

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 646/2014**

**DIST.: OSMANABAD**

Ganesh S/o Sitaram Koli,  
Age: 48 years, Occu. Nil,  
R/o Salgara Divdi,  
Tq. Tuljapur, Dist. Osmanabad.

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**APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through Secretary, Revenue Department,  
Mantralaya, Mumbai 430 032.
2. The District Collector,  
Osmanabad.
3. The Tahasildar,  
Kalamb Dist. Osmanabad.

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**RESPONDENTS**

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**APPEARANCE** : Shri D.A. Mane, Learned Advocate holding  
For Shri P.A. Bharat, learned Advocate for  
The Applicant.

: Shri V.R. Bhumkar, Learned Presenting  
Officer for the Respondents.

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

**DATE** : **20.10.2016.**  
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**J U D G M E N T**

[PER- HON'BLE SHRI J.D. KULKARNI, MEMBER (J)]

The applicant Ganesh Sitaram Koli, was serving as a Clerk in the office of Deputy Divisional Officer, Boom Tq. Bhoom, Dist. Osmanabad. He was appointed as a Clerk at Omerga Tahasil on 20.01.1984 and worked there till 1989. Thereafter, he was transferred to Paranda Tahasil and served there from 1989 to 1996 and thereafter, he was again transferred to Tuljapur Tahasil till 2006. He was then transferred to Kalamb Tahasil and served there till 2010. The respondent no. 2 carried out the inspection on 14.07.2010 and found that the applicant was not present on his table and one Smt. P.M. Gade, alone was handling the charge of the applicant. The respondent noticed that the applicant did not maintain the registers properly and there was huge pendency of work. Under such circumstances, the applicant was kept under suspension vide order dated 22.07.2010.

2. A charge sheet was served on the applicant on 6.10.2010 and the Inquiry Report was submitted on 9.2.2011. The copy of the Inquiry Report was served on the applicant on 9.2.2011. The applicant gave para wise reply and submitted his case before the Inquiry Officer but vide

impugned order dated 16.12.2011. The Collector, Osmanabad was pleased to dismiss the applicant from service. The operative order as regards dismissal of the applicant at paper book page no. 47 is as under:-

**“आदेश**

१. श्री कोळी जी एस निलंबीत लिपिक यांना शासन सेवेतून हा आदेश तामिल दिनांकापासून कायमस्वरूपी बडतर्फ करण्यात येते.
२. श्री कोळी जी एस यांचा अनाधिकृतपणे गैरहजर कालावधी हा अनधिकृतपणे गैरहजर म्हणून अकार्यकारी दिन घोषित करून सेवा खंडित करण्यात येते.
३. श्री कोळी जी एस यांचा दिनांक २२.७.२०१० ते हा आदेश तामिल होईल तो दिनांक (म्हणजे बडतर्फीचा दिनांक) हा निलंबन कालावधी, हा निलंबन कालावधी म्हणूनच ग्राह्य धरण्यात येतो.”

The said order is the subject matter of this Original Application.

3. The respondents nos. 1 to 3 have justified the order passed by the competent authority and submitted that the applicant has been rightly dismissed from the service.

4. We have heard Shri D.A. Mane, learned Advocate holding for Shri P.A. Bharat, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents. We have also perused the affidavit,

affidavit in reply and various documents placed on record by the respective parties.

5. Learned Advocate for the applicant submits that the material charge against the applicant was that he was unauthorizely absent from duty w.e.f. 26.06.2010 to 14.07.2010. There are other charges also but these charges are minor. According to the learned Advocate for the applicant, the punishment imposed upon the applicant is most disproportionate and none of the charges have been proved.

6. Learned Advocate for the applicant submits that the impugned order of his termination dated 16.12.2011 issued by the respondent no. 2 is wrong, erroneous and against the principles of natural justice, equity, good conscience and merits of the records. The respondent no. 2 has not taken in to consideration the defence raised by the applicant in his reply on 27.1.2011, 11.3.2011, 23.06.2011 and 30.09.2011. The charges based against him are baseless. It is stated that the applicant has two sons and two daughters and they are taking education in college and if the punishment for dismissal is imposed, the applicant might not

look towards their education. It therefore, prayed that the impugned order of dismissal be quashed and set aside.

7. The only material point to be considered is whether the order of terminating the services of the applicant w.e.f. 16.12.2011 is legal and proper?

8. The charges framed against the applicant are ten in numbers. However, it will be seen that except charge no. 1, rest of the charges are very minor. The charges framed against the applicant are as under:-

“दोषारोप क्रमांक १ :- उक्त श्री जी. एस. कोळी, लिपीक म्हणून तहसिल कार्यालय कळंब येथे दिनांक १०.०७.२००६ पासून दिनांक २२.७.२०१० (निलंबित दिनांकापर्यंत) या कालावधीमध्ये काम करत असतांना श्री. कोळी जी. एस. हे दिनांक २६.६.२०१० ते १४.७.२०१० पर्यंत अनाधिकृतपणे गैरहजर असल्याचे निदर्शनास आल्याने श्री. कोळी यांना निम्न स्वाक्षरीत यांचा आदेश दिनांक २२.७.२०१० अन्वये निलंबित केले आहे.

दोषारोप क्रमांक २ :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करत असतांना श्री. जी.एस. कोळी यांनी कार्यविवरण नोंदवही अद्यावत ठेवली नाही.

दोषारोप क्रमांक ३:- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करत असतांना श्री जी.एस. कोळी यांनी कार्यासनास प्राप्त टपालावर कांही कार्यवाही न करता तसेच प्रलंबित ठेवणे.

दोषारोप क्रमांक ४ :- पुर्वोक्त कालावधीत कार्यालयात काम करत असतांना श्री. जी.एस. कोळी यांनी कार्यासाठी ल अभिलेखे विहित सहा बंडल मध्ये वर्गीकरण करून तसे ठेवलेले नाही.

दोषारोप क्रमांक ५ :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करता असतांना श्री जी.एस. कोळी यांनी कार्यवाही संपल्यानंतर संचिका बंद करून अभिलेख कक्षात पाठविलेल्या नाहीत.

दोषारोप क्रमांक ६ :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करता असतांना श्री. जी.एस.कोळी यांनी संचिकाची बांधणी विहित पध्दतीनुसार केलेली नाही संचिका मध्ये टिप्पणी लिहिलेल्या नाहीत व नियमानुसार आवश्यक ती कायदेशीर कार्यवाही केलेली नाही.

दोषारोप क्रमांक ७ :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करत असतांना श्री. जी.एस.कोळी यांना स्थाई आदेश संचिका पेजींग व अनुक्रमनिकासह सुस्थितीत व अद्यावत ठेवलेल्या नाहीत.

दोषारोप क्रमांक ८ :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करता असतांना श्री. जी.एस.कोळी यांनी नियतकालीके वरिष्ठ कार्यालयास वेळेवर सादर केलेली नाहीत.

दोषारोप क्रमांक ९ :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करता असतांना श्री. जी.एस.कोळी हे संगणक परीक्षा पास नाहीत व त्यांना संगणक हाताळता येत नाही.

दोषारोप क्रमांक १० :- पुर्वोक्त कालावधीत पुर्वोक्त कार्यालयात काम करत असतांना श्री. जी.एस. कोळी यांनी मुख्यालयास वास्तव्य केले नाही. ”

9. It seems from the inquiry report that the department examined the evidence of one Shri D.H. Rathod, Tahasildar, Kalamb, Shri R.N. Nalawade, Awwal Karkoon (Revenue), Tahasil Office, Kalamb and Smt. M.P. Gade, Awwal Karkoon, Tahasil Office, Kalamb. Perusal of the evidence, all these witnesses shows that they were simply shown the memorandum of charges and the other documents of charge

sheet from page nos. 1 to 10 (Annexures 1 and 2) and they stated that the charge Nos. 1 to 10 against the applicant were clearly true and that they agree with the said charges. Except this, not even a single word is uttered by these witnesses. So in fact, they did not state anything except that charges framed against the applicant were true. They did not state even as to what were exact charges against the applicant. None of these witnesses were cross-examined by the applicant.

10. Perusal of the evidence of Smt. M.P. Gade, shows that the Collector visited Tahasil office and at that time she did not receive charge from Shri G.S. Koli i.e. applicant. According to her, the applicant was not present at that time but except this, there is nothing on record to show that she disclosed anything to prove the specific charges against the applicant.

11. The enquiry officer while giving findings on charge no. 1 which is the most material charge, stated that the applicant was absent un-authorizedly from 26.06.2010 to 14.07.2010 but he admitted that the applicant has informed through telegram to the office on 7.7.2010 itself that he was ill. It is stated that the applicant remained absent even for

medical examination and that he was directed to appear for medical examination in between 14.8.2010 to 31.8.2010. However, in the said findings it is mentioned that Dr. Pargaonkar's Medical Certificate was submitted but it was not matching with the diseases shown in the certificate mentioned by the Civil Surgeon, Osmanabad. There is no evidence on record to show as to what certificate was issued by the Dr. Pargaonkar and what was the diagnosis of Civil Surgeon, Osmanabad. It is not clear as to why the Civil Surgeon, Osmanabad, issued certificate that diseases mentioned in the certificate of Dr. Pargaonkar, were not matching when the applicant did not approach the Civil Surgeon as observed by the enquiry officer. Hence, we find that the findings given by the enquiry officer in charge no. 1 are contradictory.

12. Even if, the applicant has not cross-examined the witnesses, the Enquiry Officer ought to have gone through the submission made by the applicant before the enquiry officer. Copy of the applicant's reply in the enquiry is placed on record at paper book page nos. 18 to 25 (both inclusive). He has given details as regards his absence and also the other charges. From his reply it seems that the applicant joined



Kalamb Tahasil office on 29.6.2010 and on 30.06.2010, he was suffering from temperature and cold and therefore, he got leave sanctioned on 30.06.2010 and left the headquarter and thereafter, he enhanced leave, since he was not feeling well. The Enquiry Officer did not consider this reply given by the applicant. There is nothing on record to show that this statement given by the applicant was even considered by the enquiry officer in his enquiry report. In our opinion, the enquiry officer ought to have verified as to whether the defence made by the applicant was having any base or not?

13. As already stated, none of the witness have stated as to what exact misconduct was committed by the applicant. They were only shown the statements and the charges framed against the applicant by the department and stated that those charges were true. This cannot be said to be an evidence against the applicant at all. When a witness is examined, he has to state as to what irregularities, illegality/misconduct etc., is committed by the delinquent. Mere reference to the statement and charges saying that the same are true is not sufficient and such statement cannot be said to be evidence at all.

14. Apart from the fact that almost all 10 charges framed against the applicant, we do not find any serious irregularities or illegality committed by the applicant. The only some of the grave charge is charge no. 1 to the fact that the applicant was unauthorizely absent from duty from 26.06.2010 to 10.07.2010. The applicant has stated that he was absent because he proceeded on leave and thereafter, he extended leave. There is nothing on record to show that a false medical certificate was filed by the applicant. Even accepting all the charges, as proved against the applicant, we feel that all the charges framed against the applicant were of very minor nature and in any case, the said charges even if proved, were not sufficient to dismiss the applicant from service. At the most, the respondent authorities ought to have considered the reason given for absence and should have taken steps to regularize the absence either as extraordinary leave or leave without pay or should have converted such absence into any kind of leave such as medical leave, earned leave, etc.

15. We are therefore, satisfied that the order of punishment in the departmental enquiry is not proportionate to the charges leveled against the applicant and on the

contrary, dismissal on the ground that the applicant was absent from duty for the period from 26.06.2010 to 10.07.2010 is not only disproportionate but illegal. Since, there is no evidence on record to show that the applicant remained absent intentionally. The competent authority has not at all considered the defence statement and came to the wrong conclusion that the applicant has submitted false medical certificate even though, he was not ill. There is no supporting material to come to such a conclusion.

16. The competent authority while imposing punishment has considered the earlier history of the applicant. It seem from the paragraph no. 13 of the impugned order that earlier applicant was punished for remaining absent from duty and on other count and in spite of that there was no change in his attitude. In our opinion, such earlier punishment cannot be a ground for imposing major punishment of dismissal. On the contrary, it seems that the competent authority has considered extraneous material against the applicant but did not take into consideration his defence as to why he remained absent.

17. Learned Advocate for the applicant submits that the applicant has been dismissed from service illegally and

therefore, he is entitled to reinstate with all back wages. It is material to note that in the O.A. the applicant has in fact not claimed even reinstatement and of course back wages. The only claim made by him is that the respondents be directed to continue to pay the subsistence allowances to the applicant. In our opinion, the applicant is entitled to claim subsistence allowances, since he was kept under suspension during enquiry as per Rules.

18. The applicant claimed that the impugned order of his termination be stayed. Admittedly, no such stay was granted to the applicant and therefore, the applicant was not in service since the date of his dismissal. Considering the fact that the applicant has not claimed these reliefs and also considering the fact that the applicant did not cross examine any witnesses in the Departmental Enquiry, his claim for back-wages cannot be considered and especially when no such claim is made in the present O.A.

19. So far as charges of remaining absent unauthorizely we are of the opinion that since the absence period has already been treated as unauthorize or break in service, the suspension period has to be treated as period of

suspension period and we do not find any illegality in treating the said as suspension period.

20. In view of the discussions in foregoing paragraphs we are satisfied that it is the case where the department miserably failed to prove that the charges against the applicant and in any case, the order of punishment of dismissal is most disproportionate and therefore, we pass following order:-

**ORDER**

1. The Original Application is partly allowed.
2. The impugned order of dismissal dated 16.12.2011 passed by the respondent no. 2 so far as it relates to dismissal only is quashed and set aside.
3. The order declaring absence period of the applicant as unauthorize absence and the suspension period as suspension period, however, is maintained.
4. The respondents are directed to reinstate the applicant within one month from the date of this order. It is made clear that the applicant will not be entitled to any back wages.

There shall be no order as to costs.

**MEMBER (J)**

**VICE CHAIRMAN (A)**