

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.255 OF 2014

DISTRICT : PUNE

Shri Kisan Dhondiba Talpe,)
Jr. Clerk in the office of Tahsildar,)
Taluka Ambegaon, District Pune)
Address for service of notice:)
Shri B.A. Bandiwadekar, Advocate,)
9, 'Ram-Kripa', Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400016)..Applicant

Versus

1. The District Collector, Pune)
2. The Divisional Commissioner, Pune)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Shri N.K. Rajpurohit – Chief Presenting Officer for the
Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri R.B. Malik, Member (J)

DATE : 18th April, 2016

PER : Shri Rajiv Agarwal, Vice-Chairman

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J U D G M E N T

1. Heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant challenging the order dated 10.9.2012 passed by the Respondent no.1 imposing punishment of demotion from the post of Awal Karkun to that of Clerk and order dated 30.1.2014 passed by the Respondent No.2 ordering that reversion will be permanent. By an order dated 11.8.2014, the OA was disposed of in terms of averment made in the affidavit filed on behalf of the Respondent No.1 that if the period for which reduction in rank is ordered is not for a specific period it operates till the delinquent is due for next promotion. The Respondents challenged the order in W.P. No.9623 of 2015 in Bombay High Court and by order dated 15.2.2016, the OA was remanded to this Tribunal for fresh hearing. Accordingly, all the parties were heard afresh.

3. Learned counsel for the Applicant argued that the Applicant has been reverted permanently from the post of Awal Karkun to that of Clerk by the order of the Respondent No.1 dated 10.9.2012 and the Respondent No.2 by order dated

30.1.2014. Learned counsel for the Applicant argued that the impugned order dated 10.9.2012 does not mention any period during which the Applicant would remain under reversion. This was mandatory in the light of provision of Rule 5(v) and (vi) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Such an order is absurd and obnoxious. The order dated 30.1.2014 make reversion permanent and the Applicant would retire from Government service without any promotion. Learned counsel for the Applicant relied on the judgment of Hon'ble Bombay High Court in the case of **SUDHAKAR SHANKAR DAHAKE VERSUS ADDITIONAL REGISTRAR, HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR AND OTHERS, 1990 reported in Mh.L.J. 567.**

4. Learned Chief Presenting Officer (CPO) argued on behalf of the Respondents that the misconduct committed by the Applicant was inquired into. A proper Departmental Enquiry (DE) was conducted and the Applicant was found guilty. A minor penalty was imposed on the Applicant. The Appellate Authority confirmed the order of the Disciplinary Authority and clarified the period of punishment. There is no allegation in the OA regarding any infirmity in conducting the DE against him. He was given full opportunity to defend himself and was also heard by the appellate authority. Learned

CPO contended that there is no case to interfere with the orders passed by the Disciplinary and Appellate authorities.

5. We find that the order of this Tribunal dated 11.8.2014 has been set aside by Hon'ble Bombay High Court on the ground that this Tribunal has relied on the affidavit filed on 11.6.2014 by Shri Waydande, Naib Tahsildar working in the office of Tahsildar, Pune which was earlier rejected by the Tribunal. The matter was remanded to be heard afresh. The Applicant has challenged order dated 10.9.2012 passed by the Respondent No.1 and order dated 30.1.2014 passed by the Respondent No.2. In the order dated 10.9.2012 passed by the Respondent No.1 (Disciplinary Authority) the penalty of reversion to the post of Clerk from the post of Awal Karkun was imposed. The Appellate Authority, the Respondent No.2, by order dated 30.1.2014, imposed the penalty of permanent reversion. The Applicant has relied on the judgment of Hon'ble High Court in Dahake's case (supra). Though the judgment is in the context of the Bombay High Court Discipline and appeal Rules, 1984 it is fully applicable in the present case also. Hon'ble High Court has observed as follows:

"7-A. The effect of the reduction in rank permanently would be that even though the work and conduct of the petitioner after the date of the imposition of this punishment improves and is satisfactory or even excellent

he can never be considered for promotion to the higher post, thus debarring his promotion permanently. Such a punishment would have a disastrous effect or consequence upon the service career of an employee who normally aspires or looks forward for higher promotion in his service which is an incentive to him for showing more efficiency and improvement in his work. As observed by the Supreme Court in the case of Council of Scientific and Industrial Research v. K. G. S. Bhatt (1990-I-LLJ-246) para 8, a person is recruited by an organization not just for job but for his whole career and he must, therefore be given an opportunity to advance. Stagnation in the same post and pay creates frustration and despair in an employee and lowers his efficiency and morale.”

6. In para 8 of this judgment, Hon'ble High Court has held that a clear notice about the bar to the future promotions is required to be given, before such a punishment can be imposed. In the absence of a clear notice about the bar to the future promotion, such a punishment would be arbitrary and violative of Articles 14 and 16 of the Constitution. On careful perusal of the order of the Respondent No.2, it is seen that no clear notice was given by him to the Applicant before modifying the punishment that he will be reverted permanently. It is clearly mentioned in the aforesaid order dated 30.1.2014 that the Respondent No.1 had imposed penalty of reversion without

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specifying any period and the Respondent No.2 is making reversion permanent. As such, the order of the Appellate Authority cannot be sustained as per the law laid down by Hon'ble Bombay High Court in Dahake's case (supra). As a result the word "कायम स्वरूपी" in the operative part of the order of the Respondent No.2 is ordered to be deleted. The order of the Respondent No.1 which imposes punishment of reversion, without specifying any time limit will operate which will mean that the Applicant can be considered for future promotion if he is otherwise fit and eligible. This is as per the judgment of the Hon'ble High Court mentioned above. The same provision is there in the Departmental Enquiry Manual, 1991 of the State Government.

7. As a result, this OA is partly allowed in the terms mentioned hereinabove with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)
18.4.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
18.4.2016

Date : 18th April, 2016

Dictation taken by: S.G. Jawalkar.