

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 396 OF 2017**

**DISTRICT : SINDHUDURG**

Shri Rajaram Subrao Patil, )  
Range Forest Officer, )  
Kankavali Forest Division, )  
Sawantwadi, Dist-Sindhudurg )  
R/o: RFO Quarters, Forest Colony, )  
At & Post Janvali, Tal-Kankavli, )  
Dist-Sindhudurg. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Principal Secretary, )  
Revenue & Forest Department,) )  
Mantralaya, Mumbai 400 032.)
2. Chief Conservator of Forest [T])  
Kolhapur Circle, Dist-Kolhapur)
3. M.P.S.C, )  
Through its Secretary, )  
Office at 5<sup>th</sup> floor, Cooperage )  
Telephone Exchange Bldg, )  
M.K Road, Mumbai. )...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

**CORAM** : **Justice Mridula Bhatkar (Chairperson)**  
**Mrs Medha Gadgil (Member) (A)**

**DATE** : **14.03.2024**

**J U D G M E N T**

1. The applicant prays that this Tribunal be pleased to hold and declare that the order dated 29.4.2017 issued by Respondent No. 1, illegal and bad in law and the same be quashed and set aside with all consequential service benefits as per the law. Learned counsel submits that the Writ Petition No. 1846/2018 was filed by the Respondents before the Hon'ble High Court challenging the interim order dated 5.5.2017 passed by this Tribunal was disposed of on 17.10.2023.

2. The Report of the Enquiry Officer filed the report on dated 24.5.2014. Three departmental enquiries were initiated against the applicant by issuing charge memo on 3.8.2004, 29.11.2004 and 9.2.2009. The Enquiry Officer gave opinion regarding Charge No. 1, is proved and other charges 2 to 7 are not proved. Second show cause notice dated 11.6.2015 was issued to the applicant by the Chief Conservator of Forest, Kolhapur. The Disciplinary Authority has referred to the show cause notice dated 11.6.2015 mentioning the disagreement with the Enquiry Officer in respect of Charges No 2 to 7. By letter dated 14.7.2015 reply given by the delinquent officer to the show cause notice. The Chief Conservator of Forest, Kolhapur, a competent disciplinary authority to the extent of passing minor penalty and the Government is the competent disciplinary authority to pass major penalty. The Chief Conservator of Forest, Kolhapur sent report dated 22.9.2016 and in para 2 of the said report it is clearly stated that the Chief

Conservator of Forest has disagreed with the findings of the Enquiry Officer. This was also treated as second show cause notice thereby stating the tentative reasons of disagreement on the finding of Charges 2 to 7 given by the Enquiry Officer. The applicant gave reply on 19.10.2016 to the show cause notice dated 22.9.2016, stating that he has filed O.A 999/2016 before this Tribunal, challenging the departmental enquiry mainly on the ground of inordinate delay as the cause of action started in the year 2003 and 2004 and first charge memo was issued on 3.8.2004, second charge memo was issued on 29.11.2004 and for the same charges fresh charge memo was issued on 9.2.2009.

3. The disciplinary authority by order dated 29.4.2017 of the Disciplinary Authority disagreeing with the order of the Enquiry Officer held all charges 1 to 7 are proved holding him guilty. In the said order in the references 10 documents are referred by the Disciplinary Authority in order dated 29.4.2017 but the report dated 2.9.2016 of the Chief Conservator of Forest giving tentative reasons is not recorded.

4. Learned counsel Mr Lonkar has submitted that the departmental enquiry which was started in the year 2004 was completed on 29.4.2017. Learned counsel submitted that it took nearly 13 years to complete the enquiry. Total thrice charge sheet was issued i.e., on 3.8.2004, 29.11.2004 and 9.2.2009. Learned counsel has submitted that the concurrence from M.P.S.C was received on 29.4.2017 and on the same day the order of punishment was imposed on the applicant without seeking approval from the Disciplinary Authority. Moreover, there is no proper compliance of Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

5. Learned P.O relied on the affidavit in reply dated 12.10.2017 on behalf of Respondents No 1 & 2 through Shri Sunil P. Pandhare, Under Secretary in the office of Revenue & Forest Department. In para 2.5 it is sated that the proposal dated 28.3.2016 was referred to G.A.D and G.A.D had opined that Rule 9(2) of M.C.S (Discipline & Appeal) Rules, 1979, was not observed by the Disciplinary Authority while recommending the case of the applicant for major penalty.

6. Learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Yoginath D. Bagde Vs. State of Maharashtra & Ors (1999) 7 SCC 739.**

7. We have gone through the report of the Enquiry Officer, the impugned order passed by the Disciplinary Authority dated 29.4.2017 which is under challenge and so also the show cause notice on the report submitted by the Chief Conservator of Forest, Kolhapur on 22.9.2016. Admittedly, the Enquiry Officer has held the delinquent officer guilty of one charge and exonerated him from other charges 2 to 7. The Chief Conservator of Forest, Kolhapur has expressed his opinion by giving tentative reasons of disagreement with the Enquiry Officer in his show cause notice cum report dated 22.9.2016 and suggested major penalty. However, he not being the competent Disciplinary Authority to saddle major penalty, he rightly referred the matter to the Government, which is the Disciplinary Authority having power to impose major penalty. The Disciplinary Authority by the impugned order under challenge imposed major penalty of dismissing the applicant from service few hours before he was to retire. The Disciplinary Authority did not give the show cause notice to the applicant thereby giving tentative reasons of disagreement with the Enquiry Officer. As per the ratio laid down in the landmark

judgment in the case of Yoginath Bagade (supra), it is the requirement under Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 that if the Disciplinary Authority is in disagreement with the report submitted by the Enquiry Officer on the ground of proof of charge, the Disciplinary Authority must give tentative reasons of disagreement before passing the order of punishment. The delinquent officer is also called upon to meet this finding of the Disciplinary Authority, in view of the doctrine of principles of natural justice.

8. In the present case, the Disciplinary Authority though has mentioned the notice/report of 22.9.2016 of the Chief Conservator of Forest, who in detail gave tentative reasons of disagreement with the Enquiry Officer, it is not sufficient. Mere reference cannot be substituted as the assessment, appreciation of the evidence in the matter by the Disciplinary Authority independently. The manifestation of its own thinking about the disagreement with the Enquiry Officer should be reflected in the order passed by the Disciplinary Authority. Moreover, there is admission by G.A.D about deviation from Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Moreover, there is an inordinate delay when the incident has taken place and the completion of the enquiry.

9. In view of the above we pass the following order:-

### **ORDER**

- (i) The Original Application is allowed.
- (ii) The impugned order dated 29.4.2017 removing the applicant from service is held illegal and is hereby quashed and set aside.

(iii) The applicant is entitled to all consequential service benefits including pensionary benefits and the same should be paid to the applicant within three months from the date of uploading of the order.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 14.03.2024**  
**Dictation taken by : A.K. Nair.**