

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 691 OF 2012

DIST. : AHMEDNAGAR

Aba s/o Dharma Thakur,
Age 54 years, Occ. Service,
R/o Samta Colony, Vinayak Nagar,
Dhoot Showroom, Nagar-Pune Road,
Ahmednagar.

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APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Food, Civil Supply and Consumer
Protection Department,
Mantralaya, Mumbai.
2. The Secretary,
Water Conservation Department,
Mantralaya, Mumbai.
3. The Divisional Commissioner (Revenue),
Nasik Region, Nasik.
4. The District Collector,
Ahmednagar.

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RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned Advocate for the
applicant.
: Shri I.S. Thorat, learned Presenting Officer for
respondents.

CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

ORAL ORDER

(Passed on 1.12.2016)

1. Heard Shri V.B. Wagh, learned Advocate for the applicant and Shri
I.S. Thorat, learned Presenting Officer for respondents.

2. The applicant has been appointed on 29.6.1982. He was promoted as a Awwal Karkoon on 17.6.1994. The applicant was kept under suspension on 1.10.1997 and it was revoked on 27.5.1998. After the revocation of the suspension the applicant was working as a Awwal Karkoon. On 9.6.2000 a memorandum of charge was issued and a D.E. was initiated against the applicant. The said enquiry resulted into the punishment. The competent authority i. e. res. no. 1 the Secretary, Food, Civil Supply and Consumer Protection Department, Mantralaya, Mumbai vide order dated 31.7.2009 was pleased to impose following punishment on the applicant :-

श्री. ए.डी. ठाकुर, पुरवठा निरीक्षक यांना शिक्षा म्हणून लिपीक या पदावर ५ वर्षाकरीता पदावत करण्यात यावे. पदावततीच्या कालावधीत त्यांना वेतनवाढी मिळणार नाहीत व या पदावततीचा परिणाम त्यांचे मुळ पदावर पुर्नस्थापना झाल्यावर त्या पदाचे वेतनावर व ज्येष्ठतेवर होईल. तसेच पदावततीच्या कालावधीत त्यांनी घेतलेल्या रजेचा कालावधी शिक्षेच्या कालावधीमधुन वगळण्यात यावा अशी शिक्षा देण्यात येत आहे.+

3. Admittedly, the applicant had filed appeal against the said order before the His Excellency Hon^{ble} the Governor and His Excellency Hon^{ble} Governor authorized Dr. Nitin Raut, Hon^{ble} Minister of Water Conservation Department, Mantralaya, Mumbai to deal with the

said appeal. The said appeal was partly allowed. The appellate authority has passed following order in the appeal :-

आदेश :-

१. अपील अंशतः मंजूर करण्यात येत आहे.
२. अन्न, नागरी पुरवठा विभागाचा आदेश क्रमांक विभाचौ-१९९८/२५८/प्र.क्र.४६७५/ना.पु.१३, दिनांक ३१.७.२००९, प्रस्तुत आदेशाच्या दिनांकापासुन रद्द करण्यात येत आहे.
३. तदनुसार, श्री. आबा धर्मा ठाकुर, लिपिक यांनी पदावनतीच्या पदावर व्यतीत केलेला कालावधी वगळुन प्रस्तुत आदेशाच्या दिनांकापासुन श्री. ठाकुर यांना पुरवठा निरिक्षक पदावर पुनःस्थापित करण्यात येत आहे.
४. श्री. ठाकुर, लिपिक यांनी पदावनतीच्या पदावर प्रस्तुत आदेशाच्या दिनांकापर्यंत व्यतीत केलेल्या कालावधीसाठी त्यांना वेतन व भत्यावरील कोणताही फरक अनुज्ञेय असणार नाही.+

4. The learned Advocate for the applicant submits that, the applicant has no grudge against the order passed in the appeal, so far as sr. nos. 1 & 2 thereof is concerned and he is challenging the sr. nos. 3 & 4 contained therein.

5. The affidavit in reply has been filed by the res. nos. 3 & 4. The respondents are trying to justify to justify the order passed by the appellate authority.

6. The only material point to be considered in this O.A. is whether the order passed by the appellate authority denying the applicant the pay and allowances during the demotion period and whether the reinstatement of the applicant by ignoring the period in which he was under demotion is legal and proper ?

7. The learned Advocate for the applicant pointed out the observations made by the appellate authority in the in the order passed in appeal on 17.4.2012. In the last but one para of order the appellate authority i. e. Hon^{ble} Minister has observed as under :-

%अन्न, नागरी पुरवठा व ग्राहक संरक्षण विभागाच्या दिनांक ३१.७.२००९ रोजीच्या आदेशाद्वारे अहमदनगर येथे सन १९९५-१९९७ या कालावधीत पुरवठा निरिक्षक पदावर कार्यरत असलेल्या श्री. आबा धर्मा ठाकुर यांना निम्न पदावर अर्थात लिपिक पदावर पाच वर्षाकरिता पदावतत करण्याची शिक्षा देण्यात आली आहे. सदर शिक्षादेशांचे अवलोकन केले असता श्री. ठाकुर यांच्यावर ठेवलेल्या एकूण १० दोषारोपांपैकी ८ दोषारोप अंशतः सिध्द होतात, १ दोषारोप सिध्द होतो, तर १ दोषारोप सिध्द होत नाही असा निष्कर्ष काढून विभागाने उक्त शिक्षा सामान्य प्रशासन विभागाच्या सहमतीने दिल्याचे स्पष्ट होते. परंतु, सदर आदेशातील दोषसिध्दी संदर्भातील विवेचनात श्री. ठाकुर यांच्याविरुध्द ज्या तक्रारदारांनी प्रतिज्ञापत्राद्वारे निवेदन दिले होते, असे तक्रारदार चौकशी दरम्यान उलटतपासणीसाठी अथवा साक्षीसाठी वारंवार संधी देवूनही उपस्थित राहिले नाही ही बाब नजरेआड करता येणार नाही. सदर बाब श्री. ठाकुर यांनी देखिल नमुद केली आहे. त्यामुळे विभागाने श्री. ठाकुर यांना दिलेली शिक्षा काहीशी एकतर्फी असल्याचे दिसून येते. कारण तक्रारीचे गांभीर्य

पाहून जर एखादया कर्मचा-याविरुद्ध कारवाई होत असेल तर तक्रार पुराव्यानिशी सिध्द करण्याची जबाबदारी ही संबंधित तक्रारदारांचीदेखिल आहे. सबब, या प्रकरणी श्री. ठाकुर यांचेवरील तक्रारीची शहनिशा नैसर्गिक न्यायतत्वास अनुसरून झाली होती, असे म्हणता येणार नाही. सुनावणीस उपस्थित राहिलेले तत्कालिन चौकशी अधिक-याच्या निवेदनात देखिल वरील बाब अधोरेखित होते. त्यांचबरोबर पुस्तुत सुनावणीच्यावेळीदेखिल संबंधित तक्रारदार अनुपस्थित राहिले आहे. तेव्हा उपरोक्त वस्तुस्थिती विचारात घेता श्री. ठाकुर यांच्यावरील दोषारोप ठोस निष्कर्षासह सिध्द होत नाहीत. त्यामुळे, वरीलप्रमाणे दिलेली शिक्षा कठोर असल्याचे प्रतीत होते. सदर शिक्षेपैकी अर्धा कालावधी उलटला असून वरील तथ्ये विचारात घेता एवढी शिक्षा पुरेशी आहे, असे माझे मत झाले आहे. त्यामुळे उपरोक्त वस्तुस्थिती विचारात घेवुन पुढीलप्रमाणे आदेश देण्यात येत आहेत.+

8. Plane reading of the aforesaid para shows that even the person, who has filed complaint against the applicant on the basis of which the D.E. was initiated did not appear for deposing before the Enquiry Officer in spite of repeated notices given to him and, therefore, appellate authority rightly considered that, there was no evidence and that the Enquiry Officer was not as per the principles of natural justice and that seems to be the reason as to why the order passed by the competent authority on 31.7.2004 has been quashed and set aside. If the very order of punishment is quashed, there is no reason as to why the applicant was not considered for giving all the monetary and service benefits, which are consequential to the setting aside of the order of punishment. The finding

of the appellate authority that considering the fact that the applicant has undergone almost punishment for about 5 years, there is no need to further punish him is not legal. The only order that could have been passed was to quash and set aside the entire punishment and to give all financial and service benefits to the applicant, which are consequential to setting aside of such punishment.

9. In view thereof I feel that the order passed by the appellate authority is illegal and required to be quashed and set aside. Hence, I pass following order :-

ORDER

- (i) The O.A. is allowed.
- (ii) The order passed by the appellate authority i. e. the res. no. 2 dated 17.4.2012 so far as sr. nos. 3 & 4 is concerned, the same are quashed and set aside.
- (iii) The respondents are directed to regularize the suspension period of the applicant and to grant all service benefits to the applicant in view of setting aside of orders dated 31.7.2012 and 17.4.2012 by res. no. 1 and by the appellate authority respectively are quashed and set aside.
- (iv) The consequential benefits be paid to the applicant within a period of 3 months from the date of this order.

There shall be no order as to costs.

MEMBER (J)