

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 597 OF 2014 (S.B.)

Shri Pravin S/o Vasantao Fule,
Aged about 31 years, Occupation – Terminated,
R/o Delanwadi, Tah. Bramhapuri,
Dist. Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Collector, Chandrapur.
- 3) The Sub-Divisional Officer, Brumhapuri.
- 4) The Tahsildar, Bramhapuri.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 19th day of December, 2017)

Heard Shri G.G.Bade, learned counsel for the applicant and Shri A.P.Potnis, learned P.O. for the respondents.

2. The applicant in this case was appointed as Kotwal by respondent no. 4, vide order dated 15/04/2005 and he was terminated vide order dated 20/06/2013 on conclusion of departmental enquiry. The charges levelled against the applicant in departmental enquiry were no. I) disorderly behaviour under the influence of liquor on 02/11/2012, II) driving the private ambulance of political party and III) he was also absent from duty unauthorizedly.

3. The order of dismissal was issued by respondent no. 4. Against the said order, the applicant preferred an appeal before respondent no. 3 i.e. Sub Divisional Officer, Brumhapuri. The Sub-Divisional Officer Brumhapuri vide order dated 20/06/2014 was pleased to dismiss the appeal and the order of dismissal was confirmed. Being aggrieved by the order of dismissal passed by the respondent no. 4 i.e. Tahsildar, Brumhapuri and that by respondent no. 3 i.e. Sub Divisional Officer, Brumhapuri in appeal the applicant has preferred this O.A. The applicant has claimed that the termination order dated 20/06/2013 by respondent no. 4, which was confirmed by the respondent no. 3 on 20/06/2014 be quashed and set aside. It is further stated that after dismissal of the applicant, the respondent no. 4 has issued an

advertisement for appointment of the Kotwal on 13/08/2014 and the applicant has also prayed that the said advertisement be quashed.

4. The respondents have justified the order of dismissal. It is stated that a Show Cause notice was issued to the applicant and his explanation was not found satisfactory. There was an enquiry as per the provisions of Discipline and Appeal Rules and the applicant was found guilty. It is stated that the applicant was charged for the offence under Section 85 (1) of the Bombay Prohibition Act and the chargesheet was also filed in the Court of J.M.F.C., Bramhapuri. The applicant has also worked privately as a driver on the car i.e. Ambulance of one political party and it was unbecoming of a public servant. As regards the recruitment on the post of Kotwal, it was stated that one Shri Amol Eknath Todase was selected for the post of Kotwal in place of applicant and an appointment order was also issued in his favour on 01/09/2014.

5. The Id. counsel for the applicant submits that in the departmental enquiry, the witnesses were not examined by the department and that their statements were only read and no opportunity was given to cross examine the witnesses. It is stated that this fact was brought to the notice of appellate authority, but the appellate authority did not consider these aspects. The papers of the enquiry are placed on record alongwith letter (Annex-A-7) dated 14/02/2013. All these documents are at P.B., Pg. No. 28 to 32 (both inclusive). In those

documents there are statements of two witnesses i.e. one Shri A.P.Tank (Circle Officer) and Shri R.N.Uikey (Talathi, Brahmapuri). The Id. counsel for the applicant submits that their statements cannot be read as evidence at all. Even if those statements are read, it will be clear that they know nothing about the allegation made against the applicant and the applicant was not allowed to cross examine these witnesses. I have perused the entire enquiry report and from that report, it cannot be ascertained as to whether the witnesses were really examined/ cross-examined or not or whether opportunity was given to cross examine the witnesses or not.

6. The applicant has placed on record the order passed by the appellate authority i.e. S.D.O., Brahmapuri. In the introductory para of the order, the appellate authority has referred to the points raised by the applicant in appeal. It seems that the applicant has taken the ground that the enquiry officer did not record anybody's statement nor allowed the applicant to cross examine the witnesses. It is stated that the Medical Officer's report was also not considered. The appellate authority, however, did not say anything about the grounds raised by the applicant in his appeal. It was incumbent on the part of the appellate authority to consider as to whether the witnesses were really examined by the enquiry officer and whether opportunity was given to the applicant to cross examine the witnesses. Prima facie it seems that the witnesses

were not cross-examined whether the witnesses were made available for cross examination, but the applicant did not cross-examine them or whether no opportunity was at all given to the applicant to cross-examine the witnesses was a point to be considered by the appellate authority. It is also not clear from the enquiry papers as to whether the witnesses were really examined by the enquiry officers or whether only the statement of the witnesses recorded during preliminary enquiry were considered as it were. These aspects have not been considered by the appellate authority.

7. The Id. counsel for the applicant submits that the applicant has been acquitted from the criminal charges by the competent Court. The order of acquittal passed by the J.M.F.C., Brahmapuri in criminal case no. 373/2012 has been placed on record as Exh.-X i.e. on 15/11/2017. In the said case, the applicant was charged with the offence of behaving in a dis-orderly manner under the influence of liquor at a public place, which is also a charge in the departmental enquiry. The applicant has been acquitted of the offence and, therefore, it is necessary for the appellate authority to consider the subsequent event also, as to whether the acquittal of the applicant will have any effect on conduction of the departmental enquiry.

8. From the facts discussed in the aforesaid paras, it will be thus crystal clear that the appellate authority has not applied its mind

properly and has not considered all the points raised by the applicant in appeal. In such circumstances, it can be said that no proper opportunity was given to the applicant and his contentions have not been considered with a proper perspective, which he raised in appeal memo. Considering these aspects, the order passed by the appellate authority on 20/06/2014, confirming the dismissal of the applicant is not legal and proper and, therefore, the matter is required to be remanded back to the S.D.O., Brahmapuri for reconsidering the matter, without being influenced by any of the observations made in this para. Hence the following order :-

ORDER

1. The O.A. is partly allowed.
2. The order by respondent no. 3 on 20/06/2014 in appeal no. 1/APT.5/2013-14 is quashed and set aside. The matter is remanded back to respondent no. 3 for reconsidering the points raised by the applicant in the appeal memo against the order of dismissal passed by the respondent no. 4 on 20/06/2013. The appellate authority i.e. respondent no. 3 shall take into consideration all the points raised by the applicant in the appeal memo and to give it's findings as to whether those points are dealt by the enquiry officer properly and legally. The appellate authority shall also consider as to whether the witnesses were

really examined by the enquiry officer personally and whether opportunity of cross-examining them was given to the applicant or not. The appellate authority i.e. respondent no. 3 shall call the applicant before him for hearing and shall passed the necessary order in the appeal within **three month** from the date of this order.

3. No order as to cost.

Dated :- 19/12/2017

aps

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