

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.450/2015.

Krishna Govind Patil,
Aged about 60 yrs.,
Occ-Retired,
R/o Plot No.10, Jaibhavani Colony,
Fulewadi, Ring Road, Kolhapur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Forests,
Mantralaya, Mumbai-440 032.
- 2) The Principal Chief Conservator of Forests (Wildlife),
East, Near Govt. Press, Zero Miles, Civil Lines,
Nagpur.
- 3) The Chief Conservator of Forests & Field Director,
Pench Tiger Reserve, Near Govt. Press,
Zero Miles, Civil Lines,
Nagpur.
- 4) The Conservator of Forests & Field Director,
Pench Tiger Project, Near Govt. Press,
Zero Miles, Nagpur.

Respondents

Shri A. Deshpande, the Ld. Counsel for the applicant.
Smt. S.V. Kolhe, the learned P.O. for the respondents.

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

JUDGMENT

(Delivered on this 10th day of August 2017.)

Heard Shri A. Deshpande, the learned counsel for the
applicant and Smt. S.V. Kolhe, the learned P.O. for the respondents.

2. The applicant came to be appointed as Plantation Officer on 27.1.1984 in the Forest Department and was promoted to the post of Range Forest Officer (R.F.O.) in August 2009. The applicant honestly and sincerely served till his retirement i.e. 31.5.2014. He retired as R.F.O. from Nagpur.

3. While serving as R.F.O., East Pench, Pipariya from 2009, the applicant was required to take steps to control forest crimes and being Head of the office was under administrative control. During the period from 2010 and during the period between 2010-2011, the applicant while on patrolling duty found certain persons illegally transgressing into forest area and unauthorizedly carrying fishing activities. During the period from December 2010, the applicant received a communication dated 9.12.2012 from the Conservator of Forests and Field Director, Pench Tiger Project, Nagpur and he was informed that the Hon^{ble} Minister for Forests, Govt. of Maharashtra was to perform the tour and, therefore, to make necessary arrangements for the said tour. The applicant sought permission from respondent No.4 to hire private vehicles in between 18.12.2010 to 30.12.2010 and also got permission for hiring the vehicles.

4. The applicant received one communication after his retirement from respondent No.3 on 17.7.2014 whereby it was

intimated to the applicant that the bills submitted by him for hiring vehicles etc. were rejected and the applicant was directed to pay the amount of Rs. 1,65,608/- through challan. The said impugned order is at page Nos.44 & 45 of the O.A. (both inclusive).

5. The applicant challenged the said order before the Addl. Principal Chief Conservator of Forests (Wildlife), Nagpur (R.2) vide representation dated 10.10.2014. However, vide impugned order dated 28.4.2015, respondent No.2 rejected his appeal and subsequently vide letter dated 29.5.2015 issued by the Chief Conservator of Forests, Nagpur and a letter dated 18.6.2015 issued by the Deputy Chief Conservator of Forests, Nagpur, the applicant had been directed to deposit an amount of Rs. 1,65,608/- and it was intimated that in case the amount was not paid within seven days, same will be recovered from his retiral benefits. All these communications alongwith the impugned orders passed by respondent Nos. 2 and 3 on 28.4.2015 and 17.7.2014 respectively have been challenged in this O.A. The applicant has claimed that this impugned order be quashed and set aside.

6. The respondents have resisted the claim and submitted that the applicant was not having any authority to hire extra vehicles other than private one and without prior permission of the

higher authorities he had hired the vehicles in between September 2010 to January 2011. The said bills were rejected and, therefore, the money paid wrongly by the applicant is required to be recovered. In short, the respondents tried to justify recovery from the applicant.

7. It is material to note that the applicant has got retired on 30.5.2014 and the alleged recovery which is sought from the applicant pertains to the period January 2011 to February 2011. The first impugned order dated 17.7.2014 passed by respondent No. 3 at Annexure A-13, states that the explanation given to the applicant for claiming the amount was not satisfactory and, therefore, his claim was already rejected temporarily. But vide communication dated 17.7.2014, the same has been rejected permanently. It is not known as to when the claim was rejected temporarily and if so, whether the said order was communicated to the applicant. In the order dated 17.7.2014, it is also mentioned that the applicant has misguided the superior officers and has committed negligence in the Government work for which the applicant has been sternly warned. It is not known as to how the employee can be sternly warned after retirement without making any enquiry. There is nothing on record to show that, the department has conducted any departmental enquiry against the applicant for his alleged negligence or misconduct or for misleading the superior

officers. There is no document to show as to why the department did not take any action from 2011 till the retirement of the applicant for recovery of alleged amount incurred by the applicant illegally.

8. The applicant has filed an appeal against the impugned order passed by respondent No. 3 dated 17.7.2014 vide his representation dated 10.10.2014 and requested respondent No. 2 to reconsider and cancel the order of recovery passed against him. Respondent No. 2, however, did not apply his mind and merely stated that the appellate authority is in agreement with the decision taken by respondent No. 3. The said impugned communication dated 28.4.2015 by respondent No.2 is self explanatory and reads as under:-

“उपरोक्त संदर्भात पदावये मुख्य वनसंरक्षक व षेसंचालक, पक्ष प्याप कप, नागपूर यांना रु. १,६५,६०८/- लाचे नामंजूर माणकावर फेर वचार कान वयंपाट अहवाल आभाय सादर करयाबाबत कळवयात आले होते. या अनुषंगाने आपणास कळवयात येते की, मुख्य वनसंरक्षक व षेसंचालक, पक्ष प्याप कप, नागपूर हे आहरण व संवतरण अधिकार असून सदर करणी यांनी यापूर्वी अंत्तम जणथ दलेला असयाने, यांनी केलेया कायदाहस हे कायालय सहमत आहे. तर आपण या कायालयात सादर केलेले अपील पेटाळयात येत आहे.”

9. As already stated, there is no application of mind by the higher authorities, as the representation submitted by the applicant was not at all considered and on the contrary, respondent No.3 and the

Deputy Conservator of Forests insisted for recovery vide letters dated 29.5.2015 and 18.6.2015 respectively.

10. The learned counsel for the applicant has invited my attention to various documents filed by the applicant. Page No. 22 (Annexure A-4) is a copy of the letter is placed on record dated 9.12.2010 whereby the applicant was directed to make all arrangements and be ready in all respects for the tour of Shri Patangrao Kadam, Honorable Minister for Forests. Letters Annexure A-5 dated 15.12.2010 and 30.12.2010 at page Nos. 25 & 26 respectively show that the applicant had requested for hiring the vehicles for patrolling. Annexure A-7 dated 5.3.2011 is a detailed explanation given by the applicant requesting to pay him hiring charges of the vehicles. Letter dated 11.5.2012 Annexure A-11 Page 41 is the communication whereby information was called for accepting or non accepting the bills submitted by the applicant for hiring vehicles. All these correspondence clearly shows that there is a communication to show that the applicant requested for permission to hire vehicles for patrolling duty etc. It seems that no action has been taken against the applicant from 2010-2011 prior to his retirement on 31.8.2014 as regards recovery of this amount nor any departmental enquiry was conducted against the applicant for submitting false bills as alleged by

the department. Had it been the fact that the applicant has acted against his authority and caused financial loss to the Govt., it was necessary for the respondents to initiate departmental action against the applicant.

11. The learned counsel for the applicant has placed reliance on the judgment reported in **2015 (1) ALL MR 957 in case of State of Punjab and others V/s Raifq Mesih (White Washer etc.)**, wherein it has been observed by the Apex Court as under:-

As a ready reference, the following few situations may be summarised, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group Cq and Group Dq service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases wherein an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

- (v) In any case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.+

12. In view of the discussion in foregoing paras, notice directing the applicant to pay amount or any action on the part of the respondents for recovery of the alleged amount from the applicant from his retiral benefits, cannot be sustained in law. Hence, the following order:-

ORDER

- (i) The O.A.is allowed in terms of prayer clause 8.2.
- (ii) The impugned order dated 28.4.2015 issued by respondent No.1 and appeals preferred by the applicant dated 10.10.2014 arising out of communication dated 17.6.2014 issued by respondent No.3 are quashed and set aside.
- (iii) No order as to costs.

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