

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH NAGPUR**

ORIGINAL APPLICATION NO 192 OF 2004

DISTRICT : CHANDRAPUR

Mohammad Sharif w/o Bapu Miya)
Siddiqui, Dead,)
Rang Forest Officer, Massive)
Forestation Programme-I,)
Rajura, Central Chanda Forest)
Division, South Chanda Circle,)
R/o Near Hyderabad Bank, Rajura,)
Dist-Chandrapur.)

1. Mrs Meharunnisa M. Sharif)
Siddiqui,)
2. Mr Yahya Mohamad S.)
Siddiqui.)
3. Mr Jahir Abbas Mohammad)
Sharif Siddiqui.)
4. Mr Jafar Mohammad Sharif)
Siddiqui.)

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5. Mr Juned Mohamad Sharif)
Siddiqui.)
6. Mrs Rehana Arif Sheikh,)
7. Mrs Sumaiya Hanif Sheikh)
8. Ms Rubi Mohammad Sharif)
Siddiqui. (Legal heirs))...**Applicants**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Forest Department, Mantralaya)
Mumbai.)
2. The Chief Conservator of Forest)
[Administration], Khani Bhawan)
Seminary Hill, Nagpur 440 013)
3. The Conservator of Forest,)
South Chanda Circle, Mul Road)
Chandrapur.)
4. The Regional Special Officer,)
Departmental Enquiries and)
Deputy Commissioner,)
[Rehabilitation], Nagpur.)
Division office of the)
Divisional Commissioner,)
Civil Lines, Nagpur.)...**Respondents**

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Mrs R.Y Siddiqui, learned advocate for the Applicant.

Mrs S.V Kolhe, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 10.03.2017

ORDER

1. Heard Mrs R.Y Siddiqui, learned advocate for the Applicant and Mrs S.V Kolhe, learned Presenting Officer for the Respondents.

2. This Original Application was filed by the Applicant who expired during the pendency of this Original Application and his legal heirs have been brought on record. However, for the sake of convenience the appellation (the Applicant) will be used in respect of the Applicants.

3. It appears that the Departmental Enquiry was held against the Applicant and by order dated 16.7.2003, the Respondent no. 3 imposed punishment of bringing the pay of the Applicant to the lowest level in the time scale and monetary loss caused by him to the Government was ordered to be recovered. It was also

ordered that he will not be eligible for benefits of A.C.P scheme for next three years.

4. Learned Counsel for the Applicant argued that the Respondent no. 3 is competent to impose only minor penalty on the Applicant. She stated that as per Rule 8, sub rule 23 (a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, an authority who is empowered to impose only minor penalty has to refer the case where it has concluded that the major penalty is required to be imposed, to the authority who is empowered to impose major penalty. In the present case, the impugned order states in para 5 that it was appropriate to impose major penalty on the Applicant ““त्यांना शासकीय सेवेतून कमी करणे श्रेयस्कर ठरले असते.”.

5. Learned Counsel for the Applicant stated that this conclusion of the Respondent no. 3 clearly shows that he has decided to impose major penalty upon the Applicant who was working as Range Forest Officer, Group-B. As per Circular dated 30.9.1995, Conservator of Forest is competent to place a Range Forest Officer under suspension and also to impose minor penalty. However, if major penalty is to be imposed, the matter has to be referred to the State Government. As the Respondent no. 3 did not refer the matter to the Respondent no. 1, i.e. the State Government, the order is void, ab initio and should be quashed and set aside.

6. Learned Counsel for the Applicant further stated that the punishment of bringing the pay of the Applicant to the minimum of the time scale is not a minor punishment and as such the Respondent no. 3 was not competent to impose that penalty. The Applicant was suspended by order dated 9.1.2001 when no D.E was pending against him at that point in time. That was also improper. Though the punishment order stated that time bound promotion will not be given to the Applicant for 3 years, however, no such promotion was given to him after expiry of that period. The Applicant retired on 31.7.2005 and expired in the year 2015.

7. Learned Presenting Officer stated that the Original Application is misconceived. As per Government letter dated 30.9.1995, relied upon by the Applicant himself, Conservator of Forest, is competent to place a Range Forest Officer under suspension and he can also impose minor penalty upon him. Minor penalties are listed in Rule 5 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Except compulsory retirement, removal from service and dismissed from service, all other penalties are listed as minor penalties. Reduction to a lower stage in the time scale of pay is a penalty at Serial No. (v). The order of punishment was imposed on 10.7.2003 and the Applicant retired from service soon thereafter. Therefore, in effect this reduction in a lower stage in the time scale of pay was for a very

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short period in the present case. Such a punishment cannot be called a major penalty under the rules.

8. Learned Presenting Officer further stated that a Government employee can be suspended under Rule 4 of the aforesaid rules in contemplation of disciplinary proceedings. Therefore, the order of placing the Applicant under suspension cannot be called illegal, as the Respondent no. 3 has started full-fledged D.E under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 against him. Learned Presenting Officer further stated that Rule 8, sub-rule 23(a) contemplates that if an authority is not competent to impose major penalty, only then that authority is required to refer the matter to the appropriate authority, who is competent to impose major penalty. In the present case, nodoubt there is an observation by Respondent no. 3 that it was a fit case to remove the Applicant from service. However, actually only minor penalty has been imposed on the Applicant. As such Rule 8, sub-rule 23(a) is not attracted at all. Learned Presenting Officer further stated that before the Applicant could be considered for extending the benefits under A.C.P scheme which was withheld for 3 years, he retired from service. Therefore, the question of extending that benefit to him after his retirement does not arise. Learned Presenting Officer stated that D.E against the

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Applicant was conducted strictly in accordance with rules and he was given full opportunity to defend himself.

9. It is seen that the Applicant has challenged the order passed on 16.7.2003, in the present Original Application. The main ground in the Original Application to challenge that order of punishment in a Departmental Enquiry is that the Respondent no. 3, who has passed the impugned order was not competent to do so. Reliance is placed on Government letter dated 30.9.1995 (which the Applicant has been referring to as Government Circular). This letter has clarified that for a person working as R.F.O, the suspension order can be passed by Conservator of Forest, who also has the authority to impose minor punishment.


Rule 8, sub rule 23(a) reads as follows:-

“8. Procedure for imposing major penalties.

23(a) Where a disciplinary authority competent to impose any of the minor penalties but not competent to impose any of the major penalties has itself inquired into or caused to be inquired into any of the articles of charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it is of the opinion that any of the major penalties should be imposed on the

Government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose such major penalty.”

It is quite clear that as per this provision, the Respondent no. 3 was competent to impose any minor penalties listed in Rule 5 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, upon the Applicant. The fact that he has observed in the impugned order that it was a fit case for imposing penalty of removal from service upon the Applicant, is of no consequence, as ultimately he imposed a minor penalty upon the Applicant. In my considered opinion Rule 8, sub rule 23(a) is not attracted in this case at all. The Applicant has stated that punishment of reduction in lower stage in the time scale permanently is a major punishment. However, if the facts of the case are considered, the order of punishment was passed on 16.7.2003 and the Applicant retired from service on 31.7.2005. The net effect is that the reduction to a lower stage in the time scale was for period less than 3 years. Therefore, it cannot be called a major penalty. It is also a fact that the impugned order is passed after a D.E under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was conducted against the Applicant. Under Rule 10(2) *ibid* even if a minor punishment, which may adversely affect amount of pension payable to a Government servant is imposed, it



can be done only after holding a D.E under Rule 8. In the present case, that requirement is also not violated as the enquiry was held under Rule 8 of the M.C.s (Discipline & Appeal) Rules, 1979, which resulted in imposition of minor penalty.

10. The Applicant has not alleged that there was any procedural flaw in holding the Departmental Enquiry against him, or that he was not given full opportunity to defend himself. The Applicant has relied on the judgment of Hon. Bombay High Court in the case of **DNYANESHWAR S. BHANDARE Vs. STATE OF MAHARASHTRA & ORS : 2010 (1) Bom. C.R 152**, where the issue regarding competence of an authority who is competent to impose minor penalty, and imposes major penalty has been discussed. It is made clear that the enquiry initiated by such an authority can be used for imposing major penalty, if such disciplinary authority refers the case to the superior disciplinary authority, who is competent to impose major penalty, for imposing major penalty. As no major penalty was imposed on the Applicant, this judgment is not attracted nor is it violated by the Respondents.

11. The Applicant retired from service within 3 years of passing of the impugned order. He was barred from getting benefits of A.C.P scheme for 3 years. However, before that period is over, he has already

retired. There is no question of extending benefits of A.C.P scheme after retirement of a Government servant. The contention of the Applicant in this regard has no substance.

12. Having regard to the facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

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(Rajiv Agarwal)
Vice-Chairman

Place : ~~Mumbai~~ Nagpur

Date : 10.03.2017

Dictation taken by : A.K. Nair.