

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 946 OF 2017**

**DISTRICT : JALGAON**

**Shri Namdeo Lakadu More,** )  
Age : 63 years, Occu. : Retired, )  
R/o : Saptasrungi Colony, Old Dhule Road, )  
Near Pankaj Floor Mill, Amalner, Dist. Jalgaon.)

.. **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
The Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai-32. )
2. **The Commissioner,** )  
Tribal Development, Nasik Division, Nasik.)
3. **The Additional Commissioner,** )  
Tribal Development, Nashik. )
4. **The Project Officer,** )  
Integrated Tribal Development Project, )  
Yawal, Dist. Jalgaon. )
5. **The Project Officer,** )  
Integrated Tribal Development Project, )  
Taloda, Dist. Nandurbar. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri K.B. Jadhav, Advocate for the Applicant.

: Shri M.P. Gude, P.O. for the Respondents.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
and  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **13.04.2023**

**Pronounced on** : **20.06.2023**  
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**ORDER****(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application No. 946 of 2017 was filed by one Shri Namdeo Lakadu More on 02.12.2017 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the impugned order dated 24.02.2016, passed by respondent No. 2 in departmental appeal and impugned punishment orders dated 24.07.2013, 05.03.2016 and 22.09.2017 issued by respondent number 3.

**2. The admitted facts of this case are as follows :-**

(a) While the applicant who was working as Head Master of Government Ashram School, Chirkhan, Taluka-Shahada, District- Nandurbar in the year 2010, one student of class one, namely, Karan Bharat Kharde escaped the said Ashram School on 18.03.2010. Any of the school authorities such as Warden/ Superintendent, class teacher or Head Master, did not ascertained the attendance of the said student, who was shown as present. The school authorities came to know about it on 21.03.2010 at 10.00 pm when the Head Master received information about death of the said student by a mobile phone call. It is along with the information of death of the said student that the

school authorities came to know that the said student had escaped the boarding school / ashram school three days ago i.e. on 18.03.2010.

(b) Above narrated incident was reported by respondent No. 5 i.e. the Project Officer, Taloda, District- Nandurbar vide his letter dated 04.05.2010 to the respondent No. 3, i.e. the Additional Tribal Commissioner, Nashik. Upon receipt of the report on the incident from the respondent No. 5, the respondent No. 3 issued a show-cause notice dated 28.07.2010 to the applicant calling upon him so submit his say within 10 days' time counted from the date of receipt of the show cause notice. A copy of the said show cause notice is appended at page No. 23 of the paper-book and marked as Annexure A-1. The applicant submitted his reply to the show cause notice vide his letter dated 09.08.2010. Gist of his reply has been that his subordinates did not report to him about the missing student from the hostel and therefore, he is not responsible for the incident. Relevant part of the reply of the applicant is being reproduced below for ready reference for drawing correct inference :-

“मुददा क्र. २ :- दिनांक २९/३/१० रोजी रात्री ठीक १०:०० वाजता मला स्वतः भ्रमणध्वनिद्वारे मलगांव गावातील नागरीकाने मृत्यू झालेल्या मुलाची वार्ता कळविली. लगेच म. प्रकल्प अधिकारी तळोदा यांना भ्रमणध्वनीद्वारे संदेश पोहचविला. तदनंतर वर्गशिक्षक व अधिकांना माहिती कळविली. तेव्हाच रात्री मी स्वतः, श्री. गजुर बी.एस., श्री पाटील आर. बी. व अधिकांक मलगांव येथे गेलो.

सदर विद्यार्थी गैरहजर, वा न विचारता घरी गेला आहे. यासंबंधी अधिकांक / वर्गशिक्षक यापैकी कोणीही माझ्या निदर्शनास आणून दिलेले नाही. सदरबाब निदर्शनास आणले असते तर पालकांशी संपर्क साधता आला असता व विद्यार्थ्यांस उपचारासाठी दवाखान्यात नेता आले असते. व दुर्घटना झाली नसती. करिता सदर विद्यार्थ्यांच्या मृत्यूस मी जबाबदार नाही. असे माझे स्पष्ट म्हणणे आहे.”

(c) After receiving reply to the show-cause notice dated 28.07.2010, the authorities remained inactive in respect of the matter for more than one year until one written complaint dated 02.07.2011, purportedly made by one Shri Bharat Shelya Kharde, was received by respondent No. 2, i.e. Commissioner, Tribal Development, Nashik. It is thereafter that the respondent No. 2 directed the respondent No. 4 vide his letter dated- October 2011, to conduct inquiry in the matter and to submit inquiry report. From the text of the letter issued by respondent No. 2 to respondent No. 4 it appears that the authorities initiated action of initiating inquiry into the incident after lapse of over one year fearing that the matter may lead to question in the forthcoming session of the State Legislature. To quote



to know about the child missing from the Ashram Shala for a number of days etc. instead, the respondent No. 4 visited the father of the diseased student on 02.12.2012 (appears to be mistake in date which may be much before 07.03.2012) to ascertain whether the complaint dated 02.07.2011 was written by him.

(e) After respondent No. 2 having given personal hearing to the applicant, a memorandum dated 07.03.2012 for initiating departmental enquiry under rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was issued by respondent No. 3 to the applicant calling upon him to submit his say within 10 days from receipt of the memorandum. The applicant submitted his say on 30.03.2012. It was followed by ordering of a joint departmental enquiry by respondent No. 3 on 14.05.2012. Departmental Enquiry officer submitted final enquiry report which was accepted by the competent authority and a copy thereof was supplied to the applicant who submitted his say on the same vide his letter dated 28.02.2013.

(f) After consider the enquiry report and say of the applicant thereon, the respondent No. 3 passed order dated 24.07.2013 imposing punishment of dismissal from service in exercise of powers vested in him under rule 5 (1) (Nine) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

(g) The applicant filed appeal against the punishment order dated 24.07.2013 vide a petition for appeal dated 02.09.2013 followed by another petition dated 14.3.2014 before the respondent No. 2 who gave personal hearing to the appellant on 28.04.2015 and passed a speaking order on the same day modifying the punishment of dismissal from service to a punishment of compulsory retirement and reduction of 5% in pension payable to the appellant for a period of two years. Suspension period of the appellant was decided as leave admissible and due.

(h) Pension papers of the applicant had been returned by the office of Accountant General (Accounts & Establishments)-1, Mumbai vide reference No. 08.07.2017, a copy of which is appended at page No. 91

of the paper-book and marked as Annexure A-20 for getting Government approval to payment of pension at a rate of 2/3 of full pension or otherwise.

(i) Vide another order dated 22.09.2017, respondent No. 3 had modified his order dated 05.03.2016 allowing payment of pension and gratuity at a rate of 2/3 of full pension and gratuity in accordance with Rule 100, 101, 102 (a) of the Maharashtra Civil Services (Pension) Rules, 1981.

(j) Applicant has stated that he has filed revision petition before respondent No. 1 on 16.08.2017 which is pending for decision, therefore. The present Original Application has been filed.

**3. Relief Sought:-** The applicant has prayed for relief in terms of para X] of the present Original Application, which is reproduced verbatim for ready reference as follows :-

***“X] RELIEF(S) SOUGHT:-***

- A) *To allow the Original Application.*
- B) *To quash and set aside the judgment & order dtd. 24.2.2016 passed by the respondent no. 2 in departmental appeal.*

- C) *To quash and set aside the impugned punishment orders dtd. 24.7.2013 & 5.3.2016 & 22.9.2017 issued by the respondent no. 3 may kindly be quashed and set aside.*
- D) *To direct the respondents to submit the pension papers of the applicant to the A.G. Nagpur-II and pay the regular pension and pensionary benefits to the applicant forthwith.*
- E) *The respondent no. 1 be directed to decide the revision application dtd. 16.9.2017 filed by the applicant forthwith.*
- F) *Pending hearing and final decision of this original application, the respondents be directed to stay the impugned orders passed by the respondent no. 2 & 3.*
- G) *Pending hearing and final decision of this original application, the respondents be directed to pay the provisional pension to the applicant.*
- H) *Any other equitable and suitable relief may kindly be granted in favour of applicant in the interest of justice.”*

**4. Grounds for seeking relief:-** The applicant has put facts of the matter and statement of grounds for seeking reliefs prayed for without separating them under two different sub-titles. By segregation we list following grounds for seeking relief against the punishment order :-

- (a) Concerned Class Teacher and Warden/ Superintendent had not informed the applicant about the missing student and therefore, they are also responsible.
- (b) Parents of the diseased student had not lodged any complaint about the incident and responsibility of the applicant as Head Master of the school.

(c) The student died due to illness in his house and therefore, nobody is responsible for his death.

(d) Human Rights Commission had also informed that, the applicant was not responsible for the death of the student and no further enquiry is required.

(e) Respondent authorities have failed to take action against the concerned class teacher and Warden for the incident. Warden was initially terminated by the respondents but he was reinstated after some time. Class teacher has been exonerated from all charges.

(f) The applicant was not given opportunity to cross examine witnesses,

**5. Pleadings and Final Hearing:-** Affidavit in reply on behalf of respondent No. 4 and a joint affidavit in reply on behalf of respondent Nos. 1 to 3 and 5 were filed on 25.04.2018 and 12.09.2018 respectively which were taken on record and copies thereof served on the other side. Rejoinder affidavit was filed on behalf of the applicant on 27.11.2018 after which the matter was fixed for final hearing. Learned Presenting Officer was also directed to submit report regarding action taken, if any, against the Warden and the Class Teacher; status of revision application. Final hearing took place on 13.04.2023 on which date the learned P.O. submitted requisite information and some citations.

The learned Advocate for the applicant too, submitted a compilation of following four citations on the day of final hearing.

Thereafter, the matter was closed for orders :-

- (a) *Copy of judgment of Hon'ble Supreme Court, (1997) 10 Supreme Court Cases 779, M. Raghavelu Vs. Govt. of A. P. and Another in Civil Appeal No. 4677 of 1990 decided on 03.04.1997*
- (b) *(2010) 5 Supreme Court Cases 783, State of Uttar Pradesh and Others Vs. Raj Pal Singh in Civil Appeal No. 3511 of 1998, decided on 20.02.2001*
- (c) *(2013) Supreme Court Cases 73, Rajendra Yadav Vs State of Madhya Pradesh and Others, in Civil Appeal No. 1334 of 2013, decided on 13.02.2013*
- (d) *(2016) 11 Supreme Court Cases 289, A. K. Saxena Vs. State Bank of Patiyala and Others in Civil Appeal No. 3668 of 2012, decided on 18.02.2016*

**6. Analysis of Facts on Record and Oral Submissions:**

- (a) It is a matter of concern that the respondent No. 5 reported about the incident which occurred during 18-21.03 2010 to the respondent No. 3 i.e. the Additional Commissioner (Tribal Development) Nashik vide letter dated 04.05.2010, that is after lapse of about two months. In turn, respondent No. 3 issued a show-cause notice dated

28.07.2010 to the applicant and received response of the applicant vide letter No. 09.08.2010. However, respondent No. 3 did not take any further action.

(b) It is only after a complaint dated 02.07.2011 purported to be written by father of the diseased student was received in the office of Respondent No. 2 i.e. Tribal Development Commissioner, Nashik that the respondent No. 5 was entrusted with the enquiry into the incident vide communication dated Nil in the month of October 2011. It means that during a period of over one year the applicant and the respondent No. 3 did not perform his duties to fix responsibility for negligence and dereliction in discharge of duties on part of the Class Teacher, Warden/ Superintendent and the Head Master and wheel of enquiry moved only after receipt of complaint dated 02.07.2011 by respondent No. 2.

(c) It is even more shocking to see that the enquiry report dated 07.01.2012 (a copy of which is appended at page no. 29 of paper-book) as submitted by respondent No. 5 was sketchy / superficial one, not leading to gathering evidence as to at which point the supervisory control had failed and

whether there was any nexus among the class teacher, warden and Head Master to inflate attendance of students by marking presence of absent students for facilitating pilferage of consumables and misappropriation of contingency grants.

(d) An important question arises whether admission by the class teacher and the warden/ superintendent of charges against them exonerates the applicant of his misconduct of dereliction of duty of this kind. Answer to this is definitely going to be in negation. If the plea of the applicant is admitted then the very concept of supervisory control will be eroded damaging public interest at large.

(e) In our considered opinion, the respondent Nos. 3 and 5 dealing with the case of the class teacher and the Warden/ Superintendent with undue leniency cannot constitute a defence for the applicant. Therefore, there is, in our considered opinion, no merit in the present O.A. Nevertheless, based on facts on record, we are prima facie of the opinion that the role played by respondent No. 3 and 5 in respect of departmental proceedings of the Class Teacher and Warden/ Superintendent may be re-looked by

the respondent No 1 and 2 and necessary action may be taken against them as per merit of their respective cases.

However, our observation may not be taken as conclusive and independent view may be taken by the competent authorities in this regard after drawing proceedings as per procedure and extant rules.

(f) In the present matter the applicant had not demanded to cross examine any witness; rather he had quoted submissions made by the prosecution witnesses as his defence. Moreover, the applicant has not raised this point at any subsequent stage of hearing on enquiry report, while submitting petition for appeal and petition for revision of punishment order. Therefore, this ground raised by the applicant does not hold good. A passing statement by the applicant in para 23 of the present application that his one increment was not released temporarily in view of ongoing enquiry which may be treated as punishment as such for the same alleged incident punishment of dismissal cannot be inflicted. As the applicant has not adduced any evidence / documents to support his this contention, In our considered opinion, this ground does not hold ground.

(g) Upon perusal of cited four judgments of Hon'ble Supreme Court, in our considered opinion, the ratio in the cited cases is different and not applicable in the present matter covering one incident of the diseased student of standard 1 had been missing for three consecutive dates from the boarding school/ Ashram Shala where boarding & lodging cost is provided by the Government, his attendance getting marked in class, as well as, in hostel and on third day, the boy is reported to be dead; the nature and gravity of misconduct on part of the applicant becomes exclusive and unique in nature as compared to the co-delinquents.

(h) Respondent Nos. 2 and 3 should have taken all necessary steps to get the final pension, DCRG, Leave Encashment and all other post-retirement benefits due and admissible to the applicant sanctioned and paid within prescribed time limit. It appears from the submissions made by the applicant and response thereto by the respondents that the applicant has not been paid the post-retirement benefits including final pension and DGRD, therefore, the respondents must undertake that all the post-retirement benefits due and admissible to the

applicant is paid expeditiously along with interest due as per extant rules.

(i) Hence, the following order :-

**ORDER**

Original Application is partly allowed in following terms :-

- (a) Prayer Clauses [X](B), [X](C) and [X](F) are rejected.
- (b) Prayer Clause [X](E) contradicts with Prayer Clauses [X](B), [X](C) and [X](F) and is therefore, infructuous.
- (c) Prayer Clause [X](D) and [X](G) are allowed, with the direction to the respondent Nos. 1 to 3 and 5 to take all necessary steps to get the provisional pension granted to the applicant within four weeks of receipt of this order, as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1981 and get final pension, DCRG and other post-retirement benefits, due and admissible as per provisions of Maharashtra Civil Services (Pension) Rules, 1981 sanctioned and paid within a period of 12 weeks of receipt of this order.
- (d) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**