

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**BENCH AT AURANGABAD****ORIGINAL APPLICATION NO. 401/2016****WITH****MISC. APPLICATION NO. 224/2016****WITH****CAVEAT NO. 49/2016****DIST.: PARBHANI**

Jalamsing Davanji Valvi,
Age 54 Years, Occu. Service,
Tahsildar, Jintur,
Dist. Parbhani

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APPLICANT**VERSUS**

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
M.S. Mantralaya, Mumbai-32
2. The Commissioner,
Aurangabad Division,
Aurangabad.
3. The Collector, Jalna.

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RESPONDENTS

APPEARANCE : Shri S.D. Dhongde, learned Advocate for
the Applicant.

: Shri M.S. Mahajan, Learned Presenting Chief
Officer for the Respondents.

: Shri C.D. Biradar, learned Advocate for
intervener, **absent**.

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

J U D G M E N T**[PER- HON'BLE SHRI J.D. KULKARNI, MEMBER (J)]****(Delivered on this 13th Day of December, 2016)**

1. The applicant Jalamsing Davanji Valvi, is serving as Tahsildar, Jintur, Dist. Parbhani. The Original Application has been filed for the relief that the impugned order of enhancement of punishment whereby the applicant has been reverted to lower post for two years by the Commissioner dated 6.5.2016 be quashed and set aside. The O.A. was subsequently amended and vide amended prayer the applicant has claimed relief that the order passed by the Collector, Jalna on 1.8.2015 withholding annual increment payable to the applicant on 1.7.2016 be quashed and set aside and consequential orders passed by the Collector Parbhani and the Collector, Nanded shall also be set aside and respondents be directed to allow the applicant to work as Tahsildar, Jintur.

2. The factual matrix of the Original Application is that the applicant joined service as a Clerk with respondents in the year 1983 and considering his seniority, he was promoted to the post of Tahsildar on 16.09.2009. In the year 2005, he was posted as Nayab Tahsildar at Jalna and at that time, he has passed some orders in the matter of Smt. Laxmibai Panduranag

Wagh Vs. Bhskar Madhavrao Kulkarni in tendency matter. The said order was challenged before the Collector and thereafter, before Maharashtra Revenue Tribunal and was set aside. Shri Kulkarni, filed application before the Government seeking permission to prosecute the applicant in criminal Court and also filed W.P. No. 841/2015 seeking same relief. The said W.P. was however, disposed of with direction on 11th August, 2015.

3. On 11.8.2015, the Government rejected permission to prosecute against the applicant, however directed initiation of Departmental Enquiry.

4. The applicant faced the Departmental Enquiry in accordance with the provisions of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The charge against the applicant was that when the powers to deal with the tenancy cases were confirmed upon the then Tahsildar Mr. Joshi, the applicant exercised said powers as Nayab Tahsildar and illegally passed the orders and acted beyond his jurisdiction. The Collector found the applicant guilty and passed the order of stoppage of one annual increment for one year against the applicant.

5. Shri Kulkarni, being unsatisfied with said order of punishment of one annual increment passed by the Collector, filed Appeal before the Commissioner, Aurangabad on 4.9.2015, through Advocate Mr. C.D. Birajdar. On 6.5.2016, the Commissioner passed final order and modified the order of punishment passed by the Collector. The Commissioner enhanced the punishment and reverted the applicant on lower post for two years. The said order is subject matter of this O.A. Subsequently, the applicant amended the O.A. and also challenged the order of punishment passed by the Collector on 13.8.2015.

6. The learned counsel for the applicant submits that the impugned order of enhancement of punishment is without application of mind and has been passed under the influence of the order passed by the Hon'ble High Court in W.P. No. 849/2015. No reason is assigned by the Commissioner for enhancement and the order is also gross violative of proviso to Rule 25 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is stated that Shri Kulkarni has no *locus standi* to file appeal being third party and therefore, Commissioner ought not to have entertained the appeal/revision.

7. Mr. Bhaskar Madhavrao Kulkarni also filed his affidavit.

8. The respondent no. 2 justified the order passed by the Commissioner. It is stated that full opportunity was given to the applicant by the Commissioner. The applicant has exercised those powers which were not vested in him under Hyderabad Tenancy and Agricultural Lands Act, 1950. The applicant not only exceeded his jurisdiction but it is a case of illegal exercise of power.

9. It is stated that Shri Kulkarni filed complaint/appeal against the applicant and it was treated as suo-moto revision and after giving opportunity, the order of enhancement of punishment was passed. It is stated that the applicant has alternative remedy available under Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 but without exhausting that opportunity the applicant has filed this O.A. and therefore, the O.A. is not tenable.

10. We have heard Shri S.D. Dhongde, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. Shri C.D. Biradar,

learned Advocate for intervener, was **absent**. We have also perused the affidavits, affidavit in reply, short affidavit filed by third party Shri Kulkarni and various documents placed on record by the respective parties.

11. From the facts immerged it seems that the Collector Jalna was pleased to pass the order in Departmental Enquiry, whereby one increment of the applicant which was due on 1.7.2016 was stopped for one year. The relevant order is as under:-

- “ आदेश
- (१) श्री. जे.डी. वळवी, तत्कालीन नायब तहसिलदार (निवडणूक) तहसिल कार्यालय, जालना सध्या तहसिलदार जिंतूर जि. परभणी यांना महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ५(१)(चार) अन्वये त्यांनी ०१ जूलै २०१६ रोजी देय होणारी एक वेतनवाढ एक वर्षासाठी रोखून ठेवण्यात येत आहे.
- (२) आदेशाची नोंद संबंधीताचे मूळ सेवापुस्तिकेत घेण्यात यावी.
- (३) सर्व संबंधीताना कळवून प्रकरणाची मूळ संचीका अभिलेख कक्षाकडे वर्ग करण्यात यावी.”

12. It is material to note that this order of punishment in the Departmental Enquiry has not been challenged by the applicant by filing appeal but the same is being challenged directly before this Tribunal that too by amending O.A. If the pleadings of the O.A. are considered, it seems that the applicant

seems to have accepted order passed by the Collector, whereby his one increment is stopped, for one year only but by way of amendment in the O.A., the said order is also challenged.

13. The learned Chief Presenting Officer submits that the applicant has not challenged the original order passed by the Collector imposing punishment upon the applicant and therefore, for the first time in this Original Application the applicant cannot challenge that order, since he has not filed appeal under section 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. From the synopsis as well as pleadings in the O.A., it seems that the applicant originally challenged only order passed by the Divisional Commissioner, Aurangabad whereby, the applicant was reverted to the lower post for two years. In other wards, the order passed by the Collector, Jalna seems to have been accepted by the applicant.

14. The Section 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 deals with the order against which appeal lies and as per Section 17 (ii) the Government servant may prefer an appeal against the order imposing any of the penalties specified in Rule 5 of these rules, whether made by the disciplinary authority or by any appellate or reviewing

authority. Rule 18 states about appellate authorities. In view of these Rules, it was necessary for the applicant to challenge the orders passed by the Collector in appeal, since he has not filed any appeal against the said order, he cannot for the first time challenge that order before this Tribunal.

15. The learned Advocate for the applicant submits that the entire order of punishment was passed by the Collector under the presumption that the applicant was not authorized or not having jurisdiction to decide the tenancy matter of Shri Kulkarni. He also submits that this very foundation of taking action against the applicant is wrong. The learned Advocate for the applicant invited our attention to some copies of notifications, which he placed on record subsequently. The copies of Notifications dated 30th May 1959 and 8th February, 1983 are placed on record at paper book page nos. 30 and 31. The said Notifications states that the Government of Bombay was pleased to vest in the Naib Tahsildars including Naib Tahsildars (Lands Reforms) in the Hyderabad area of the State of Bombay all the powers confirmed and the duties imposed, by or under the said Act on the Tahsildar. The learned Advocate for the applicant therefore, submits that the applicant was very much authorized to exercise powers to deal with revenue matters

as he was working as Naib Tahsildar. It is however, not so because from the charge framed against the applicant in Departmental Enquiry, it seems that the applicant was Tahsildar in-charge of Election and not land records and still he exercised his powers to deal with revenue matters. In any case, it was necessary for the applicant to file appeal against the order of Collector, had he being aggrieved by such order of Collector.

16. The material order, whereby the applicant has been aggrieved, is the order passed by the Divisional Commissioner, dated 6.5.2016. The said order can be reproduced for convenience, which is as under:-

“निकालपत्र

(महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम २५ अन्वये पुनर्विलोकन)

श्री जे. डी. वळवी, तत्कालीन नायब तहसीलदार (निवडणूक), तहसील कार्यालया जालना सध्या तहसिलदार जिंतूर जि. परभणी यांनी केलेल्या अनियमतीततेच्या अनुषंगाने केलेल्या विभागीय चौकशी अंती जिल्हाधिकारी जालना यांनी दिनांक ०१.०८.२०१५ रोजी शिक्षेसंदर्भात आदेश पारीत करून त्यांची दि. ०१.०७.२०१६ रोजी देय होणारी एक वेतनवाढ एक वर्षासाठी रोखून ठेवली आहे. उक्त आदेशाचे नाराजीने श्री. भास्कर माधवराव कुलकर्णी, राहणार जालना यांनी दिनांक ४.९.२०१५ रोजी त्यांचे विधीज्ञ अॅड. सी.डी. बीरादार यांचे मार्फत महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम १७ अन्वये अपील दाखल केले. श्री. भास्कर माधवराव कुलकर्णी, ह सदर प्रकरणात त्रयस्त व्यक्ती असून त्यांनी केलेल्या तक्रारीच्या

अनुषंगानेच जिल्हाधिकारी जालना यांनी उपविभागीय अधिकारी, जालना यांचे विभागीय चौकशीच्या अहवाला वरून श्री वळवी यांचे विरूध्द शिक्षेचा आदेश पारित केला आहे. श्री कुलकर्णी यांनी निदर्शनास आनुन दिलेल्या मुद्द्यांचा विचार करून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम २५ अन्वये जिल्हाधिकारी जालना यांचे आदेशाचे पुनर्वीलोकन करण्याचा निर्णय घेण्यात आला. श्री. जे.डी. वळवी, तत्कालीन नायब तहसीलदार (निवडणूक), तहसील कार्यालय जालना सध्या तहसीलदार जिंतुर व श्री भास्कर माधवराव कुलकर्णी यांना नोटीस काढून बाजु मांडण्याची पुरेशी संधी देण्यात आली.

श्री. भास्कर माधवराव कुलकर्णी यांनी दिनांक ४.९.२०१५ रोजीचे अर्जात पुढील प्रमाणे म्हणने मांडले आहे. हैद्राबाद शेत जमिन व कुळ वहिवाट कायदा १९५० चे कलम ८ नुसार तहसिलदार यांना त्यांचे कार्यक्षेत्रातील कुळाचे प्रकरणात निर्णय घेण्याचे अधिकार आहेत. श्री राजेश जोशी, तत्कालीन तहसीलदार जालना हे दिनांक २४.५.२००५ रोजी तहसील कार्यालय जालना येथे उपस्थित होते. त्या दिवशी त्यांनी फेरफार प्रकरणांची सुनावणी घेतलेली आहे. असे असतांना श्री. जे.डी. वळवी, तत्कालीन नायब तहसीलदार, (निवडणूक) यांना कुळाचे प्रकरणात निर्णय घेण्याचा कोणताही अधिकार नसतांना त्यांनी प्रकरण क्रमांक २००५/एलआर/टीएनसी/कवी, लक्ष्मीबाई पांडुरंग वाघ विरूध्द वसंत नागोराव कुलकर्णी या प्रकरणात दिनांक २४.५.२००५ रोजी तहसीलदार जालना या जदनामाने नियमबाहय व अधिकारबाहय आदेश पारित केला आहे. या अनुषंगाने जिल्हाधिकारी जालना यांनी श्री वळवी यांचे विरूध्द महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ८ अन्वये विभागीय चौकशीची कार्यवाही करून पारित केलेले शिक्षेचे आदेश १.८.२०१५ व त्या अनुषंगाने पारित केलेले दुरूस्तीचे आदेश श्री वळवी यांनी केलेल्या अनियमिततेच्या तुलनेत अतिशय किरकोळ आहेत. त्यामुळे जिल्हाधिकारी जालना यांचे दिनांक १.८.२०१५ व दिनांक १३.८.२०१५ चे आदेश रद्द करून श्री वळवी यांचेवर कठोर शिक्षा बजावण्यात यावी अशी विनंती श्री. कुलकर्णी यांनी केली आहे.

दिनांक १६.१.२०१५ रोजी दिलेल्या सुनावणीचे वेळी श्री कुलकर्णी व श्री. जे.डी. वळवी हजर होते. सदर प्रकरणात श्री जे.डी. वळवी यांनी त्यांचे लेखी म्हणने सादर केले आहे. त्यामध्ये त्यांनी या प्रकरणात त्यांचेकडून अनावधानाने चुक झाल्याचे कबुल करून त्या बाबत जिल्हाधिकारी जालना यांनी शिक्षा दिलेली आहे. अर्जदार दुषीत हेतुने प्रेरीत होउन तक्रार करत

असल्याने जिल्हाधिकारी यांचा आदेश कायम ठेवून श्री कुलकर्णी यांचा अर्ज निकाली काढण्याची विनंती श्री वळवी यांनी केली आहे.

अर्जदार श्री भास्कर माधवराव कुलकर्णी, यांनी त्यांचे अर्जात नमूद केलेले मुद्दे, श्री. जे.डी. वळवी यांनी सुनावणीचे वेळी दिलेले बचावाचे लेखी निवेदन, जिल्हाधिकारी जालना यांचा आदेश आणि खालील न्यायालयाचे मुळ संचिकेतील उपलब्ध कागदपत्रांचा विचार करता, श्री जे.डी. वळवी, तत्कालीन नायब तहसिलदार (निवडणूक) तहसिल कार्यालय, जालना यांनी नायब तहसिलदार (निवडणूक) या पदावर कार्यरत असतांना व त्यांना कुळ कायदयान्वये निर्णय घेण्याचा कोणताही अधिकार नसतांना अधिकार कक्षेबाहेर जाउन त्यांनी तहसिल कार्यालयातील प्रकरण क्रं. २००५/भूसू/कुळ/कावि श्रीमती लक्ष्मीबाई पांडूरंग वाघ विरूध्द नागोराव कुलकर्णी यांचे जमिनीचे कुळ विषयक प्रकरणात हैद्राबाद कुळ कायदा १९५० चे कलम ३८(एच) प्रमाणे कुळ घोषित करण्याचा दि. २४.०५.२००५ रोजी (श्री. राजेश जोशी, तहसिलदार जालना हे कार्यालयात उपस्थित असतांना) तहसिलदार या पदनामाने आदेश पारीत केला आहे. श्री वळवी यांनी आपले अधिकार कक्षेचे बाहेर जावून व वरीष्ठांचे अधिकारावर अधिक्रमण करून आदेश पारीत केला असल्याचे स्पष्ट होते. जिल्हाधिकारी जालना यांनी श्री. वळवी यांचेवर बजावलेली शिक्षा त्यांचेवर सिध्द झालेल्या दोषारोपांचे तुलनेत फारच अल्प असल्याचे दिसून येते. त्यामुळे जिल्हाधिकारी जालना यांचे शिक्षेबाबतचे आदेशात बदल करून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ५(१)(सहा) नुसार श्री. वळवी यांना कनिष्ठ सेवेत दोन वर्षाकरीता पदावनत करण्याची शिक्षा बजावणे न्यायेचित होईल या निष्कर्षाप्रत मी आलो आहे. सबब, सदर अपील अर्जावर खालील प्रमाणे आदेश पारीत करत आहे.

आदेश

१. जिल्हाधिकारी जालना यांचे अपीलाधीन आदेशात बदल करण्यांत येतो.
२. श्री. जे.डी. वळवी, तत्कालीन नायब तहसिलदार, तहसिल कार्यालय जालना सध्या तहसिलदार जिंतूर जि. परभणी यांना कनिष्ठ सेवेत (नायब तहसिलदार संवर्गात) दोन वर्षाकरीता पदावनत करण्याची शिक्षा बजावण्यात येते.

३. सदर शिक्षेचा अंमल सुरू असतांना श्री. जे.डी. वळवी हे रजेवर गेल्यास त्यांचा रजेचा कालावधी वगळून शिक्षेचा कालावधी गणण्यात यावा.
४. सदर शिक्षेचा अंमल संपल्यानंतर व मुळ पदावर पुनस्थपित केल्यानंतर श्री. जे.डी. वळवी यांचे भावी काळातील वेतनवाढी पुढे ढकलल्या जाणार नाहीत.”

17. The learned Advocate for the applicant submits that the order passed by the Divisional Commissioner is against the provisions of Rule 25 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and particularly against the proviso of Rule 25. The Rule 25 and its relevant proviso read as under:-

“25. Revision. – (1) *Notwithstanding anything contained in these rules, the Governor or any authority subordinate to him to which an appeal against an order imposing any of the penalties specified in Rule 5 of these rules lies may, at any time, either on his or its own motion or otherwise call for the records of any enquiry and revise any order made under these rules or under the rules repealed by Rule 29 of these rules from which an appeal lies but against which no appeal has been preferred or orders against which no appeal lies, after consultation with the Commission where such consultation is necessary, and may-*

(a) Confirm, modify or set aside the order; or

(b) Confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

(d) Pass such other orders as it may deem fit :

Provided that, no order imposing or enhancing any penalty shall be made by any revising authority, unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed, and where it is proposed to impose any of the major penalties or to enhance the penalty imposed by the order sought to be revised to any of the major penalties, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 of these rules except after consultation with the Commission where such consultation is necessary .”

18. The learned Advocate for the applicant submits that the revisional power should not have been exercised without giving opportunity to the applicant as per the proviso. Perusal of the proviso says that the revising authority, unless the Government servant concerned has been given a reasonable

opportunity of making a representation against the penalties or to enhance the penalty imposed by the order sought to be revised to any of the major penalties, no such penalty shall be imposed except after an enquiry.

19. The very opening paragraph of the order passed by the revising authority makes it clear that Shri Kulkarni, was aggrieved by the order against the applicant and therefore, he filed appeal under Rule 17. The revising authority however, observed that he was satisfied that Shri Kulkarni, was aggrieved person, since the order was passed by the applicant in his revenue matter. However, before passing any order the Divisional Commissioner, thought it proper to issue notices to the applicant as well as Shri Kulkarni not only that he has taken decision to review the order as per Rule 25.

20. Admittedly, the Division Commissioner is authority subordinate to the Government and as per Rule 25, he is authorized to review the order either on his own or otherwise, call for the record of any enquiry. Considering this aspect the Divisional Commissioner was authorized to revise the order. While revising the order under Rule 25, the revising authority may confirm, modify or set aside the penalty imposed by the

order or impose any penalty, where no penalty has been imposed. In such circumstances, by no stretch of imagination it can be said that the Divisional Commissioner was not authorized to revise the order as per Rule 25.

21. The learned Advocate for the applicant submits that the applicant was not given opportunity of being heard. In this regards, the very first paragraph of the order makes it is clear that the applicant as well as Shri Kulkarni were given opportunity to submit their say and notices were issued to them.

22. The impugned order further says that on 16.11.2015 when the matter was heard Shri Kulkarni as well as applicant were present and Shri Valvi i.e. applicant has filed his written submission and in the said written submission, the applicant admitted that he has committed mistake but inadvertently and that the Collector has also punished him. This clearly shows that the applicant was satisfied with the order passed by the Collector. He has also mentioned that Shri Kulkarni filed complaint against him, as he was aggrieved. He has also requested that the order of Collector shall be kept intact. All

these facts clearly show that the order passed by the Collector was agreeable to the applicant.

23 Perusal of the order passed by the Collector shows that the charge against the applicant in the Departmental Enquiry was as under:-

“(१) मौजे नाव्हा ता.जि.जालना येथील सर्व क्रमांक ६३/५ व ७२/२ गट क्रमांक १८६ क्षेत्र ०२ हेक्टर ५८ आर या जमिनीचे हैद्राबाद कूळ कायदा १९५० चे कलम ३८ (एच) प्रमाणे कूळ घोषित करण्याचे दिनांक २४.५.२००५ अन्वये गैरकायदेशीर आदेश पारित केले आहेत.

(२) नायब तहसिलदार (निवडणूक) पदावर कार्यरत असतांना त्यांना कूळ कायद्याचे कोणतेही अधिकार नसताना त्यांनी तहसिल कार्यालयातील प्रकरण क्रमांक २००५/भूसू/कूळ/कावी श्रीमती लक्ष्मीबाई पांडूरंग वाघ विरूध्द वसंत नागोराव कूलकर्णी यांचे कूळ जमीन विषयक प्रकरणात दिनांक २४.५.२००५ रोजी आदेश पारित केलेले आहे.

(३) श्री राजेश जोशी तात्का. तहसिलदार जालना हे दिनांक २४.०५.२००५ रोजी तहसिल कार्यालयात जालना येथे उपस्थित होते. श्री. जे.डी. वळवी नायब तहसिलदार (निवडणूक) यांना कूळ विभागाचे प्रकरणात हैद्राबाद कूळ कायदा १९५० कलम ३८(एच) प्रमाणे कूळ घोषित करण्याचे कायदेशीर कोणत्याही प्रकारचे अधिकार नसताना त्यांनी तहसिलदार म्हणून आदेश पारित केले. अधिकार मर्यादेचे उल्लंघन केले गैरवर्तणूक केली आहे.”

24. From the aforesaid charges it is clear that the applicant was not authorized to deal with the revenue matter of Shri Kulkarni as he was Naib Tahsildar (Election). The revision authority has considered this fact and has specifically observed that there is absolutely no reason for applicant to deal with

revenue matter, when he was Naib Tahsildar (Election). The applicant has acted beyond his jurisdiction and therefore, he came to the conclusion that the order passed by the Collector is meager or in-proportionate and therefore, he has decided to enhance the punishment.

25. The learned Advocate for the applicant invited our attention to proviso 25, which is already reproduced earlier and careful reading of the said proviso says that if the revising authority comes to the conclusion that the penalty imposed on the delinquent is not proportionate and it is desirable to enhance the penalty then it is necessary to give reasonable opportunity of making a representation against the penalties proposed.

26. In the present case, even though the opportunity was given to the applicant to deal with the complaint filed by Shri Kulkarni, whereby, he requested the revising authority to enhance the punishment, the revising authority directly came to the conclusion and straightway imposed penalty. In our opinion, as the Divisional Commissioner came to the conclusion that the penalty imposed by the Collector was meager or in-proportionate and that he desire to enhance the same, he

should have passed such order and should have issued show cause notice to the applicant calling upon him to explain as to why the penalty against the applicant issued by the Collector shall not be enhanced and why the enhanced punishment shall not be imposed upon the applicant. After receiving representation/reply to the said show cause notice filed by the applicant, the Divisional Commissioner should have passed necessary order keeping his mind open for considering the representation filed by the applicant.

27. In view of the discussions in foregoing paragraphs we are satisfied that even though the cognizance of the complaint is taken by the Divisional Commissioner is legal and proper, his action imposing punishment straightway without giving opportunity to the applicant to file representation against the enhanced punishment is not legal and on this count, the order passed by the revising authority i.e. Divisional Commissioner will have to be interfered. Hence, we pass following order:-

ORDER

1. The Original Application is partly allowed.

2. The applicant's prayer for quashing and setting aside the order passed by the Collector, Jalna on 01.08.2015 withholding annual increment payable to the applicant as on 1.7.2016 is rejected.
3. The order passed by the Divisional Commissioner, Aurangabad on 6.5.2016 reverting the applicant to the post of Naib Tahsildar is quashed and set aside.
4. The matter is remanded back to the Divisional Commissioner. The Divisional Commissioner is directed to pass detailed order regarding his conclusion to enhance punishment considering the circumstances and shall give an opportunity to the applicant to file representation as to why the punishment shall not be enhanced along with the said show cause notice, the copy of the order passed by the Commissioner giving his conclusion for enhancement of punishment shall be attached.
5. After receiving representation filed by the applicant to such show cause notice, the Divisional Commissioner may pass necessary orders considering facts and circumstances of the case and also the representation of the applicant, if filed without being influenced by any of the observations made by us in this O.A.
6. The necessary action regarding issuance of show cause notice for enhancement of punishment, receiving representation thereon etc. and passing final order shall be completed within three months from the date of this

order and the same shall be communicated to the applicant in writing.

7. As the O.A. is finally disposed of by this order nothing survives in the M.A. No. 224/2016, which is filed for early hearing of the O.A., and hence, the same is also stands disposed of.

There shall be no order as to costs.

MEMBER (J)

Kpb/DB OA No 401 of 2016 jkd 2016

VICE CHAIRMAN (A)