

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION 1055 OF 2015**

DISTRICT : MUMBAI

Shri Sadanand Govind Chavan,)
Rationing Inspector, Rationing Office)
48-F, Mumbra (E/W),)
Mumbai.)**...Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)
Food, Civil Supply & Consumer)
Protection Department,)
Mantralaya, Mumbai 400 032.)
2. Controller of Rationing &)
Director of Civil Supplies,)
Royal Insurance Building,)
Churchgate,)
Mumbai 400 020.)**...Respondents**

Shri C.T Chandratre, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 24.06.2016

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Shri K.B Bhise, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging the order dated 17.4.2013 passed by the Respondent no. 2 imposing the penalty of stoppage of one increment with cumulative effect and the order of the Appellate Authority dated 23.4.2014 confirming the order of the Respondent no. 2.
3. Learned Counsel for the Applicant argued that the Applicant was working as Rationing Inspector in Mumbai/Thane Region. A Departmental Enquiry (D.E) was held against the Applicant and punishment of stoppage of one increment with cumulative effect was imposed by Respondent no. 2 by order dated 17.4.2013. Learned Counsel for the Applicant argued that the charge against him was that the authorized ration Shop No. 39-F/182 in Dombivali was found not functioning from the place from which it was sanctioned, viz., Geeta General Store, Gala No. 4, Omkar Society, Gurumandir Road, Dombivali (W). This was on the basis of the report of

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Flying Squad when they visited the spot on 17.7.2008 and did not find the shop at the aforesaid address. The licence of the aforesaid Shop was suspended on 18.8.2008 and the owner Shri Hirji Dharmshi Patel had filed a Revision Application before Hon'ble Minister, Food & Civil Supplies. By order dated 25.2.2009, the order of suspension of licence of the Applicant was set aside and the licence of the Applicant's Ration Shop was restored by the Minister. Learned Counsel for the Applicant argued that the explanation of the owner of Ration Shop that he was running his shop from some other address and there was no complaints from the Ration Card holders attached to his shop was accepted. This fact was totally ignored in the D.E proceedings against the Applicant. Learned Counsel for the Applicant further stated that the Flying Squad has visited the spot of Ration Shop on 17.7.2008, while the Applicant was transferred to some other post on 10.6.2008. He was not the Rationing Inspector for that Shop on 17.7.2008. The charge sheet did not mention the details like the date from which the Ration Shop was not working from Omkar Housing Society, Dombivali. There was no evidence on record that the Ration Shop was not working at this address before 10.6.2008, when the Applicant was transferred from the post of Rationing Inspector, 39-F, Dombivali. Learned Counsel for the Applicant argued that the Applicant was not given opportunity to cross-examine the witnesses in the D.E and on the basis of

preliminary enquiry report only, the Enquiry Officer submitted his report on 4.2.2012. It is also admitted by the Respondents that no documents were provided to the Applicant in the Departmental Enquiry. The D.E was not conducted as per the rules of the Maharashtra Civil Service (Discipline & Appeal) Rules, 1979. Learned Counsel for the Applicant prayed that the impugned orders dated 17.4.2013 and 23.4.2014 may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was working as Rationing Inspector in 39-F, Dombivali till 10.6.2008. It was found that authorized Ration Shop no 39-F/182 was allotted to one Shri Hirji Dharamshi Patel at Omkar Society, Dombivali on 1.12.2006. A report was received from Rationing Inspector, Dolas, that A.R.S no 39-F/182 (and 39-F/187) was not working at the address mentioned in the Authorization. On the visit of the Assistant Rationing Officer (Inspection) and Rationing Inspector on 26.6.2008, it was found that there was no ration Shop at Omkar Society, Dombivali. Learned Presenting Officer stated that detailed enquiry was made, statements of ration card holders attached to A.R.S no 39-F/182 were recorded, Panchanamas made and it was found that A.R.S no 39-R/182 never functioned from the address at Omkar Society, Dombivali. The Applicant was Rationing Inspector of Ward 39-F in Dombivali and he

was charged with distributing Kerosene to this A.R.S, though it did not exist. Learned Presenting Officer stated that a Departmental Enquiry was conducted under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 against the Applicant and the charge against him was found proved in the D.E. Accordingly, the Respondent no. 2 passed order dated 17.4.2013, imposing the penalty of stoppage of one increment with cumulative effect. The order was confirmed by the Respondent no. 1 who is the Appellate Authority on 23.4.2014. Learned P.O argued that considering the nature of the charges against the Applicant, the penalty cannot be called disproportionate. He has been punished after holding a regular D.E against him and no judicial interference is called for.

5. From the impugned order dated 17.4.2013, it is quite clear that a Departmental Enquiry (D.E) under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was ordered against the Applicant by memorandum dated 25.1.2010. The Applicant in his reply dated 10.2.2010, denied the charges against him and stated that the Authorization of A.R.S no F-39/182 was suspended by the Respondent no. 2 by order dated 18.8.2008 on the ground that the ARS no F-39/182 was not being run at the address given in the Authorization dated 13.4.2006. The shop owner challenged the suspension order dated 18.8.2008 in Revision

Application before Minister, Food & Civil Supplies Department and by order dated 25.2.2009, the suspension order dated 18.8.2008 was set aside by the Minister and the Authorisation was restored. In the order Minister has accepted the claim of the shop owner that he had shifted A.R.S no F-39/182 without permission, but the shop was functioning. It is seen that in order dated 25.2.2009, Minister, Food & Civil Supplies has noted that:-

“..... वादीनी केलेल्या विनंतीनुसार वादीना एक संधी देण्याकरिता वादीनी उपनियंत्रक शिधावाटप, क-परिमंडळ, ठाणे यांच्या पूर्व परवानगीशिवाय दुकान स्थलांतरित केले या दोषांकरिता वादीच्या रास्तभाव दुकानाची संपूर्ण अनामत रक्कम शासन जमा करून तसेच वादीना रु.२०,००० (रु. वीस हजार फक्त) एवढा दंड करून वादीना रास्तभाव धान्य दुकानाचे प्राधिकार पत्र पूर्ववत सुरू करण्याच्या निष्कर्षाप्रत मी आलो आहे.”

From this it is clear that shop owner was found guilty of shifting ARS without permission of Deputy Controller of Rationing. It was not the case that aforementioned shop never functioned. However, the Applicant was charged in the D.E that the A.R.S has misappropriated food grains / kerosene valued at Rs. 13,52,817/- as it never functioned and the Applicant was responsible for the same. It is seen that the shop owner of F-39/182 was never charged with any misappropriation of food grains /kerosene. It is not understood as to how the Applicant could be charged with failure of reporting misappropriation of food grains/kerosene valued at Rs.

13,52,817/- as alleged in appendix-2 of the charge sheet dated 25.1.2010 when this charge was never made against the Shop owner. The Applicant has also stated that the Enquiry Officer, did not conduct any detailed enquiry by recording the statements of the witnesses. No opportunity to cross examine the witnesses was given to the Applicant. This is not denied by the Respondents. In fact, in the affidavit in reply dated 18.2.2016, on behalf of the Respondent no. 2, it is stated in para 3.7 & 4 that:-

“3.7 Taking into consideration the statements of witnesses, available evidences, panchanama, statements recorded during spot verification (mentioned above in point A, B, C) Enquiry Officer submitted his final report on 4.2.2012.

4. With reference to Para 6.12(ii), I say that from the available office record, it is found that no documents were provided to Shri Chavan during Enquiry procedure.”

It is clear that no statements of the witnesses/panchas were recorded by the Enquiry Officer, who relied on the preliminary enquiry report, which was held behind the back of the Applicant. No documents were admittedly provided to the Applicant in the D.E. No opportunity to cross-examine the witnesses was given to the Applicant. These are serious lacuna and the whole D.E proceedings

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were seriously vitiated. The D.E was not conducted as provided for in Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. As the D.E against the Applicant was not conducted as per the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, it has to be quashed. Accordingly, the orders dated 17.4.2013 and 23.4.2014 impugned in this Original Application also deserved to be quashed.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is allowed. The order dated 17.4.2013 issued by the Respondent no. 2 and the order dated 23.4.2014 issued by the Respondent no. 1 are quashed and set aside. The Respondent will extend all the benefits like fixation of pay, revision of pension and payment of pay and allowances and pension within a period of 3 months from the date of this order. There will be no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 24.06.2016
Dictation taken by : A.K. Nair.