

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 43/2008**

Nanaji S/o Pochannaji Manthanwar,  
Aged about 47 years, Occ. Service,  
C/o Shirang J. Buriwar, Teachers Colony,  
At and Post : Mul, Tahsil : Mul,  
District Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through the Secretary Department  
of Revenue & Forests, Mantralaya,  
Mumbai-32.
- 2) The Commissioner,  
Nagpur Division, Civil Lines, Nagpur.
- 3) The Collector,  
Chandrapur, District Chandrapur.
- 4) The District Enquiry Officer,  
Administrative Building,  
Chandrapur.

**Respondents**

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**S/Shri A.C. Dharmadhikari, Prashant Gode, Advs. for the applicant.**  
**Smt. S.V. Kolhe, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on this 8<sup>th</sup> day of June, 2017)**

Heard Shri Prashant Gode, Id. counsel for the applicant  
and Smt. S.V. Kolhe, Id. P.O. for the respondents.

2. On 16/04/2004 the applicant was kept under suspension in  
view of the order dated 12/08/2005 and at that time he was working as

Assistant Superintendent of Land Records at Chandrapur Circle. The suspension order was issued by respondent no.3, the Collector, Chandrapur. Subsequently an enquiry was conducted against the applicant for the following charges :-

- 1- fouk i jokuxhusvukf/kdrfjR; k xjgtj jkg.ks
- 2- dk; kly; kr mi fLFkr dkyko/khr dke u dj.kso vkns kksi kyu u dj.ks
- 3- ed; ky; kr u jkg.ks
- 4- fuyæu dkyko/khr fny; k ed; ky; hgtj u jkg.ks\*\*

3. It seems that the inquiry was conducted and the Inquiry Officer submitted his report on 30/06/2006. The said report of inquiry was accepted and the respondent no.3 was pleased to pass following order :-

*^vksk*

*eh] ftYgkf/kdkjh] pmi ij f'kLrHkax fo"k; d i kf/kdkjh Eg.kuu egkjk"V<sup>a</sup>ukxjh I ok ¼f'kLr o vihy½ fu; e]1979 o R; ke/khy I dkjhr fu; e 5 mi fu; e v ¼1½ e/khy ¼pkj½ rjrphud kj Jh- , u-i h-e fkuokj] I gk; d vf/k{kd] Hkfe vfHky[k] ftYgkf/kdkjh dk; kly; ] ¼fuyæcr½ ¼l /; k eMG vf/kdkjh] 'ksko cqt]rgfl y o jkj½ ; kpoj 2 okf"kd oruok<h dk; eLo#i h ¼i qhy oruok<hoj i fj.kke gkr-k½ jk[kuu Bp.; ; kph f'k{k ctkohr vkgs r l p R; kpk fuyæu dkG gk dkekoj 0; rhr dsysy Eg.kuu dkyko/kh ekuyk tk.kkj ukgh gh f'k{k I qnk ctkfor vkgs \*\**

4. The applicant filed an appeal against the order of punishment in the departmental enquiry before respondent no.2, i.e., the Commissioner, Nagpur Division, Nagpur and the respondent no.2

vide order dated 12/11/2007 was pleased to dismiss appeal and the order of punishment was maintained.

5. Being aggrieved by the order passed by respondent no.3 on 10/10/2006 and order passed by respondent no.2 on 12/11/2007 as aforesaid the applicant has preferred this O.A.. The applicant has claimed that his order of suspension dated 12/08/2005 issued by respondent no.3 i.e. Collector, Chandrapur be quashed and set aside. He has also prayed that the findings given by the Inquiry Officer dated 30/06/2006 be quashed and similarly the order of punishment passed by respondent no.3, the Collector, Chandrapur on 10/10/2006 and the order confirming the punishment passed by respondent no.2 on 12/11/2007 be quashed and set aside. It is also prayed that the order of punishment is disproportionate.

6. The learned counsel for the applicant submits that it is a case of non evidence and therefore the findings recorded by the Inquiry Officer are perverse to the facts on record. As against this, the learned P.O. Smt. S.V. Kolhe submitted that full opportunity was given to the applicant to submit his case before the Inquiry Officer as well as before Appellate Authority and all the charges have been proved on merits.

7. Perusal of the inquiry report shows that the Inquiry Officer has examined all four witnesses i.e. (1) Shri Ravindra Kumbhare,

Deputy Collector (Encroachment), Chandrapur, (2) Shri P.S. Akojwar, Circle Officer, (3) Sau. S.S. Bodkhe, Junior Clerk in the office of Collector, Chandrapur and (4) Shri Madan Khadilkar, Tahsildar, Gondpimpri. These witnesses were cross examined by the applicant. The applicant was given opportunity to submit his statement of defence and he was also asked to state as to whether he wants to examine witnesses in defence. There is nothing on record to show that no opportunity was given to the applicant. On the contrary due procedure has been followed by the Inquiry Officer.

8. I have perused the report of inquiry. It seems that the Inquiry Officer has appreciated the evidence and has come to the conclusion that all the charges have been proved by the Department. Perusal of the inquiry report as well as the evidence and cross examination makes it crystal clear that there is no perversity in the findings recorded by the Inquiry Officer. From perusal of the statement in defence as well as appeal memo filed by the applicant it seems that there is no doubt that the applicant firstly proceeded on leave for two days only, i.e., on 21/07/2004 and 22/07/2004 and thereafter remained absent without intimation. He seems to have appeared for the first time after proceeding on leave on 21/07/2004 in the office on 16/11/2004. Even show cause notice was also issued to the applicant. He remained absent for almost four months and did not

produce the medical fitness certificate from Civil Surgeon before the Competent Authority.

9. The learned counsel for the applicant invited my attention to the fact that he was examined by the Civil Surgeon and that he applied for medical fitness certificate before the Civil Surgeon and that he has also obtained information to that effect under the RTI Act. Even accepting that the applicant was examined by the Civil Surgeon, the question remains as to whether the applicant has produced the fitness certificate or not. From the record it seems that the applicant has not produced the fitness certificate and therefore he was not allowed to join.

10. So far as the charge that the applicant did not work in the office. The learned counsel for the applicant submits that the Inquiry Officer has shifted the burden from the applicant. He submitted that shifting of burden from the applicant to prove the charge is illegal. He invited my attention to this relevant findings of the Inquiry Officer which is as under :-

*" iLrqr nkskkjksi k'kh I calkhr I k{knkj dz1 Jh-dhkkjs I kgc] miftYglf/kdkjh g; kauh I k{khr I kixrys dh] eh dkskrigh uLrh fnukad 16@7@2004 ikl uu gkrkGyh ukgh- I -v-Hkqv- g; kps kh I calkhr dk; Iooj.k i at h fdok , dgh uLrh I knj dsyh ukgh- myVrikl .khr dkj.ks nk[kok ukshl Onkjsfopkj.kk dj.; kr vkyh dk; \ vl k izu dz5 fopkyyk vl rk Jh-dhkkjs I kgc kauh fopkj.kk dj.; kpk iz up mnHkor ukgh- uLrh R; kauh gkrkGyh*

vl Y; kl i jkok l knj djkok vl smRrj fnys l keku; r%nk'sk'jki dj.; k&; koj p  
 rks fl /n dj.; kph tclcnkj h vl rsg h ck ek- d'kk'js l kgck'k; k y{kkr uOgrh  
 vl s fnl rs i dj.kkrthy l k{kknkj Jh-vkd'kstokj] eMG vf/kdkjh ; kauh  
 l jri kl .khr R; kauh dkskR; k rkj [ksyk dke dsys ukgh R; k rkj [kk l kark ; skkj  
 ukgh i jarweh dk; k'z; hu dke dsys ul Y; kps l k'xrys eh dkes d'syh ukgh  
 Eg.k'p dkj.k nk[kok uk'hl fnys fdok ukgh rs ekfgr ul Y; kps l k'xrys  
 , dmjhr ek>oj B.; kr vky'; k g; k nk'sk'jki kcny i k'f'fed pl'd'kh  
 dj.; kr vkyh ul Y; kpsLi "V gks"

l knj d'riZ vf/kdkjh ; kauh Jh-vkd'kstokj] eMG vf/kdkjh] Jh-  
 d'kk'j] mi ftYgkf/kdkjh ; kps l jri kl .khr l k{khr uem ckch var'k'k' d#u  
 ys[kh Vkp.kkr nk'sk'jki fl /n gks rks vl suem dsys i jarwi R; {kkr g; k nk'sk'jki kps  
 fl /nr'djhrk dkskr'gh dkxn i jf'k"V 3 e/; suem ukgh- v'k.k l k{kknkj kps  
 l k{khr u d'G eh dke dsys ukgh- g; k ckchoj i d'k'k i Mrks i jarwdkxni =kps  
 vk'kk'jsgh ckc fl /n gkr ukgh fdok g; k ckchr i k'f'fed pl'd'kh gh dj.; kr  
 vkyh ukgh- i'q's vl gh uem d'j'ks dh] ^ofj"B vf/kdkjh&; kauh o'Gko'Gh  
 l k'xrysh dkes u d'j'rk V'k'G'V'k'G dj.k s o cst'ckcnkj i .ks okx.k's\*\* g; k  
 oDr0; k'kh l c'k'k'hr dkskr'gh dkxni =s i dj.kkr ukgh fdok l k{kknkj k'k; k  
 l k{khr gh g; kckcr dkghp l k'xrys ukgh- R; ke'G's g; k ckch ek>s foj'ks'kkr  
 fl /n gkr ukgh dkj .k nk'sk'jki kph ckc ns[kh ek'ke v'k'gs\*\*

11. In this regard I would like to state that the charge against the applicant was that he did not do any official work while working in the office. Had it been a fact that the applicant had really done any work, it would have been appropriate on the part of applicant to produce documentary evidence in this regard. No documentary evidence that the person has not done any work can be given.

Therefore, I do not find any perversity in the findings given by the Inquiry Officer.

12. On a conspectus of discussion in foregoing paras, I am satisfied that there is nothing on the record to show that no opportunity was given to the applicant to defend the departmental enquiry. On the contrary the Department examined four witnesses, the applicant cross examined the witnesses, submitted his statement of defence and refused to lead any witness in defence. The appreciation of the evidence cannot be said to be perverse to the facts on record and therefore I do not find any reason to interfere in the findings given by the Inquiry Officer. Said findings have been rightly accepted by the Competent Authority, i.e., respondent no.2 and the Appellate Authority (respondent no.3) also has considered all the pros and cons of the case.

13. The learned counsel for the applicant submits that two punishments have been inflicted for a single charge. He submits that the increments have been stopped permanently and the suspension period has been treated as suspension.

14. The impugned order shows that the suspension period has been treated as suspension period and it was not treated as duty period. It is stated that a notice was issued to the applicant and in reply to the said notice the applicant requested leniency in the

punishment. However, the Collector, Chandrapur took decision to treat the suspension period as suspension period. Perusal of the said order passed by the Collector dated 10/10/2006 shows that no reasons are given as to why the suspension period was not treated as duty period.

15. Rule 72 (7) (5) of the Maharashtra Civil Services (Joining time, Foreign Service and Payments During Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as "MCS [Joining Time) Rules"] has been referred in the order dated 10/10/2006. I have perused the said rule. Rule 72 (7) of the MCS (Joining Time) Rules shows that the authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant. In the present case the applicant is not charged with serious kind of allegations. Minor penalty has been inflicted upon the applicant, i.e., stoppage of increments. The applicant is neither removed, dismissed from the service nor has he been made to retire compulsorily. In such circumstances, there is no reason as to why the action as per proviso to rule 72 (7) of the MCS (Joining Time) Rules has not been taken by the Collector. In my opinion since in minor penalty has been inflicted upon the applicant, the suspension period should have been treated as duty period and his absence should have been treated as period spent on duty and the said



suspension period should have been converted into leave of any kind due and admissible to the Govt. servant. Punishing the applicant for remaining absent without permission and treating his suspension period as suspension only seems to be harsh punishment and therefore the applicant is entitled to some leniency. Hence, the following order :-

**ORDER**

The O.A. is partly allowed. The order of punishment awarded in the departmental enquiry to the applicant except as regards suspension period is maintained. The respondent no.3, the Collector, Chandrapur is directed to re-consider the case of the applicant as per proviso to rule 72 (7) of the MCS (Joining Time) Rules. The suspension period be treated as duty period and the period of suspension be converted into leave of any kind due and admissible to the applicant. The decision in this regard shall be taken within three months from the date of this order and shall be conveyed to the applicant. No order as to costs.

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

dnk..