

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 974 OF 2018

DIST. : NANDED

Nilesh s/o Ramrao Pawar,)
Age. 30 years, Occu.: Service)
As Account Clerk,)
R/o C/o District Treasury Office,)
Nanded.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through the Principal Secretary,)
Accounts and Treasuries,)
Finance Department, Mantralaya,)
Madam Kama Road, Mumbai – 32.)
2. The Director,)
Accounts and Treasuries,)
Mumbai Port Trust,)
Thakarsi House, 3rd Floor,)
Shurji Vallabhdas Marg,)
Balard Estate, Fort, Mumbai.)
3. The Joint Director,)
Accounts & Treasury Office,)
Lekha Khosh Bhavan, Fajilpura,)
Aurangabad.)
4. The District Treasury Officer,)
Nanded.).. **RESPONDENTS**

APPEARANCE :- Shri Kakasaheb B. Jadhav, learned
Advocate for the applicant.

: Smt. M.S. Patni, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri B.P. Patil, Acting Chairman**
RESERVED ON : **10th February, 2020**
PRONOUNCED ON : **13th February, 2020**

ORDER

1. The applicant has challenged the order dated 18.9.2018 passed by the res. no. 2 the Director, Accounts and Treasuries, Mumbai in the appeal challenging the order dtd. 29.5.2018 passed by the respondent no. 3 the Joint Director, Accounts & Treasury Office, Aurangabad in the Departmental Enquiry, by filing the present Original Application.

2. Applicant was initially appointed as Accounts Clerk with the respondents on 5.9.2014. He was posted in the office of the respondent no. 4. Thereafter he was transferred at various places. It is his contention that when he was working as Account Clerk in the office of the respondent no. 4 the false allegations were made against him. Respondent no. 4 issued show cause notice to him to which he had submitted his reply. In the month of February, 2017 he was transferred from Nanded to Shirur Anantpal, Dist. Latur. Applicant challenged the said order by filing O.A. no. 164/2017 before this Tribunal. During the pendency of that O.A. the respondent no. 2 modified the said transfer order and reposted

the applicant at Nanded by the order dtd. 8.9.2017. As the grievance of the applicant was redressed the O.A. no. 164/2017 came to be disposed of by the Tribunal on 8.9.2017.

3. It is contention of the applicant that as he has filed O.A. before this Tribunal the respondent no. 3 decided to conduct departmental enquiry against him on the basis of the false allegations made against him. Accordingly the respondent no. 3 issued a charge sheet to the applicant. It is alleged that the applicant had not obeyed the orders of the superiors and had not completed the work allotted to him within time. On 3.2.2017 he cried in the office and misbehaved with the superiors and thereby committed misconduct. It is also alleged that he had instigated the other employees to file complaints against the superiors and he used to take leave repeatedly thereby causing inconvenience to the office. The applicant has submitted his reply to the show cause notice on 29.4.2017 and denied the charges leveled against him. Thereafter Enquiry Officer conducted the enquiry and recorded the evidence of total 10 witnesses. Applicant had also examined 2 witnesses in his defense. It is contention of the applicant that on 22.9.2017 he demanded the various documents from the respondent no. 4 to enable him to defend his case, but no documents have been supplied to him. He submitted written

notes of arguments on 24.11.2017 and submitted that the witnesses had deposed in his favour and therefore prayed to exonerate him from the charges leveled against him. Considering the evidence and his submissions the Enquiry Officer submitted his report to the respondent no. 3 on 28.2.2019. On the basis of the Enquiry report submitted by the Enquiry Officer the respondent no. 3 issued notice dtd. 19.3.2018 to the applicant and called upon him to submit his say to the enquiry report. Accordingly he submitted his reply to it. Respondent no. 3 thereafter passed the order dtd. 29.5.2018 and imposed punishment of withholding of one increment due on 1.7.2018 without cumulative effect. Applicant had challenged the said order before the respondent no. 2 on 18.6.2018 by preferring an appeal. The respondent no. 2 decided the appeal on 18.9.2018 and modified the punishment order dtd. 1.7.2018 passed by the respondent no. 3 and imposed the punishment of Censure. Applicant has challenged the said order by filing the present O.A.

4. It is his contention that the respondent nos. 2 & 3 have not considered the evidence of witnesses with proper perspective. They have not considered the evidence adduced by the applicant and they have wrongly held the applicant guilty of the charges leveled against him. It is his contention that his misconduct has

not been proved, but the respondent nos. 2 & 3 had wrongly held that the applicant had committed the misconduct. It is his contention that the respondents have not followed the provisions of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and the principle of natural justice while conducting the enquiry. They ought to have exonerated the applicant but had wrongly punished him. The punishment imposed on him is bad in law. Therefore he prayed to quash and set aside the impugned orders by allowing the present O.A.

5. Respondent nos. 1 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant was appointed as a Account Clerk in the office of the District Treasury Officer, Nanded vide order issued by the Joint Director, Accounts and Treasuries, Aurangabad dated 20.8.2014 and accordingly he joined the service on 5.9.2014. Applicant was given posting in the 'Pension Branch' of District Treasury Office, Nanded. Thereafter he was transferred from 'Pension Branch' to 'compilation branch' w.e.f. 28.10.2014. It is their contention that thereafter the applicant was sent on deputation in the Sub Treasury Office, Mukhed w.e.f. 3.11.2014 on his own request dtd. 31.10.2014. As the performance of the applicant was not satisfactory he was

transferred from Sub Treasury Office, Mukhed to the District Treasury Office, Nanded and posted in 'record section' w.e.f 21.7.2015. Said section of the applicant was changed due to his unsatisfactory work and he was posted in D.C.P.S. branch w.e.f. 20.1.2016 and in the cheque section w.e.f. 18.11.2016. The said changes in his Desks were made for administrative convenience taking into consideration his incompetency in the work, intentional disobedience, adamant, arrogant and aggressive attitude in discharging the work. It is their contention that in the month of February, 2017 the applicant was given an oral warning in respect of the pendency in the CMP and NEFT. It is their contention that as the applicant had not performed his duty properly his Desk was changed and he was posted in Record section. Applicant was asked to handover the charge and passwords of CMP and NEFT to respective authority vide office order dtd. 4.2.2017. However, he refused to accept the said order and shouted at the District Treasury Officer, Nanded in his cabin. Some of the office employees entered in the cabin of the District Treasury Officer, Nanded and saved the District Treasury Officer. As the applicant had not handed over the charge and passwords of CMP and NEFT to respective authorities, the work of payment of the bills of different offices had been affected.

6. It is their contention that the applicant remained absent from duty for total period of 76 days from February, 2015 to December, 2016 without intimation. The said period of absence of the applicant was regularized by the District Treasury Officer, Nanded. It is their contention that the applicant has uploaded the incidents of changing the desks on social media i.e. whatsapp group on 25.6.2016 wherein he had contended about alleged injustice caused by the District Treasury Officer, Nanded. It is their contention that the said act of the applicant had damaged the image and reputation of the office. The applicant had violated the provisions of Rule 3 of M.C.S. (Conduct) Rules, 1979 and the office code of conduct. Therefore the applicant was served with show cause notice dtd. 29.6.2016 issued by the District Treasury Officer, Nanded. Applicant filed reply dtd. 5.7.2016 to the said show cause notice and tendered his unconditional apology stating that his mind was not stable due to bye-pass surgery carried out on his father and therefore such misbehavior was done by him. Applicant had assured the District Treasury Officer, Nanded that such incidents will not be repeated in future. But thereafter there was no change in the approach and attitude of the applicant. It is their contention that the misbehavior of the applicant in the chamber of District Treasury Officer, Nanded was brought to the notice of Joint Director, Accounts and Treasuries,

Aurangabad. Therefore the services of the applicant were transferred to the Joint Director, Accounts and Treasuries, Aurangabad vide letter issued by the District Treasury Officer, Nanded dtd. 4.2.2017. The Joint Director, Accounts and Treasuries, Aurangabad by communication dtd. 6.2.2017 issued show cause notice to the applicant and called upon him to give explanation about the incident stated by the District Treasury Officer, Nanded in his letter dtd. 4.2.2017. As the explanation submitted by the applicant was not satisfactory, the Joint Director, Accounts and Treasuries in the capacity of disciplinary authority issued charge sheet to the applicant vide memo dtd. 11.4.2017. It is their contention that as the explanation of the applicant to the show cause notice was not satisfactory he was transferred from the office of the Joint Director, Accounts and Treasuries, Aurangabad to Sub Treasury Office, Shirur Anantpal, Dist. Latur by the Joint Director, Accounts and Treasuries, Aurangabad vide order dtd. 15.2.2017. The applicant filed O.A. no. 164/2017 challenging the said order before this Tribunal. During the course of hearing this Tribunal expressed opinion that the said transfer of the applicant was not in consonance with the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short the Transfer Act, 2005). Therefore, the Joint

Director, Accounts and Treasuries, Aurangabad submitted a proposal for transfer of the applicant from Shirur Anantpal, Dist. Latur to Nanded. The Respondent no. 2 the Director of Accounts and Treasuries, Mumbai accorded approval to the said proposal and therefore the applicant was transferred from Shirur Anantpal, Dist. Latur to the District Treasury Office, Nanded and accordingly the said O.A. has been disposed of. They have denied that the departmental enquiry against the applicant has been initiated as he has filed O.A. before this Tribunal. It is their contention that the departmental enquiry against the applicant has been conducted because of his misbehavior & misconduct. It is their contention that the explanation submitted by the applicant to the show cause notice was not satisfactory and therefore charge sheet was issued against him vide memo dtd. 11.4.2017 for the five charges. Applicant submitted his explanation-cum-representation on 29.4.2017. Thereafter the Enquiry Officer was appointed. In the enquiry 10 witnesses have been examined by the disciplinary authority. All the witnesses supported the charges leveled against the applicant. Applicant examined two witnesses in his defense. After conclusion of the D.E. the Enquiry Officer has submitted his report on 28.2.2018. Thereafter the Joint Director of Accounts and Treasuries, Aurangabad issued notice dtd. 19.3.2018 to the applicant to which he has submitted his reply. Thereafter the

respondent no. 3 passed the order dtd. 29.5.2018 and thereby imposed the punishment of stoppage of one increment of the applicant without cumulative effect. Applicant challenged the order passed by the respondent no. 3 before the respondent no. 2. Opportunity of hearing was given to the applicant in the appeal and thereafter the respondent no. 2 passed the order dtd. 18.9.2018 modifying the punishment imposed by the respondent no. 3 and imposed the punishment of censure on the applicant. It is their contention that the departmental enquiry has been conducted in view of the provisions of M.C.S. (Discipline & Appeal) Rules, 1979 and principles of the natural justice have been followed while conducting the enquiry. Applicant behaved arrogantly with his superiors and therefore the respondent imposed the punishment in view of the provisions of the M.C.S. (Discipline & Appeal) Rules, 1979. The punishment imposed on the applicant is proportionate to the charges leveled against him. Therefore they justified the impugned orders and prayed to reject the O.A.

7. I have heard the arguments advanced by Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

8. Admittedly the applicant was appointed as a Accounts Clerk in the office of the District Treasury Officer, Nanded vide order issued by the Joint Director, Accounts and Treasuries, Aurangabad dated 20.8.2014 and accordingly the applicant joined the service on 5.9.2014. Admittedly initially the applicant was posted in the Pension Branch of District Treasury Office, Nanded. Thereafter he was transferred from 'Pension Branch' to 'Compilation Branch' w.e.f. 28.10.2014. Admittedly, on his request the applicant was sent on deputation in the Sub Treasury Office, Mukhed w.e.f. 3.11.2014. But his performance was not satisfactory therefore he was transferred from Sub Treasury Office, Mukhed to the District Treasury Office, Nanded and posted in 'Record Section' w.e.f 21.7.2015. Admittedly the said section of the applicant was changed due to his unsatisfactory work and he was posted in D.C.P.S. branch w.e.f. 20.1.2016 and in the 'Cheque Section' w.e.f. 18.11.2016. The said changes in his Desks were made for administrative convenience taking into consideration the incompetency of the applicant in the work, intentional disobedience, adamant arrogant and aggressive attitude in discharging the work. Admittedly in the month of February, 2017 the applicant was given an oral warning in respect of the pendency in the CMP and NEFT. The applicant had not

performed his duty properly and therefore his Desk was changed and he was posted in Record section. Admittedly the applicant was asked to handover the charge and passwords of CMP and NEFT to respective authority vide office order dtd. 4.2.2017. However he refused to accept the said order and shouted at the District Treasury Officer, Nanded in his cabin. Admittedly in the year 2017 the applicant was transferred from District Treasury Office, Nanded to Sub Treasury Office, Shirur Anantpal, Dist. Latur on the basis of the report made by the District Treasury Officer, Nanded. Admittedly the applicant challenged the said order by filing O.A. no. 164/2017 before this Tribunal. During the pendency of said O.A. the respondent no. 2 cancelled the order and transferred the applicant to District Treasury Office, Nanded from Sub Treasury Office, Shirur Anantpal and therefore the said O.A. came to be disposed of by the Tribunal. Admittedly on the basis of the report of the District Treasury Officer, Nanded, the Joint Director, Accounts and Treasuries, Aurangabad issued show cause notice to the applicant to which he has filed his reply. But his reply was not satisfactory and therefore the respondent no. 2 decided to initiate D.E. against him. Admittedly the applicant has given reply to the memo and thereafter the Enquiry Officer has been appointed. On conclusion of the D.E. the Enquiry Officer submitted his report. On the basis of the report of the Enquiry

Officer the respondent no. 3 the Joint Director of Accounts and Treasuries, Aurangabad passed the order imposing the punishment of stoppage of one increment without cumulative effect on 29.5.2018. Admittedly the applicant challenged the said order before the respondent no. 2 by preferring an appeal and that appeal was disposed of on 18.9.2018. Admittedly, the respondent no. 2 decided the appeal on 18.9.2018 and modified the punishment imposed by order dtd. 29.5.2018 passed by the respondent no. 3 and imposed the punishment of Censure on the applicant.

9. Learned Advocate for the applicant has submitted that the applicant was involved in the false charges. He never misbehaved with the superiors while discharging his duties. Applicant never caused delay in discharging the work allotted to him. He never misbehaved with the superiors, but he has been falsely involved in the charges as he has challenged the transfer order by filing O.A. no. 164/2017 before this Tribunal. He has submitted that the enquiry has been initiated against the applicant by the respondent nos. 2 & 3 as he approached the Tribunal. The action on the part of the respondents is of vindictive nature. He has submitted that the witnesses examined by the disciplinary authority have not supported the authorities. But the Enquiry Officer as well as

disciplinary authority and appellate authority had not considered the said aspect and had wrongly held the applicant guilty of the charges leveled against him. He has submitted that the applicant had never instigated the other employees to make complaints against the superiors and never posted the post regarding injustice caused on him on social media i.e. whatsapp group. He has submitted that the said aspect had not been considered by the Enquiry Officer, disciplinary authority and the appellate authority while imposing the punishment on the applicant. The impugned order is bad in law and against the provisions of the M.C.S. (Discipline & Appeal) Rules, 1979. It is his contention that the Enquiry Officer, disciplinary authority and appellate authority ought to have exonerated the applicant on the basis of the evidence adduced by the witnesses, but they have not appreciated the evidence in proper perspective. Therefore he has prayed to quash the impugned orders by allowing the present O.A.

10. Learned Presenting Officer has submitted that the behavior of the applicant was arrogant and adamant. Applicant was not discharging his duties promptly. He was arguing with his superiors and pressurizing them. He posted false information on the whatsapp group. All these acts constitute misconduct and the said misconduct had been proved by the authorities by examining

10 witnesses. All the witnesses have supported the authorities and therefore the Enquiry Officer had held the applicant guilty of the charges leveled against him. She has submitted that the misconduct of the applicant is of serious nature and therefore the respondent no. 3 passed the order imposing punishment of stoppage of one increment without cumulative effect. She has submitted that the order passed by the respondent no. 3 was proper and legal. She has argued that the said punishment has been reduced to 'Censure' by the respondent no. 2 in the appeal. The respondent no. 2 had taken lenient view while deciding the appeal and thereby reduced the punishment though the misconduct of the applicant was of serious nature. She has argued that the principles of natural justice as well as the provisions of the M.C.S. (Discipline & Appeal) Rules. 1979 had been followed by the respondents and there is no illegality. Therefore, she justified the impugned orders.

11. On going through the documents on record it reveals that 5 charges have been leveled against the applicant. It is alleged that the applicant was in habit of disobeying the orders of the superior officers. He was in habit of causing delay in discharging his official work. He was in habit of proceeding on leave without prior sanction. It is alleged that on 3.2.2017 the applicant raised hue &

cry in the office and misbehaved with the superiors & thereby committed misconduct. Applicant used to send posts on social media i.e. whatsapp group regarding alleged injustice caused on him and thereby instigated the other employees to make complaints against the superiors. In order to prove the said charges the disciplinary authority examined in all 10 witnesses. All the witnesses supported the allegations made by the disciplinary authority against the applicant. Their evidence had not been shaken in the cross examination. Their evidence is sufficient to establish the misconduct on the part of the applicant. Not only this, but the applicant admitted in his reply dtd. 5.7.2016 that he committed mistake by putting a post on whatsapp group and he tendered his unconditional apology therefor. Putting a post on social media i.e. on whatsapp group and instigating the other employees to make complaints against the superiors amounts misconduct. The said misconduct has been established by the respondents. Not only this, but other charges have been established against the applicant. All the witnesses supported the charges leveled against the applicant. On the basis of the said evidence the Enquiry Officer held the applicant guilty of the charges leveled against him and submitted the enquiry report accordingly to the disciplinary authority. The disciplinary authority issued show cause notice in that regard to

the applicant and the applicant submitted his reply to it. Thereafter the respondent no. 3 passed the order on 29.5.2018 and imposed the punishment of withholding of one increment of the applicant without cumulative effect. Applicant challenged the said order before the respondent no. 2 by filing appeal. The respondent no. 2 had given an opportunity of hearing to the applicant and thereafter took lenient view and reduced the punishment & imposed the punishment of 'Censure' instead of withholding of one increment without cumulative effect. The respondent no. 2 followed the principles of natural justice while deciding the appeal. The punishment imposed by the respondent no. 2 is proportionate to the charges leveled against the applicant. In fact the applicant was involved in serious charges of misconduct, but the respondent no. 2 took a lenient view and imposed the punishment of censure instead of withholding of one increment without cumulative effect. Considering the nature of charges leveled against the applicant, punishment imposed by the respondent no. 2 on the applicant is proper. Therefore, no interference in the impugned order passed by the respondent no. 2 is called for. There is no illegality in the impugned order. Therefore, I find no illegality in the impugned orders. There is no reason to interfere with the said order. There is no merit in the O.A. Consequently the O.A. deserves to be dismissed.

12. In view of the discussion in the foregoing paragraphs the Original Application stands dismissed. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 13th February, 2020

ARJ-O.A. NO. 974-2018 BPP (MINOR PUNISHMENT)