

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.504/2016.

(S.B.)

Shri Sambhaji Kadu Thakur,
Aged about 4 years,
Occ- Ex. Sub-Divisional Agriculture Officer,
Achalpur, Distt. Amravati.
Presently Project Director, Jalgaon
Under transfer to Solapur.
R/o Plot No.11, Khote Nagar,
Indranil Society, Pimprala Shivar,
Jalgaon.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Rural Development &
Water Conservation,
Mantralaya, Mumbai-400 032.
- 2) The Commissioner of Agriculture, (M.S.),
Central Building, Pune-01.
- 3) The Joint Director of Agriculture,
Amravati Region, Amravati.

Respondents

Shri Bharat Kulkarni, the learned counsel for the applicant.
Shri M. I. Khan, the learned P.O. for the respondents.

Coram:- Shri A.D. Karanjkar,
Member (J)

ORAL ORDER

(Passed on this 4th day of February 2019.)

Heard Shri Bharat Kulkarni, the learned counsel for the applicants and Shri M. I. Khan, the learned P.O. for the respondents.

2. The applicant was appointed in Agriculture Service, Class-I, Group-A in 1997. The applicant worked on various posts. The applicant was attached to Panchayat Samiti, Dharni during the period from December 2003 to May 2004. Chargesheet was served on the applicant dated 12.8.2005 under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It was alleged that while working in Amravati District, the applicant did not do his official work, did not complete the enquiry, though eleven reminders were given to him. Second allegation was that in respect of the work at mouza Ukupati and mouza Nagzira, false report was submitted about the work. On this basis of this chargesheet, disciplinary enquiry was initiated. The Enquiry Officer, after examining witnesses completed the enquiry and came to the conclusion that both charges were not proved.

3. After receiving the report from the Enquiry Officer, the report was placed before the Disciplinary Authority. The Disciplinary Authority disagreed with the findings recorded by the

Enquiry Officer and came to the conclusion that both the charges were proved and awarded punishment to the applicant by permanently stopping one annual increment of the applicant for 5 years vide order dated 20th March 2013.

4. The applicant preferred an appeal before the Governor of Maharashtra. Appeal came to be decided on 27.5.2016 and punishment was modified. It was directed that the order dated 20th March 2013 be set aside and his one annual increment was stopped for a period of two years without effecting future increments. Being aggrieved by this, the present O.A. is filed.

5. The impugned punishment is attacked on the ground that the appellate authority did not give opportunity of hearing and decided the matter, therefore, it is in contravention of law. It is submitted that without hearing the applicant on the point of punishment, punishment was awarded to the applicant vide order dated 20th March 2013 and this was the illegality. It is submitted that the procedure prescribed under Rule 8 and 9 of the M.C.S. (Discipline and Appeal) Rules, 1979 was not followed, therefore, the punishment is illegal, it be quashed and set aside.

6. The respondents have submitted reply which is at page No.49 and justified the action. The submission of the

respondents is that as minor punishment is awarded, therefore, there was no need to hear the applicant. According to the respondents, enquiry was conducted as per the procedure following the rules. Opportunity was given to the applicant to participate and defend in the enquiry. Though, the Enquiry Officer exonerated the applicant, but the Disciplinary Authority rightly exercised its authority and came to the conclusion that the charges were proved. According to the respondents, there is no flaw in the procedure and, therefore, there is no substance in the O.A.

7. I have heard oral submissions of the applicant and the respondents. In this case, it is an admitted position that the Enquiry Officer submitted his report which is at page Nos. 39 to 48. After perusal of the documents and evidence recorded during enquiry, the Enquiry Officer held that both the charges were not proved. On perusal of order dated 20th March 2013, it seems that the Disciplinary Authority recorded that the applicant was exonerated by the Enquiry Officer vide report dated 6.11.2008. But the Government came to the conclusion that the misconduct was committed by the applicant and consequently the Disciplinary Authority awarded punishment of permanently withholding one increment for five years affecting future increments. In this regard, it is necessary to see

whether the procedure laid down under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 was followed by the Disciplinary Authority.

8. So far as the Service Laws are concerned, the Disciplinary Authority has right and authority to disagree with the conclusions and views formed by the Enquiry Officer, but there are guidelines which are necessary to be followed by the Disciplinary Authority. In the present matter, when the Disciplinary Authority came to the conclusion that the conclusions which were drawn by the Enquiry Officer were incorrect and the applicant was guilty of misconduct, it was the duty of the Disciplinary Authority to follow the procedure under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979. The said Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 reads as under:-

“Rule 9 (2):- The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not the said Government servant.”

9. After plain reading of Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979, it appears that when the Disciplinary Authority disagrees with the findings recorded by the Enquiry Officer, then the Disciplinary Authority shall serve on the delinquent a copy of Enquiry Report and tentative reasons recorded by the Disciplinary Authority for disagreement and shall give an opportunity of hearing to the delinquent. Tentative reasons to be recorded by the Disciplinary Authority must be communicated to the delinquent for giving him an opportunity to justify how he was rightly held not responsible for misconduct.

10. In the present case, it seems that after receiving the Enquiry Report dated 6.11.2008 after about five years, straightway the Disciplinary Authority passed the order disagreeing with the findings of the Enquiry Officer and awarded punishment. The Disciplinary Authority did not forward report of the Enquiry Officer alongwith its tentative reasons why it disagrees with the view of the Enquiry Officer to the applicant and straightway awarded punishment and this is material is sufficient to hold that the procedure laid down under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 was not followed.

11. Once it is accepted that the mandatory procedure laid down under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 was not followed by the Disciplinary Authority, it must be accepted that the punishment awarded is not in accordance with the law and it cannot be justified. Hence, I proceed to pass the following order:-

ORDER

- (i) O.A. is partly allowed.
- (ii) The impugned punishment dated 20th March 2013 and modified in appeal on 27th May 2016 are hereby set aside.
- (iii) The Disciplinary Authority is directed to comply with the provisions under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 within a period of six months.
- (iv) No order as to costs.
- (v) O.A. stands disposed of.

(A.D. Karanjkar)
Member (J)

