

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 170 /2015 (S.B.)

Wasudeo Madhukarrao Pande,
Aged 60 years, Occ. Retired,
Agriculture Officer,
R/o Plot No.41, Ganesh Colony,
Pratap Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Rural Development and Water
Conservation Department, Mantralaya,
Mumbai-32.
- 2) The Commissioner (Agriculture),
Commissionerate, Maharashtra State,
Pune.
- 3) The Regional Joint Director (Agriculture),
Civil Lines, Nagpur.

Respondents.

Shri S.K. Majid, Advocate for the applicant.

Shri S.A. Sainis, P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 24th day of January,2019)

Heard Shri S.K. Majid, learned counsel for the applicant
and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant has claimed following reliefs :-

“5 (2) Quash and set aside the impugned order dated 03/11/2012 issued by the respondents and thereby direct the respondents to refund the amount of Rs.1,94,963/- recovered from the DCRG of the applicant and further be pleased to direct the respondents grant him two increments which were permanently reduced from his salary by the impugned order dated 23/12/2013.

(3) Quash and set aside impugned order dated 23/12/2013 and thereby to treat the suspension period w.e.f. 18/10/1999 to 18/01/2001 as duty period.

(4) Grant all retiral benefits for which he is entitled after superannuation by quashing and setting aside both the impugned orders.”

3. From the admitted facts on the record it seems that the applicant was Agricultural Supervisor and got retired on superannuation on 30/11/2012. Before his retirement departmental inquiry was initiated against him on six charges, it was common inquiry against six persons. The Inquiry Officer submitted his report to the Disciplinary Authority. The six charges against the applicant and findings thereon of the Inquiry Officer are as under :-

nKkjk dkd	fu"d"l
<p>ck dkd 1 mDr Jh-MCY; w , e-i Mj ekth d"kh i ; bskd en l zkkj.k] ulxHkM dk; ky; mi foHkxh; en</p>	<p>fl /n gkrs</p>

<p>I alkj.k vf/kdkjh]cEgijh Eg.kw l u 1998&99 e/; sdk; jr vl rkauk R; kauh df"k l gk; d Jh-i-h, u-ekujko ; kP; k'kh l axuer d#u ukxfHKM rkyD; krhy ekStk ckGkiij ¼rpd½ Mksyh xV dækd 1@5]1@8 ekStk ckGkiij ¼rpd½ ; sksyh xV dækd 1@2] ekStk fp[ky ijl kMh ik.kykv/ dækd 4 psxV dækd 19]20]21]22 vkf.k 23 ekStk [kMdh xV dækd 2@1 ekStk i kat j i kj xV dækd 1@4]1@3]2@2 e/; s l ekfo"V l Ogð ucje/; s eatij l folrj vankti=d o udk'kkiæk.k s i R; {k dke u djrk rs dY; kP; k [kks/; k uksh ?kouw [kks/k nLrk, ot r; kj d#u 'kkl ukph Ql o.kpl d#u R; kauh 'kkl dh; jDde #i; s 2]53]334@& 'kkl dh; jdepk vigkj dsyk- R; ki slh #i; s 84]446@& P; k jdes Jh-MCY; w , e-i Mj d"kh i ; bskd ol nyhl ik= vkgr-</p>	
<p>clc dækd 2 mDr Jh-MCY; w , e-i Mj ekth d"kh i ; bskd en l alkj.k] ukxHKM dk; kzy; mi foHkxh; en l alkj.k vf/kdkjh]cEgijh ; kauh mi jkDr dkyko/khr dk; jr vl rkauk R; kauh df"k l gk; d Jh-i-h, u-ekujko ; kpskh l axuer d#u ukxfHKM rkyD; krhy ekStk foye ¼fp [kyi j l kMh½ ; fkyh ik.kykv/ dækd 4 ps xV dz20 e/; s l ekfo"V l Ogð dækdke/; s l folrj vankti=d o udk'kkiæk.k s i R; {k dke u djrk rs dY; kP; k [kks/; k uksh ?kouw [kks/k nLrk, ot r; kj d#u 'kkl ukph Ql o.kpl dsyh vkf.k 'kkl dh; jDde #-63]797-94@& pk vigkj dsyk R; ki slh #-21]246@& P; k jdes Jh-MCY; w , e-i Mj ekth d"kh i ; bskd ol nyhl ik= vkgr-</p>	<p>fl /n glrs</p>
<p>clc dækd 3 mDr Jh-MCY; w , e-i Mj ekth d"kh i ; bskd en l alkj.k] ukxHKM dk; kzy; mi foHkxh; en l alkj.k vf/kdkjh]cEgijh mi jkDr dkyko/khr dk; jr vl rkauk R; kauh ukxfHKM rkyD; krhy ekStk [kMdh ; fks es 1998 e/; s r; kj dsyY; k fl eW ukyk clakdkekoj i k.kh Vkd.; kP; k dkekps [kks/s nLrk, ot r; kj d#u #-3]726@& pk vigkj dsyk- R; ki slh 1]242@& P; k jdes Jh-i Mj ekth df"k i ; bskd ol nyhl ik= vkgr-</p>	<p>fl /n glrs ukgh-</p>
<p>clc dækd 4 mDr Jh-MCY; w , e-i Mj ekth d"kh i ; bskd dk; kzy; mi foHkxh; en l alkj.k</p>	<p>fl /n glrs</p>

<p>vf/kdkjh]cEgijh mijkdR dkyko/khr dk; jr vl rkauk R; kauh ukxfHKM rkyD; krhy ekStk i kat;si kj vkf.k [kMdh; Fks, fizy 98 rstuw 98 ; k dkyko/khr cka'kdke dsyY; k fl eW ukykckak ik.kykV dz2 ps xV dz5]8]9 vkf.k [kMdh ik.kykV dækd 2 oj rka=hd fu; æ.k dsysukgh-i ; k; kusl nks'k cka'kdkekl enr dsh rlp foghr VDdskjhud kj ukyk cka'kdkekrhy rikl .kh u djrk i eW vnk dsysEg.kau #-2]67]814@& pk fujFKd [kpl ol gyhi k= vkgs R; ki Sdh #-89]271@& P; k jded Jh-i Mj d"kh i ; bskd ol gyhl ik= vkgs-</p>	
<p>clc dækd 5 mDr Jh-MCY; w , e-i Mj ekth d"kh i ; bskd dk; k; mi foHkxh; en l akkj.k vf/kdkjh]cEgijh ; kauh i ; bskh; vf/kdkjh o i xkj okV dj.kkjs d"kh i ; bskd Eg.kau Loinkph drD; so tckenkjhp si ky u dj.; kr dl j dsyk-i ; k; kus R; kauh egkj k"V ukxjh l ok ¼orZkd ½ fu; e]1979 e/khy fu; e 3 ¼1½2 o 3 pk Hkæ dsk-</p>	<p>fl /n gks</p>
<p>clc dækd 6 Jh-MCY; w , e-i Mj ekth d"kh i ; bskd dk; k; mi foHkxh; en l akkj.k vf/kdkjh]cEgijh ; kps xSforZkd o xSf'kLrhps xSdR; keGs R; kph l ak; kLin l pks/h fun'kZkl vkyh vkgs</p>	<p>fl /n gks ukgh-</p>

4. The learned counsel for the applicant submits that fair opportunity was not given to the applicant and no incriminating circumstances coming against the applicant were explained to him nor his explanation was obtained. There is a breach of Rule 8 (20) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "MCS (D&A) Rules"). The learned counsel for the applicant placed reliance on the Judgment in this regard in the case of **Shri Vijay Shamrao Bhale Vs. Godavari Garments Limited, Aurangabad,**

2011 (2) Mh.L.J.,983, In this case the Hon'ble High Court at Aurangabad Bench has stated that the Inquiry Officer is not left with any other discretion but has to question the delinquent about the circumstances appearing against him. It is further stated that Rule 8 (20) is imperative and the same is mandatory.

5. The learned counsel for the applicant also placed reliance on Judgment in O.A.648/2013 **Dudhrao Rupla Rathod Vs. State of Maharashtra & Ors.**, delivered by this Tribunal at Nagpur Bench on 13/01/2015 wherein the matter was remitted back to the Inquiry Officer to proceed afresh from the stage of generally questioning the applicant on the circumstances appearing against him as provided under Rule 8 (20) of the MCS (D&A) Rules.

6. The learned counsel for the applicant placed reliance on the Judgment of this Tribunal in case of **Himmat Ganpatrao Khawale Vs. State of Maharashtra**, delivered on 08/08/2012 wherein it was held that Rule 8 (20) of the MCS (D&A) Rules was mandatory and Tribunal refused to remand the matter on the ground that 8 years had already elapsed for completion of the inquiry.

7. The Rule 8 (20) of the MCS (D&A) Rules states that after the case is closed, the government servant has to be examined and generally questioned him on the circumstances appearing against him in the evidence for the purposes of enabling the government servant to

explain any circumstances appearing in the evidence against him. From the record it seems that no statement of applicant as per Rule 8 (20) of the MCS (D&A) Rules has been recorded and it is specifically mentioned in sub-para (C) of the para-4.8 of the O.A. The said statement has not been denied by the respondent authorities. It is only stated that sufficient opportunity was given to the applicant and the procedure was followed as per Rules 8&9. However there is nothing to show that the applicant was given an opportunity to explain incriminating circumstances against him as per Rule 8 (20) of the MCS (D&A) Rules and therefore on this ground the inquiry stands vitiated since fair opportunity was not given to the applicant to explain the incriminating evidence / circumstances.

8. Normally and generally when such irregularities committed by the Inquiry Officer, the matter is remanded back for giving opportunity. The applicant however, in this case has retired on 30/11/2012 and the impugned orders have been passed on 03/11/2012 and 23/12/2013 respectively. In such circumstances it will be great injustice on the applicant if the matter is remanded for fresh inquiry since he has already been retired. Considering these aspects, there is no need to go into the merits of the inquiry and except this there seems to be no illegality. The learned counsel for the applicant submits that the applicant was not present at the time of inspection but

that cannot be a mandatory provision and admittedly the applicant was given opportunity so far as other aspects of inquiry is concerned. By not recording the statement under Rule 8 (20) of the MCS (D&A), the Disciplinary Authority has denied the valuable right to the applicant. Therefore this is nothing but denying opportunity which goes to the root of the inquiry and therefore considering all these aspects, the impugned orders needs to be quashed and set aside so far as the applicant is concerned. Hence, the following order :-

ORDER

The O.A. stands allowed in terms of prayer clause 5 (2),(3) & (4). No order as to costs.

Dated :- 24/01/2019.

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(J.D. Kulkarni)
Vice-Chairman (J).