

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 229/2015 (SB)**

Rajkumar Radheshyam Jaiswal,  
Aged about 52 years, Occ. Service,  
R/o Plot no.158, Om Mansion,  
Ramdaspath, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Public Works Department,  
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,  
Public Works Region,  
Civil Lines, Nagpur.
- 3) The Superintending Engineer,  
Public Works Circle,  
Opp. General Police Office,  
Civil Lines, Nagpur.
- 4) The Executive Engineer,  
Public Works Division No.1,  
Residency Road, Sadar, Nagpur.

**Respondents.**

---

**S/Shri D.M. Kakani, G.K. Bhusari, Advs. for the applicant.**

**Shri H.K. Pande, P.O. for respondents.**

---

**Coram :- Hon'ble Shri A.D. Karanjkar,  
Member (J).**

---

**JUDGMENT**

**(Delivered on this 20<sup>th</sup> day of December,2018)**

Heard Shri D.M. Kakani, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. In the month of July,2007 the applicant was serving as Sub Divisional Engineer, P.W.D., Division No.1 attached to the MLA Hostel, Nagpur. On 01/07/2007 the Executive Engineer, P.W.D., Division No.1 received application from M/s Swastik Engineers, Nagpur under the RTI Act. The Executive Engineer, Division No.1 forwarded that application on 07/07/2007 to the applicant. On 17/07/2007 the applicant informed the Executive Engineer that the work was done by the PWD Sub Division No.2 and all the record and papers of that work were not deposited in his office. The Executive Engineer thereafter informed this fact to the RTI applicant vide letter dated 21/07/2007. As the information was not provided in time first appeal was preferred by the Swastik Engineers before the Superintending Engineer, PWD, Nagpur who was the first Appellate Authority. The first Appellate Authority decided the appeal on 21/11/2007 and directed the Executive Engineer, PWD, Division No.1 to supply the information demanded by Swastik Engineers within 15 days. Thereafter again there was exchange of letters and official correspondence and as the information was not received, the Swastik Engineers preferred second appeal before the State Information Commission.

3. The State Information Commission decided the appeal on 02/03/2009 and while deciding the appeal came to the conclusion that the Information Officer i.e. the Executive Engineer, PWD, Division No.1, Nagpur and his subordinates were negligent and reckless in supplying the information called by the RTI applicant, consequently issued direction to initiate the disciplinary proceedings against the responsible officials as they were also part of Public Information Officer. In consequence of the order passed by the State Information Commission memorandum dated 07/01/2013 was served on the applicant along with the imputation of the charges as the Disciplinary Authority decided to proceed under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "MCS (D&A) Rules"), opportunity was given to the applicant to submit his explanation and after hearing the Disciplinary Authority passed the order dated 17/05/2014 observing that the applicant committed minor misconduct and the applicant was censored, being aggrieved by this order the present O.A. is filed.

4. The impugned order is attacked mainly on the ground that the Disciplinary Authority did not consider the explanation submitted by the applicant and papers. It is grievance of the applicant that it was immediately informed by the applicant to the Executive Engineer, PWD, Division No.1 that the information called for was not in

possession of his office and all the papers were in custody of PWD, Sub Division No.2 which was under the control of PWD, Division No.3, Nagpur. It is submitted that the PWD, Sub Division No.2 avoided to deposit the papers in PWD, Division No.1, so the applicant's office was not possessing the papers and it was difficult for the applicant to supply the information called.

5. The second submission is that the Disciplinary Authority did not consider the fact that the Executive Engineer, Division No.1 was aware of this situation and in spite of it, he forwarded the application dated 01/07/2007 to the applicant. According to the applicant as the papers were not received from PWD, Sub-Division No.2, therefore, there was no propriety to forward the application submitted by the Swastik Engineers for the information to the office of the applicant. It is submitted that the applicant has discharged his duty promptly informing the Executive Engineer, PWD, Division No.1 that his office was not possessing the record and for this reason the Disciplinary Authority should have held that no misconduct was committed by the applicant.

6. It is contention of the applicant that the Disciplinary Authority did not examine the papers in this regard which were pointing out that the applicant's office was not responsible for not

providing the information to Swastik Engineers as the record was not in custody of the office of the applicant. It is submitted that the Sub Divisional Engineer, Sub-Division No.2 and Executive Engineer, Division No.1 and the Executive Engineer, Division No.3 were guilty of the misconduct and they were responsible for not supplying the information to Swastik Engineers in time.

7. The application is opposed by the respondents vide reply Exh-57. It is submission of the respondents that the information called by the Swastik Engineers was not supplied in time, consequently first appeal was preferred. In spite of the decision of the first appeal as no information was provided, therefore, Swastik Engineers preferred second appeal before the State Information Commission. It is contention of the respondents that after examining the entire material the State Information Commission held that besides the Executive Engineer, PWD, Division No.1 the subordinate officers were also responsible for non compliance of the order passed in the first appeal. It was observed by the State Information Commission that the subordinate officers, members of the staff were also covered in the definition of Public Information Officer as per Section 5 (5) of the RTI Act,2005. The State Information Commission held all of them were responsible for the delay in giving the information and directed to initiate disciplinary inquiry.

8. It is submission of the respondents that though the information was not in custody of the applicant then also it was his statutory duty as provided under Section 6 (3) of the RTI Act,2005, to transfer the application to the authority in whose possession the information was within period of 5 days after receiving the application. It is submitted that the applicant received the application on 09/07/2007, he remained silent and on 17/07/2007 he wrote letter to the Executive Engineer, PWD, Division No.1 that the information and papers were in custody of PWD, Sub-Division No.2. It is contention of the respondents that by committing breach of Section 6 (3) of the RTI Act,2005 the applicant committed the misconduct and therefore, the punishment awarded is legal and no interference is required.

9. I have heard submissions on behalf of the applicant and on behalf of the respondents. I have also perused the relevant documents filed by the applicant and the respondents. There is no dispute about the fact that on 01/07/2007 the application under the RTI Act was submitted by Swastik Engineers and that application was forwarded for compliance by the Executive Engineer, PWD, Division No.1, Nagpur to the applicant. The letter dated 07/07/2007 was received by the applicant on 9-7-2007 and on 17/07/2007 the applicant wrote letter to the Executive Engineer, PWD, Division No.1 informing that the relevant record was in custody of PWD Sub-Division

No.2. In Annex-A-17 reply submitted by the applicant to the show cause notice in para-3 it was mentioned that the applicant received the application dated 01/07/2007 along with the letter dated 07/07/2007 on 09/07/2007 and he immediately wrote letter dated 17/07/2007 to the Executive Engineer, PWD, Division No.1, Nagpur informing that the relevant documents were not deposited by the Sub-Division No.2. Here it must be noted that the applicant accepted that he received the letter dated 07/07/2007 and the application dated 01/07/2007 on 09/07/2007, therefore, though the applicant was not in custody of the record and papers which were necessary to give information, he was bound to take emergent action and as provided under section Section 6 (3) of the RTI Act. The Section 6 (3) of the RTI Act is as under :-

*6 (3) “ Where an application is made to a public authority requesting for an information –*

*(i) which is held by another public authority; or*

*(ii) the subject matter of which is more closely connected with functions of another public authority,*

*The public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer :*

***Provided that the transfer of an application pursuant to this sub section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”***

10. The proviso to sub section 3 is very much material. The sub section 3 says that when the application is made for information which is held by another public authority or the subject matter of which is closely connected with the functions of another public authority, then the public authority receiving the application for the information shall transfer the application to the appropriate public authority and inform the fact of transfer of the application to the RTI applicant immediately. After reading of section 6 (3) and the proviso it seems that the applicant was under obligation to transfer the RTI application to the other public authority in whose possession the necessary record was available and to give its intimation to the RTI applicant Swastik Engineers and he was bound to do so within 5 days from the receipt of the application.

11. In the present case it seems that the applicant in this regard wrote first letter to the Executive Engineer, PWD, Division No.1 on 17/07/2007. There is no dispute about the fact that the copy of this letter was not sent by the applicant to RTI applicant Swastik Engineers and secondly as the applicant received the RTI application on 09/07/2007, therefore, he was bound to comply the directions in terms



of section 6 (3) within 5 days. Here it seems that the RTI application was never transferred by the applicant to the concerned public authority in whose custody the relevant record and papers were lying and no intimation was given by the applicant to Swastik Engineers within 5 days. Under these circumstances, there appears no error committed by the Disciplinary Authority holding that the applicant was guilty of misconduct. It is grievance of the applicant that he is made scapegoat and the Executive Engineer who was responsible is set free. On perusing page no.43 of the P.B. it seems that the Disciplinary Authority decided to initiate the departmental inquiry against the present applicant and Shri G.E. Sukhdeve, Executive Engineer who was under suspension and it was decided to conduct common disciplinary inquiry. After reading this document which is produced by the applicant at page no.43, it is difficult to infer that disciplinary action was initiated only against the applicant and no action was initiated against the Executive Engineer, PWD, Division No.1.

12. After perusing all the papers it seems that in pursuance of the directions given by the State Information Commission show cause notice was served on the applicant, his explanation was called, then memorandum together with the imputations were served on the applicant. The applicant was given opportunity of hearing and after

considering the material the Disciplinary Authority passed the impugned order. The legal position is settled that the Courts and the Tribunals should not interfere in the disciplinary proceedings and punishment awarded, unless it is shown that the decision taken by the disciplinary committee is not supported evidence or it is contrary to the evidence or it is perverse or the punishment awarded is shockingly disproportionate. After considering all circumstances it seems that though several persons were involved and were responsible for not supplying the information to Swastik Engineers within stipulated time, but on the basis of it inference cannot be drawn that no misconduct was committed by the applicant. It is submitted by learned PO that the applicant did not comply the provisions under section 6 (3) of the RTI Act,2005 and consequently the act of the applicant can be labelled as misconduct. It seems that the disciplinary authority after considering the circumstances decided to award minor penalty and initiated the action under Rule 10 of the MCS (D&A) Rules,1979. The disciplinary authority not awarded any punishment of the nature causing any financial loss to the applicant, but simply **censured** the applicant. In my opinion considering this nature of the punishment, it is not possible to say that the punishment is shockingly disproportionate or was not required at all. It appears from the facts and circumstances the PWD Department was not willing to provide the information demanded by

the Swastik Engineers and therefore the record was not made available and in spite of the order passed in the appeal, no steps were taken to provide the information. The RTI applicant was running here and there for the information which was required by him and the Government officials were prolonging the matter for one reason or the other. Therefore in view of the provisions under the RTI Act, I am of the view that the punishment awarded is proper and no interference is called for. Hence, the following order :-

**ORDER**

The O.A. stands dismissed with no order as to costs.

**Dated** :- 20/12/2018.

\*dnk..

**(A.D. Karanjkar)**  
**Member (J).**