

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.250/2008.

Smt. Ashalata wd/o late Deorao Shingne,
Aged about 50 yrs.,
Occ-Nil,
R/o 225, Laxmi Karmachari Co-operative
Housing Society, Laxmi Apartment,
Nandanvan Main Road, Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Forests,
Mantralaya, Mumbai-440 032.
- 2) The Principal Chief Conservator of Forests (M.S.),
Nagpur.
- 3) The Chief Conservator of Forests (Regional),
Near Govt. Press, Zero Mile,
Civil Lines, Nagpur.
- 4) The Chief Conservator of Forests,
(Research Education and Training),
Pune-02.
- 5) The Assistant Conservator of Forests
(Silviculturist), Near C.P. & Berar School,
Ravinagar, Nagpur.

Respondents

Shri P.V. Thakre , Ld. Counsel for the applicant.
Shri P. N. Warjekar, learned P.O. for the respondents.

Coram:- Hon'ble Shri Rajiv Agarwal,
Vice-Chairman (A) and
Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

Per:-Vice-Chairman (J)

JUDGMENT

(Delivered on this 11th day of August 2017.)

Heard Shri P.V. Thakre, the learned counsel for the applicant and Shri P. N. Warjekar, the learned P.O. for the respondents. This matter is being disposed of on merits with the consent of the parties concerned.

2. This O.A. has been filed against the order dated 22.3.2006 passed by respondent No.3 (Exh.A-9). Vide the said impugned order, respondent No.3 was pleased to remove the applicant from service and relevant operative order is as under:-

“मिमी आशालता देवराव ढांगणे, ढापाई यांना शासकाय सेवेतून काढून टाकण्यात येत आहे. मां भावी काळात शासकाय नोकरां मळण्याया ढटजे ह अनहत्ता ठरणार नाहं”

3. In the O.A., the applicant has claimed that the said order dated 22.3.2006 be quashed and set aside and she be reinstated in service.

4. The applicant has preferred an appeal against the order dated 22.3.2006 and the said appeal was disposed of by

respondent No.2 vide order dated 3.3.2009 during the pendency of this O.A. The order of removal of the applicant was confirmed by the appellate authority i.e. respondent No.2. In view of this development, the O.A. was amended and the applicant has also claimed that the order dated 3.3.2009 passed by respondent No.2 in departmental appeal be quashed and aside.

5. The applicant Smt. Ashalata wd/o late Deorao Shingne was appointed on compassionate ground due to death of her husband and she joined the post of Peon (Shipai) in the office of the respondents on 21.6.1990. Her husband died while working as Forest Surveyor on 1.3.1986. On 20.2.1992, the applicant was transferred in the office of respondent No.5.

6. On 20.2.2002, respondent No.5 directed the applicant to appear before the Medical Board, since she was absent from duty. However, for want of communication, the applicant could not appear before the Medical Board. She was not allowed to resume her duties. The applicant was, therefore, forced to file O.A. No. 540/2002 and the said application was disposed of on 14.2.2003 with the observations that the applicant was willing to appear before the Medical Board.

7. On 29.11.2002, respondent No.4 directed respondent No.5 not to suspend the applicant, but to initiate departmental

proceedings as per Rule 10 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as %Discipline and Appeal Rules+). Accordingly, respondent No.5 initiated departmental enquiry against the applicant, but as per Rule 8 of the Discipline and Appeal Rules. The applicant submitted her explanation and in the said enquiry, the applicant was removed from service. The applicant filed this O.A., since her appeal was not decided for more than one year by respondent No.2.

8. According to the applicant, enquiry proceeded unilaterally and the submissions of the applicant were not considered properly. Copies of the documents were not supplied to the applicant. She requested respondent No.5 to supply copies of documents on 14.5.2003, 2.6.2003 and 13.6.2003. But the documents were not supplied to her. Even though respondent No.5 was directed to initiate an enquiry under Rule 8 of the Discipline and Appeal Rules, but the enquiry under Rule 10 of the Discipline and Appeal Rules was initiated. A show cause notice was issued to the applicant, declaring the intention to suspend the applicant and her explanation was not properly considered. The applicant also alleged malice on the part of the respondents in removing her from service. In the alternative, it is submitted that the applicant has no source of livelihood and has to

look after her children who are taking education and this aspect also has not been considered. The punishment is disproportionate and is shocking to the conscience of any prudent man. Enquiry is suffered from bias. The authority ought to have considered that the applicant was appointed on compassionate ground. Hence, this O.A.

9. The respondents have tried to justify the action taken by them. Reply affidavit has been filed on behalf of respondent Nos. 3,4 & 5 on 2.7.2008 and thereafter by respondent Nos. 2 to 5 on 13.4.2009. The allegations of bias and not giving an opportunity are denied by the respondents. It is submitted that the documents which were irrelevant and which were not available, were not supplied to the applicant and full opportunity was given.

10. On perusal of Enquiry Report, it seems that as good as five charges were framed against the applicant in the departmental enquiry and the said charges were as under:-

१. वरुणंठी कायालयीन वेळेत व ँयांचेच दालनात बेरुणतपणे वागणे.

२. वरुणंठीया आदेशाची अवमानना करणे व परुपर अनाधकृतपणे कामावर गैरहजर राहणे.

३. शासकलय दताएवज नट करणे, फाडून पेंकणे व दताएवजात खाडाखोड करणे.

13. We have perused the Enquiry Report submitted by the Enquiry Officer which is at page Nos. 28 to 53 and the same is dated 4.10.2005. It seems that the department has examined as good as six witnesses in the departmental enquiry and they are:- (1) Abdul Rashid Khan, Assistant Conservator of Forests (Tendu Leaves), Bramhapuri, (2) Anand Gopal Mahajan, Assistant Conservator of Forests (Retd.), (3) Parshuram Baliram Bhojar, Accountant, Retired Assistant Conservation Expert, Nagpur (4) Smt. Gomatidevi Virendrasingh Chouhan, Clerk, Pench Tiger Project, Nagpur (Zero Mile), (5) Shrikant Ramlalji Jangde, Clerk, Assistant Conservation Expert, Nagpur, (6) Ashok Marotrao Marbat, Steno, office of Principal Chief Conservator of Forests (M.S.), Nagpur.

14. Generally and normally, the Tribunal will not look into the merit of the evidence or would not appreciate the evidence. However, since the applicant states that it is a case of ~~no~~ evidence, it is necessary to look into the evidence of the witnesses.

15. From the evidence of Shri Abdul Rashid Khan, Assistant Conservator of Forests (Tendu Leaves), Bramhapuri, it seems that the applicant filed an application before him on 18.2.2000 to the effect that she was unable to attend the office, since her mental condition was not good and when she appeared in the office she was

asked the reason for coming late, she behaved adamantly and cried loudly. It is material to note that, the evidence regarding so-called misbehaviour of the applicant is most vague. None of the other witnesses also stated about the exact misbehaviour of the applicant. The witness Shri Anant Mahajan merely stated that sometimes the applicant used to come late in the office in the morning and used to talk to the labourers in the nursery. The witness Parshuram Baliram Bhojar stated that on 20.2.2002, Shri Abdul Rashid Khan asked for the report from the applicant as to why she was absent from 18.2.2002. On that, the applicant talked loudly and stated that she was not ready to submit the report and that Shri Khan can do whatever he wants to do. From the cross-examination of this witness, it seems that he does not know anything in the matter and that his evidence is vague as regards allegations against the applicant.

16. Smt. Gomatidevi Virendrasingh Chouhan, Clerk, Pench Tiger Project, Nagpur (Zero Mile) seems to be a witness about alleged misbehaviour of the applicant and allegations of destruction of documents. But she does not know anything. The witness Pramod Namdeo Hajare also did not make any specific allegations against the applicant. From this cross-examination, it seems that his knowledge about the incident or behaviour of the applicant is not personal and in

fact he did not state anything against the applicant. The witness Shrikant Ramlalji Jangde, Clerk, Assistant Conservation Expert, Nagpur stated that at one time, Shri Abdul Rashid Khan demanded water to the applicant and on that, there was some altercations between the applicant and Shri Abdul Rashid Khan. However, he could not state anything specific against the applicant. On the contrary, he stated that Shri Abdul Rashid Khan gave notice to the applicant and asked the applicant to come out of the office forcibly. The witness Ashok Marotrao Marbat, Steno, office of Principal Chief Conservator of Forests (M.S.), Nagpur, though stated that the applicant used to behave adamantly and used to talk on telephone, he did not state about the misbehaviour of the applicant, its date, day and time etc. Hence, allegations made by him against the applicant are vague.

17. From whatever evidence placed on record, it seems that none of the witnesses stated the exact misbehaviour on the part of the applicant. In fact, they did not state anything and their statements might have been shown to them and they merely stated whatever stated within the statements, was correct. None of the witnesses have specified misbehaviour alleged on the part of the applicant. From the cross-examination of the witnesses, it can be said that these witnesses

may not be even knowing the exact date of incident and exactly what happened on particular dates.

18. The applicant has filed her explanation to the show cause notice. Her explanation is very material and the same reads as under:-

श्री. आदरणीय महोदय,

वरिष्ठ वरिष्ठ वरिष्ठ वरिष्ठ वरिष्ठ सादर आहे कृ, आपले कायान्वयीन पत्र ६९ दिनांक २५.५.२००४ अवलोकन आहे. यात नमूद आहे कृ, कायान्वयीन वेळेचा अपयय करत आहात. भाषणात पत्रयवहार टाळावा. मग आपणास उर का यावे हा नच आहे. आपण माझे न्युती अधिकार यांचेकडे करण सोपवा, जेणेकरून मला तुमचे समाधान करता येईल. मी अनुक्रमा तवावरत चतुथेणी वधवा पी कमन्त असून मला वकित नाह मी अराजपत सुधा नाह यामुळे सेवेतून काढयासारखा गंभीर गुहा माझेकडून खरोखरच घडला आहे काय ? एक जबाबदार राजपत अधिकार मनातील गैरहेतू सया होत नाह तेहा आवक ५०२ जी.पी.एफ. अमाचा अजणट करतो दिनांक १७.२.२००२ रववार या दसाचेवेतन अडवतो. दिनांक १८.२.२००२ रोजी पी कमन्ताचे उपथितीचे हजेरया सहंवर पांढर शई लावतो. मनःथिती वाईट करतो आण वैयक्य मंडळाकडेह पाठवतो. कोतेह कारण नसताना वाषक वेतनवाढ सुधा अडवतो. या आरोपाचे खंडन कोणी करावे. मी खरोखरच दोषी असेल तर मला फाशीच या. एकाकडे वैयक्य मंडळाकडे पाठवायचे आण वेतन व भो देयाची वेळ आल हणजे मग अनधिकृत गैरहजेरचा आरोप लावायचा. आपण खर वतुथिती लपवून अयाय करत आहात. ह अतशय गंभीर बाब आहे. मला यायालयात जायाची परवानगी असावी, ह न वनंती.”

19. Neither the Enquiry Officer nor the Appellate Authority consider the explanation given by the applicant with a proper

perspective. The applicant has stated about her financial condition as well as the fact that somebody might have manipulated the documents by applying whitener. But this fact is not considered with a proper perspective. As already stated, the fact that the allegations against the applicant that she applied whitener to the documents or forged documents, has not been proved. Similarly, charge that the applicant used to remain absent in the office, is also not proved.

20. Allegations against the applicant is that she remained absent without obtaining leave from 18.2.2002 to 20.2.2002. It has come on record that the applicant appeared before her superior on 18.2.2002 and submitted an application for leave and stated that her mental condition was not proper and, therefore, she proceeded on long leave. This fact is not considered with a proper perspective.

21. It is material to note that, the applicant has made some allegations against her superior officer. However, the said allegations are also not considered by the appellate authority. The grounds mentioned in appeal memo were not considered with a proper perspective.

22. The learned counsel for the applicant invited our attention to the last order passed by respondent No.2 on 3.3.2009. Perusal of the said order shows that, the conclusions drawn by the

appellate authority are not proper. It seems that he has not considered the points raised by the applicant with a proper perspective. The mitigating circumstances made out by the applicant were also not considered. Perusal of the charges framed against the applicant clearly shows that, the only material charge against the applicant is that, she misbehaved in the office and humiliated the superior officers. However, no specific evidence is led in this regard. There is no cogent and reliable evidence to show that the applicant torn or destroyed the documents or that she had made interpolation in the documents or forged the documents. It is not clear as to which part of charge No.3 is proved and which is not proved. Allegations as regards charge Nos. 1 and 2 are absolutely vague.

23. The appellate authority ought to have considered the fact that the applicant was appointed on Class-IV post in place of her husband on compassionate ground. It should have been considered that she was absent for a very short period and she also appeared for medical examination. Allegations of misbehaviour are vague and possibility that her superior authority against whom she made allegations, might be prejudiced against the applicant because of allegations made out in the explanation given by the applicant, cannot be ruled out and in any case, removal of the applicant from service on

such vague charges, is definitely not justifiable. The competent authority as well as appellate authority ought to have considered the fact that the applicant is a widow, having children and was required to maintain her children. Her application dated 20.2.2002 (Annexure-I) clearly shows that she has intimated to the office on 18.2.2002 itself that her mental condition was not good and, therefore, she was unable to work in the office. It is really surprising to note that, only for such a reason, Shri Abdul Rashid Khan asked her to get herself medically examined and report was asked from the Medical Officer as to whether she was fit to work in the Govt. office. This itself shows that Shri Abdul Rashid Khan must have some prejudice against the applicant. Probably this might be the first occasion before this Tribunal wherein the officer had shown that much promptness to get the employee medically examined as regards her mental health, merely because the employee has given an application that she cannot work in the office due to her mental condition that too for such a short duration.

24. As already stated, we have perused the evidence recorded by the Enquiry Officer and we are satisfied that the evidence brought on record is not only vague, but in fact none of the witnesses have specifically stated as regards the allegations made against the applicant in the charge as well as in the imputation of charges framed

against her. We are, therefore, satisfied that this is a fit case where interference by this Tribunal is required in the interest of justice and equity. The applicant seems to be a victim, might be for the reasons which are not coming on record and in any case we are satisfied that the evidence on record is not at all sufficient to come to a conclusion that that the applicant has committed grave misconduct so as to warrant her dismissal. We are, therefore, of the opinion that the order of punishment inflicted on the applicant by respondent No.3 on 22.3.2006 (Annexure A-9) and the said order confirmed by the appellate authority (R.2) dated 3.3.2009 (Annexure A-12) are not legal and proper and hence the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 22.3.2006 (Annexure A-9) passed by respondent No.3 and the order passed by the appellate authority (R.2) dated 3.3.2009 (A.12) stand quashed and set aside.
- (iii) The respondents are directed to reinstate the applicant in service, (in case she has not reached the age of superannuation) with all back wages and arrears thereof.

- (iv) The arrears to which the applicant is entitled shall be paid to her within a period of **three months** from the date of this order.
- (v) In case the applicant has reached the age of superannuation, the respondents are directed to pay to the applicant the pay and allowances from the date of dismissal i.e. 22.3.2006 till the date of her retirement on superannuation alongwith pension and pensionery benefits.
- (vi) No order as to costs.

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

(Rajiv Agarwal)
Vice-Chairman (A)