

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.769/2012.

Ramsingh Harishchandra Lohade,
Aged about 61 years,
Occ- Retired Forester,
R/o Ward No.4, Near Vijaya-Laxmi Sabhagriha,
Radhakrishna Mandir Road,
Risama (Amgaon), Distt. Gondia.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Forests,
Mantralaya, Mumbai-32.
2. The Principal Chief Conservator of Forests,
(M.S.), Nagpur.
3. The Chief Conservator of Forests,
(Regional), Near Govt. Press,
Zero Miles, Nagpur-1.

Respondents.

Shri P.V. Thakre, Ld. Advocate for the applicant.

Shri D.M. Kakani, Ld. C.P.O. for the respondents.

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

Dated:- 11th January, 2013.

Oral Order

By consent of learned Counsel appearing for the respective parties, O.A. is taken up for final hearing at admission stage.

2. Heard Shri P.V. Thakre, the learned counsel for the applicant and Shri D.M. Kakani, the learned C.P.O. for the respondents.

3. By filing the present O.A., the applicant is challenging an order dated 30th May 2012 passed by the respondent/disciplinary authority imposing punishment of recovery of amount of Rs. 2,35,657/- for the loss caused to the Government and further punishment of deduction of 10% from the retirement pension.

4. The applicant, while in employment of the State Government, was issued a chargesheet which contains two charges—1) That the applicant while working as Field Assistant (Forest), Bijepar was negligent in performing his

duty and 2) that the applicant deliberately did not inform his superiors about illegal felling of trees and has misled the superiors, causing loss to the Government exchequer worth Rs. 2,35,657/-, for which the applicant is responsible.

5. On conclusion of Inquiry Proceedings, the Enquiry Officer submitted the Inquiry Report and categorically exonerated the applicant of both the charges by holding that neither charge No.1 nor charge No.2 has been proved. However, the disciplinary authority, without recording reasons for disagreement and without affording an opportunity of hearing to the present applicant, has passed the impugned order of punishment. According to the learned Counsel for the applicant, the disciplinary authority was obliged to afford an opportunity of hearing to the applicant even under unamended Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979, as has been interpreted by the Supreme Court in **Yoginath Bagde's case**. Though, Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 did not expressly provide for affording

an opportunity of hearing to the delinquent, when the disciplinary authority proposes to disagree with the findings of Inquiry Officer which are in favour of the delinquent employee, the Supreme Court read in the Rule extending of an opportunity of hearing. To bring the said rule in conformity with the pronouncement of the Supreme Court in Yoginath Bagde's case, Rule 9 has been amended by issuing a Notification on 10.6.2010. The impugned order passed by the disciplinary authority is dated 13.5.2012 and thus the said order ought to have been passed in conformity with the amended provision of Rule 9.

Sub -
Amended Rule 2 and 2 (a) lays down the procedure to be followed and it also provides for an opportunity to be extended to the delinquent employee in a situation wherein the Inquiry Officer exonerates the employee of the charges of misconduct and the disciplinary authority proposes to disagree with the said findings. It is undisputed that the respondent did not either communicate the tentative reasons for disagreement nor was any opportunity of hearing granted to the applicant as is envisaged by Rule 9

(2) and 9 (2) (a) of the M.C.S. (Discipline and Appeal) Rules, 1979. As the impugned order has been passed in breach of principles of natural justice and in violation of Rule 9 of the M.C.S. (Discipline and Appeal) Rules, 1979, the said order is wholly unsustainable in law and deserves to be quashed and set aside. In the result, O.A. must succeed.

At this stage, the learned C.P.O. submits that as the Tribunal is quashing the impugned order on technical ground, it would be in furtherance of cause of justice to grant liberty to the respondents to hold fresh enquiry from the stage envisaged by Rule 9 of the M.C.S. (Discipline and Appeal) Rules, 1979 and then permit passing of fresh order. Per contra, according to the learned counsel for the applicant, as the applicant is a retired Government servant, to drag him into a further enquiry would not be in the interest of justice. Be that as it may, I am of the view that liberty need to be granted to the respondents to hold fresh enquiry from the stage contemplated by Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 i.e. to communicate

tentative reasons for disagreement. However, subject to adherence of the time frame specified in the Operate part of the order.

Allowing the O.A., I proceed to pass the following order:-

- (i) The impugned order dated 30.5.2012 passed by the respondent No.3/disciplinary authority is quashed and set aside.
- (ii) Liberty is granted to the Disciplinary Authority to hold an enquiry from the stage of forwarding tentative reasons for disagreement under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 within a period of three months, failing which no enquiry shall be held.
- (iii) It is made clear that if the enquiry which is permitted from the stage of Rule 9 (2), if not completed in six months, the same shall lapse and the applicant shall stand exonerated of the charges.
- (iv) No order as to costs.

sd/-

(Justice A.P.Deshpande)
Vice-Chairman