

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 650 OF 2015**

**DISTRICT : SINDHUDURG**

Shri Mohanrao Rajaram Patil, )  
Retd Plantation Officer, Social )  
Forestry, Tal-Kudal, Dist-Sindhudurg.)  
Having R/o: City Survey No.1764, )  
'A' Ward, Shivaji Peth Bramheshwar )  
Residency, A-11, Kolhapur 460 010. )...**Applicant**

**Versus**

1. The Government of Maharashtra)  
Through Principal Secretary, )  
Revenue & Forest Department,) )  
Mantralaya, Mumbai 400032. )
  
2. Maharashtra Public Service )  
Commission, through its )  
Secretary, office at Bank of )  
India Bldg, Dr D.N Road, )  
Fort, 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 : 22.08.2022**

**PER : Justice Mridula Bhatkar (Chairperson)**

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

1. The applicant seeks exception to the order of punishment dated 4.10.2010 issued by Respondent no. 1, which was confirmed in appeal on 29.5.2015.

2. The applicant joined the service as Range Forest Officer on 1.3.1984. During his service, in February, 2001 he was posted as Range Forest Officer, Khanapur, Dist-Sangli. In February, 2004, Tree Plantation work was completed. He was transferred to Aatpadi in June, 2004. Thereafter, in the year 2008 the objection was raised for the work at Khanapur and Aatpadi. The department initiated the departmental enquiry against the various officials in the Forest Department for the similar charges about their work in Tree Plantation. The charge sheet was issued on 30.12.2008 for the charges during the period 2002 to 2004. On 3.4.2008, Presenting Officer was appointed to conduct the departmental enquiry. The Enquiry Officer after conducting the enquiry he submitted his report on 11.4.2009. The applicant was given the notice pursuant to which he submitted his reply on 21.5.2009. Thereafter, Respondent no. 1 issued memorandum dated 6.3.2013 directing the applicant to show cause as to why the decision of proposed punishment of compulsory retirement and recovery of Rs. 4,67,825/- should not be imposed on him. The applicant submitted his reply on 5<sup>th</sup> June 2014 denying the allegations. The same was not considered and the Disciplinary Authority by order dated 4.10.2010, which is under challenge in this Original

Application punished by compulsory retiring the applicant and ordering the recovery of loss of Rs. 4,67,823/-.

3. The applicant therefore approached this Tribunal by filing Original Application in the year 2015, that is within time seeking that the said orders of punishment under challenge are to be declared as illegal, bad in law and to be quashed and set aside and prays for consequential service benefits.

4. Learned counsel for the applicant Mr Lonkar, submitted that the enquiry was conducted not as per Rule 8 & 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Learned counsel Mr Lonkar further submitted that against the order of punishment dated 4.10.2014 the appeal filed by the applicant was rejected by the Hon'ble Minister on 28.5.2015. Learned counsel for the applicant submitted that the Assistant Conservator of Forest is competent to give approval, however, enquiry was initiated without proper administrative approval. He submitted that applicant was tried under total 19 charges, out of which only 3 charges are proved and 16 are not proved. The charges in respect of matter nos 118, 121 and 134 are proved. Learned counsel Mr Lonkar submitted that the Disciplinary Authority in the present case disagreed with the report of the Enquiry Officer. The Disciplinary Authority has power to take a different view. However, the Disciplinary Authority is required to give the reasons for the same. In support of his submissions, he relied on the decision of the Hon'ble Supreme Court in the case of YOGINATH D. BAGDE Vs. STATE OF MAHARASHTRA & ORS, (1997) 7 SCC 739. Learned counsel for the applicant submitted that there is violation of Rule 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. So also it is inconsistent with the ratio laid down in the case of YOGINATH BAGDE's case

(supra). Learned counsel for the applicant submitted that though the charges were not proved yet he was punished and the amount was recovered from him. Learned counsel for the applicant submitted that assuming that charges no. 118, 121 and 134 are proved and the total amount of loss suffered by the Government comes to Rs. 61,692/- while the recovery is ordered of Rs. 4,65,825/-. The Disciplinary Authority has mentioned in the order that all the charges were proved. It shows that there is no application of mind.

5. Learned counsel for the applicant has submitted that sub-rule 3 of Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was not followed while giving the charge sheet. Learned counsel for the applicant further submitted that the Enquiry Officer did not furnish him the necessary documents especially the report and the Panchanama on which the officer relied. He was also not made aware exactly as to what type of irregularity or illegality is occurred in the work done by him at respective places for which the charges were held proved. Learned counsel for the applicant further argued that the Respondent-State did not adduce evidence to hold the applicant guilty. Panchanamas of the physical inspection were not complete and they were not furnished. Learned counsel for the applicant relied on the explanation given by him pursuant to the enquiry report dated 21.5.2009. Learned counsel pointed out that proper Panchanama was not prepared in respect of matter 118. The signature of Mr Bhoie was not seen on Panchanama. He submitted that in fact the fencing work of the said land was done and therefore, the charge was wrong. Learned counsel submitted that the Enquiry Officer has concluded while concluding the enquiry that he has erroneously concluded that there is misappropriation of money in matter no. 121. The money which was spent was not

required to be spent and so the expenses was not justified. Learned counsel further submitted that in respect of matter no. 134, nobody has conducted a personal survey of the land and thus there is no evidence against the applicant.

6. Learned Presenting Officer has submitted that the order of punishment of compulsory retirement and recovery of Rs. 4,65,825/- is justified in view of the findings of the Enquiry Officer and so also the Disciplinary Authority. Learned P.O submitted that Rule 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is followed by the Respondents and the applicant now cannot raise any objection to the procedure followed by the Respondents as the applicant has participated in the enquiry and now he is barred from taking any further objection. Learned P.O submitted that Mr Sameer Sahai, Range Forest Officer, was earlier appointed as the President and under him a Committee was formed to conduct a preliminary enquiry about the actual work and the money spent in the work of plantation, fencing on the forest land at various places. Mr Sameer Sahai, has conducted the enquiry against one Mr Shendge and 29 other officers. Mr Sameer Sahai, has submitted a comprehensive report on 29.10.2005 regarding the various forest lands and the work done on it wherein Mr Shendge and 29 other officers were involved. Learned P.O has submitted that the disciplinary authority has relied on the said preliminary enquiry report. She further submitted that the Conservator of Forest, Kolhapur, has submitted the report dated 30.6.2009 to the Additional Principal Conservator of Forests, Nagpur, which is a confidential report and on the basis of the said report, the applicant was found guilty. Learned P.O relied on the evidence recorded by the Enquiry Officer and read over the said evidence of the witnesses Mr Bhande, Bhoie, Khandare and Gaitadak. She further submitted that the

disciplinary authority has powers to disagree with the report of the Enquiry Officer and the said authority can take the other view. In the present case, the Disciplinary Authority has taken a other view holding the applicant guilty and hence the order dated 4.10.2014, imposing the punishment of compulsory retirement and recovery of Rs. 4,65,825/- from the pensionary benefits is justified.

7. We considered the ratio laid down in the case of YOGINATH BAGDE (supra), which is applicable to the facts of the present case. In the case of YOGINATH BAGDE (supra), the appellant, who was the Additional District & Sessions Judge, has challenged the order of dismissal passed by the Bombay High Court before the Hon'ble Supreme Court. In the disciplinary proceedings the appellant was found guilty of the charges framed against him. The Enquiry Officer has submitted his report in December 1992, to the Disciplinary Authority holding that the charge against the applicant were not established and recommended the reinstatement of the appellant. However, the Disciplinary Committee of the Bombay High Court after considering the said report disagreed with the findings of the Enquiry Officer and held that the charges against the appellant were proved. Therefore, the appellant was given a show cause notice as to why the proposed penalty of dismissal should not be imposed on him. The report of the Enquiry Officer was sent to the appellant and subsequently, he was dismissed from service in November, 1993. While dealing on the aspect of disciplinary authority who disagree with the findings of the Enquiry Officer on any charge the Hon'ble Supreme Court has held that:-

*“The Disciplinary Authority has to communicate to the delinquent officer the “TENTAVIE” reasons for disagreement with the finding of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not*

*germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."*

The Supreme Court further on the point of right to be heard has held:-

*"In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer."*

8. By order dated 4.10.2014, the Disciplinary Authority imposed on the applicant the punishment of compulsory retirement and recovery of Rs. 4,67,825/- towards the amount of the loss suffered by the Government. We have gone through the enquiry report dated 11.4.2009 submitted by Mr T.G Birdvade, Retd. Assistant Conservator of Forest. Similarly, also the order dated 24.4.2015 of the Appellate Authority, i.e. Minister of State, Women and Child Welfare Department, dismissing the appeal preferred by the applicant. Total 19 charges were framed against the applicant in respect of plantation of tree, fencing, exceeding the expenditure amount and ultimately causing financial loss to the State Government. The preliminary Committee headed by Mr Sameer Sahai has conducted survey and also drew the Panchanama of the relevant section of the forest land. After going through this report and Panchanama, Mr Sameer Sahai, has held

the applicant and one Mr Shendge along with 28 others guilty of the misconduct.

9. In the said report for each and every matter the measurement report and Panchanamas were annexed and the name of the officer who was responsible was mentioned. The name of the applicant was mentioned at Sr. No. 47, 55, 57, 60, 61, 63, 68, 73, 82, 84, 86, 87, 88, 89, 90, 91, 117, 118, 121, 133, 134, 135, 136 and 137 and it is mentioned that Survey and Panchanamas are annexed to the said report. The copy of report of Mr Sameer Sahai was not served to the applicant.

10. On the basis of the preliminary report the charge sheet was issued to the applicant on 30.12.2008, wherein the period of the misconduct was bifurcated in two parts, i.e. from 11.6.2002 to 17.6.2004 when he was posted as Range Forest Officer, Khanapur, Sangli and for the second period i.e. from 21.6.2004 to 30.10.2004 when he was posted as Range Forest Officer at Employment Guarantee Scheme, Aatpadi, Sangli. The charges were mainly pertaining to no proper plantation of the saplings, faulty fencing and so also unnecessary expenditure or showing more expenditure than the actual amount spent. Out of 19 chargers, admittedly 3 charges were proved. That is charge at Sr. No. 118, which was at Yetgaon, without taking proper inspection and doing the actual work the amount was shown as spent. Charge no. 121, for digging pit holes for the plantation at Dhanwad and constructing the fencing when it was not required. Charge no. 134, it was alleged that the applicant showed exorbitant amount for the work which was not correct or enough compared to the work done. The Enquiry Officer held that the other charges were not proved.

11. However, in the order of punishment dated 4.10.2014, which was issued by the Disciplinary Authority, the Disciplinary



Authority has relied on various documents wherein it is mentioned that the Enquiry Officer Mr T.G. Birdvade, was appointed on 30.10.2008, who has submitted the report on 11.4.2009, wherein he has concluded that all the charges against the applicant is proved and accordingly the report is submitted to the Principal Chief Conservator of Forest, Kolhapur. After going through the enquiry report of Mr Birdvade and the order passed by the Disciplinary Authority, the first point we noticed is that the Disciplinary Authority has wrongly mentioned in para 4 of its order that all the charges have been proved in the enquiry. However, only 3 charges out of 19 charges were admittedly proved. We noticed glaring fact that 3 charges are proved out of 19 charges and the Enquiry Officer has discharged the delinquent officer from remaining 16 charges. The Disciplinary Authority should have stated specifically in the order that in the enquiry the applicant is held guilty for 3 charges and the Disciplinary Authority did not agree with the same. However, after considering the evidence and for the reasons recorded has arrived at the conclusion that all the charges are proved. Then it was a different case. It is a settled law that the Disciplinary Authority has power and jurisdiction to inquire into the misconduct by himself or by his delegate and to impose the penalty for the proved misconduct of a delinquent. However, it is also a fundamental principle that the Disciplinary Authority should not conclude on the basis of speculation and surmises.

12. In the present case, the Disciplinary Authority has passed the order on 6.3.2014 and thereafter on 5.6.2014 applicant gave explanatory reply and requested to give break ups of the amount which was to be recovered. However, it was not considered and the Disciplinary Authority prepared a confidential report. We are informed that this confidential report was prepared by the

Conservator of Forest, Kolhapur and it was sent to the Addl. Principal Chief Conservator of Forest, Nagpur. Admittedly, there is no provision of audience before the Disciplinary Authority as it is taken away by the 42nd Amendment of the Constitution. However, in the affidavit in reply dated 12.4.2016 filed by the Respondents through Shri D.L Thorat, Joint Secretary, Revenue & Forest Department (Forest), Mantralaya, Mumbai, nothing is mentioned about the said report except a passing reference of this report was made in para 6 of the said reply.

13. Thus, the said report of the Disciplinary Authority is also not made available to the Tribunal. Hence, when the Disciplinary Authority has disagreed with the findings given by the Enquiry Officer in respect of 16 charges levelled against the applicant, then it was necessary to specify the tentative reasons for the same in the notice/letter calling the explanation of the delinquent officer, i.e. the applicant.

14. The Appellate Authority has rejected the appeal, and therefore, the applicant has approached this Tribunal. Even though we do not have appellate powers, however, within the writ jurisdiction we need to go through the procedural aspect and verify and see whether the principles of natural justice are properly followed at the time of holding the applicant guilty wherein the applicant was imposed with the punishment of compulsory retirement and recovery of Rs. 4,65,825/-. The amount of Rs. 4,65,825/- is ordered to be recovered from the gratuity of the applicant as the total amount of all proved 19 charges. However, as the evidence recorded by the Enquiry Officer was read over by the learned Presenting Officer, we found that proper opportunity of cross examination was not afforded to the delinquent officer, i.e. the applicant. The Panchanamas or the statements do not contain

the signature of the Committee Members of the Sahai Committee. It appears that the Disciplinary Authority has completely relied on the preliminary report submitted by Mr Sameer Sahai and on the basis of the preliminary report held the applicant guilty for all the 19 charges. Even for the charges which were held to be proved, i.e. Charges at no. 118, 121 and 134, the evidence is unfolded. The witnesses are not properly examined to prove these charges. It appears that there was a voluminous work as along with one Mr Shendge 29 officers were involved in this misconduct of misappropriation of the amount and the disciplinary authority could not dissect the evidence against the applicant properly by giving the tentative reasons for which the Disciplinary Authority held guilty of all the charges. There might be some irregularity in discharging he duty on the part of the applicant as Forest Officer. However, it is necessary for the Respondents to prove by following the proper procedure laid down under Rule 9 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

15. In view of the above the following order is passed:-

- (a) The impugned order of punishment at Exh. 'A' and confirmed in appeal at Exh. 'B' is illegal, bad in law and is hereby quashed and set aside.
- (b) The applicant is entitled to all consequential service benefits.

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

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

**Place : Mumbai**

**Date : 22.08.2022**

**Dictation taken by : A.K. Nair.**