

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.59/2010.**

Pushpakar Mahadeorao Kharad,  
Aged about 63 years,  
Occ- Retired Jailor,  
R/o Ayodhyavihar Post, Sainagar,  
Badnera Road, Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Director General of Police and  
Inspector General of Prisons (M.S.),  
Central Building, Pune-1.
3. The Dy. Inspector General of Prisons,  
Central Region, Aurangabad.
4. The Superintendent,  
Central Prison, Nasik Road,  
Nasik.

**Respondents.**

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Shri V.G. Bhamburkar, Advocate for the applicant.  
Shri B.D. Pandit, P.O. for the respondents.

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**Coram:- The Hon'ble Shri Justice A.P.Deshpande,**  
**Vice-Chairman.**

**Dated:- 11<sup>th</sup> January, 2013.**

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**Oral Order**

Heard Shri V.G. Bhamburkar, the learned counsel for the applicant and Shri B.D. Pandit, the learned P.O. for the respondent.

2. At the relevant point of time, when the applicant was served with the chargesheet, he was holding the post of Jailor at Nasik. For the alleged acts of misconduct, a chargesheet was served on the applicant and the charges were enquired into. Based on the report of the Enquiry Officer, the disciplinary authority viz. the respondent No.3 imposed punishment of withholding of an increment for a period of six months without any effect on future increments. The said impugned order dated 9<sup>th</sup>/10<sup>th</sup> June 2003 also directed the period of suspension w.e.f. 24.9.1999 to 17.6.2000 to be treated as such. Aggrieved by the impugned order, impugning minor punishment, the applicant preferred an appeal before the respondent No.2 viz. the Director General of Police and Inspector General of

Prisons, (M.S.), Pune. The Appellate Authority has dismissed the appeal by an order dated 4.10.2004. By filing the present O.A., the applicant has challenged the order of punishment imposed by the Disciplinary Authority so also the Appellate order.

3. According to the learned counsel for the applicant, the respondent No.2 has dismissed the appeal without affording an opportunity of personal hearing to the applicant and thus the appellate order is wholly unsustainable, it being in breach of principles of natural justice. The learned counsel for the applicant places reliance on full bench judgment of the Bombay High Court reported in **2002 (3) Mh.L.J.- 750.** The Full Bench, while interpreting the Rule 23 (2) of the M.C.S. (Discipline & Appeal) Rules, 1979, has observed that, expression 'consider' used in Rule 23 (2) will include within its meaning, application of mind, personal hearing and recording of reasons. The submission of the learned counsel for the applicant is substantiated by the full bench

judgment. The earlier view taken by the Division Bench in case of Anant Sadashiv Chandwadkar V/s District Judge and Disciplinary Authority, District Court, Thane reported in 1997 (B) Mh. L.J. 302 has been overruled by the Full Bench and hence is no longer res-integra. The learned P.O. does not dispute that the appellate order does not make a mention that an opportunity of personal hearing was granted to the applicant nor does the record reveal that such an opportunity was afforded to the applicant. In that view of the matter, the present O.A. must succeed. The O.A. stands allowed in the following terms:-

(1) The impugned order passed by respondent No.2 dated 4.10.2004 is quashed and set aside.

(2) The respondent No.2 is directed to hear the appeal preferred by the applicant afresh, challenging the order passed by respondent No.3 and decide the same after affording an opportunity of personal hearing to the applicant

(3) I hope and trust that the Appellate Authority will <sup>A.</sup> ~~shall~~ decide the appeal as expeditiously as possible and

preferably within a period of three months from the date of receipt of this order.

(4) No order as to costs.

sd/-

(Justice A.P.Deshpande)  
Vice-Chairman

Pdg