

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 409 /2017 (S.B.)

Rajkumar S/o Kawduji Lanjewar,
Aged about 55 years,
Occ. Agriculture Assistant in the office
of Sub-Divisional Agriculture Officer, Sakoli,
Tq. Sakoli, District Bhandara
r/o 27, New Friends Colony, Khat Road, Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of Agriculture,
Mantralaya, Mumbai-400 032.
- 2) Divisional Joint Director of Agriculture,
Nagpur Division, Administrative Building No.2,
Civil Lines, Nagpur-440 001.
- 3) District Superintending Agriculture Officer,
Rajiv Gandhi Chowk, above Bank of Baroda,
Jail Road, Bhandara-441 904.

Respondents.

Shri P.V. Thakre, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondents.

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

JUDGMENT

(Delivered on this 3rd day of January, 2019)

Heard Shri P.V. Thakre, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant is challenging the order dated 29/10/2016 passed by the respondent no.2 by which one annual increment of the applicant was withheld temporarily. The facts in brief are as under :-

3. The applicant was appointed as Agriculture Assistant in the year 1983. In the year 2013 the applicant was working on the establishment of the respondent no.3 at Bhandara and he was transferred to the office of the Sub Divisional Agriculture Officer, Sakoli, District Bhandara. The applicant was relieved on 21/06/2013 but on the same day additional charge of Agriculture Assistant (Extension) was kept with the applicant.

4. It is case of the applicant that he was looking after the work of both the posts and all of a sudden he received the memorandum dated 30th July,2015 along with the imputation of charges. It was alleged that after transfer the applicant did not hand over the cash book, cheque book etc., the entries in the cash book of the year 2012 were not certified, signatures of the concerned officer were not obtained, there was over writing and erasures in the cash book and in spite of reminders in writing there was avoidance to hand over the cash book and cheque book. It was also alleged that two

cheques for payment of Rs. 1,00,000/- and Rs. 1,25,000/- were retained by the applicant those cheques were not handed over to Shri Arun K. Samrit and Shri Gajanan B. Naktode and the cheques were retained by the applicant for more than three months, therefore, the concerned Agriculturist were unable to encash the cheques.

5. The applicant submitted reply and denied the charges and thereafter, the respondent no.3 passed the impugned order dated 01/02/2016 under Rule 5 (1) (4) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "MCS (D&A) Rules") and directed to withhold one increment for temporary period. The applicant challenged this order by preferring appeal before the respondent no.2. It is grievance of the applicant that the respondent no.2 passed the cryptic order dated 29/10/2016 and dismissed the appeal. The applicant made representation, but it was in vain.

6. It is submission of the applicant that without following the principles of natural justice and without application of mind, the action was initiated under Rule 10 of the MCS (D&A) Rules, therefore, miscarriage of justice is caused. The second contention is that the procedure laid down in Rule 10 of the MCS (D&A) Rules was not followed, therefore, the proceeding was illegal. The third contention is that the impugned order is not a speaking order, therefore, there is patent illegality in the impugned order. It is submission of the

applicant that the respondent no.2 without passing final order decided the appeal, therefore, there is illegality in the procedure. In this background it is submitted that the impugned orders dated 29/10/2016 and 01/02/2016 be quashed and set aside.

7. The application is opposed by the respondent nos. 1 to 3 vide reply which is at page no.29 of the P.B. It is contention of the respondents that Dr. Bhojar joined as District Superintending Agriculture Officer, Bhandara on 09/04/2015, it was noticed that the applicant was not punctual in duty and his work was not satisfactorily. The respondent no.3 thereafter withdrew the additional charge from the applicant and relieved him from the office to join his post at Sakoli. The applicant was directed to hand over the cash book, cheque book and other record which was his possession to the Accountant, but the applicant did not pay any heed. It was also noticed that after repeated reminders the cheque book and cash book were handed over by the applicant. The cash book was not properly written, signatures of the officers were not obtained, there were erasures in the cash book. Similarly the applicant retained two cheques for a period of more than three months due to which the farmers could not receive the amount of subsidy. It is submitted that considering this conduct of the applicant the respondent no.3 issued him memorandum along with the imputation of charges, opportunity was given to the applicant to submit

reply and after hearing the respondent no.3 passed the order dated 01/02/2016 thereby withholding one increment without affecting future increments and it was for a temporary period. It is submitted that there is no violation of the provision under Rule 10 of the MCS (D&A) Rules and no violation of principles of natural justice. It is submitted that all documents were considered by the Appellate Authority and considering the explanation submitted by the applicant, the Appellate Authority observed that the order passed by the respondent no.3 was correct and no interference was required. It is submitted that there is no substance in the O.A. and it be dismissed with costs.

8. I have heard oral submissions on behalf of the applicant and on behalf of the respondents. There is no dispute about the fact that the applicant was transferred to Sakoli, he was relieved from Bhandara and thereafter additional charge of the post of Agriculture Assistant (Extension), Bhandara was kept with the applicant. The Annex-A-4, dated 30/07/2015 is the memo along with the imputation of charges. After reading Annex-A-4 it seems that specific understanding was given to the applicant as to what misconduct was committed by him while working at Bhandara in the office of respondent no.3. The applicant was given reasonable time to submit his explanation. The Annex-A-5 is the covering letter with which the explanation was submitted by the applicant.

9. After reading the explanation in relation to charge no.1, it seems that stand was taken by the applicant that he was holding additional charge of the post of Agriculture Assistant (Extension), Bhandara, but he was never directed orally or in writing to deposit the cash book and cheque book in the office. It is pertinent to note that in reply to charge no.2 the applicant has mentioned the letter nos. 2433/16.06.2015 and 2532/25.06.2015 by which he was directed to deposit the cash book and all documents in the office. It was contended in explanation that when the applicant offered the cash book to the Accounts Officer, he refused to receive the same and thereafter the applicant was directed to hand over the cash book to the Accounts Officer and Cashier and accordingly on 06/07/2015 the cash books were handed over to Shri Donadkar, but he refused to accept it. It seems that the applicant was in possession of the official cash book and cheque book, but he did not hand over the same.

10. In the above background it is contention of the applicant that the Accounts Officer refused to accept the cash book so also Shri Donadkar, Cashier refused to receive the cash book, but no documentary evidence was produced by the applicant in this regard. No reason is shown why the applicant did not inform these facts immediately to the respondent no.3. As a matter of fact when the applicant was relieved in 2015 and he was directed to join at Sakoli it

was duty of the applicant to hand over the cash book, cheque books and all relevant papers which were in his possession to his successor in the office, but it was not done. The applicant had knowledge that the cash book and the check book were essential for daily official business. In view of these facts it is not possible to accept the story of the applicant that the accounts officer and the cashier refused to accept the cash book and the cheque book.

11. So far as the charge no.6 is concerned, the applicant accepted and admitted that he was in possession of two cheques for Rs.1,00,000/- and Rs.1,25,000/- and the cheques were to be handed over to Shri Arun K. Samrit and Shri Gajanan B. Naktode. The cheques were dated 31/03/2015 and the applicant did not hand over the Cheques to Shri Arun K. Samrit and Shri Gajanan B. Naktode, but retained the cheques in his custody till 29/06/2015. As the cheques were retained by the applicant for a period more than three months, the beneficiaries Shri Arun K. Samrit and Shri Gajanan B. Naktode could not receive the amount of subsidy. Considering this conduct of the applicant, the respondent no.3 came to the conclusion that the applicant was relieved on 22/06/2015, but he did not deposit the cash book in the office, there was over writing and erasures in the cash book which were not initiated or signed by the concerned officer and the applicant without authority retained the two cheques due to which

the beneficiaries of the cheques could not get the amount. After reading the explanation of the applicant it seems that the inferences drawn by the respondent no.3, the Disciplinary Authority are absolutely correct and the respondent no.3 rightly held that misconduct was committed by the applicant.

12. The respondent no.3 awarded punishment to withhold one increment temporarily without affecting the future increments. In my opinion the punishment is also proportionate and there is no illegality in it. After considering the entire material, it is not possible to say that the procedure laid under Rule 10 of the MCS (D&A) Rules is violated or there is a breach of the principles of natural justice.

13. Though the Appellate Authority did not pass the order in appeal in the standard form, but after reading Annex-A-9 it seems that the Appellate Authority gave opportunity of hearing to the applicant and considered the entire material and then came to the conclusion that there was enough evidence for holding that the misconduct was committed by the applicant and the punishment was correct. It must be remembered that the respondent no.2 was not a judicial officer and therefore he decided the appeal after doing the exercise, considering the allegations, the submission and the documents, therefore I do not see any flaw in the procedure. Besides this once it is held that the order passed by the Disciplinary Authority and punishment awarded

by the Disciplinary Authority is correct, legal and proper, then if any error is committed by the Appellate Authority will not be sufficient reason to disturb the order passed by the Disciplinary Authority. In view of this discussion, I hold that there is no substance in the application, hence, the following order :-

ORDER

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

Dated :- 03/01/2019.

*dnk.

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