

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 632/2016 (S.B.)

Hitendra S/o Abhiman Gajbhiye,
Aged about 52 years, Occ. Head Quarter Assistant,
R/o at Post Kharashi,
Tq. Lakhni, Dist. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue,
Mantralaya, Mumbai-32.
- 2) Deputy Director of Land Records,
Nagpur, Dist. Nagpur.
- 3) District Superintendent of Land Record,
Bhandara, Dist. Bhandara.
- 4) Deputy Superintendent of Land Record,
Tumsar, District Bhandara.

Respondents.

Shri N.S. Warulkar, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for the respondents.

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

JUDGMENT

(Passed on this 12th day of December, 2018)

Heard Shri N.S. Warulkar, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant was serving as Scrutiny Clerk under the Deputy Superintendent of Land Record, Paoni. The applicant was holding additional charge along with Shri Goswami who was also on the establishment of Deputy Superintendent of Land Record, Paoni.

3. The applicant was directed to measure area of the village Jahrali, Tq. Tumsar, Dist. Bhandara by means of E.T.S. machine and submit the map along with the measurement C.D. In order to execute the order, the applicant and Mr. Goswami went to the site and they completed the measurement and after completion of the work submitted the print map in the office of respondent no.4.

4. It is grievance of the applicant that on 18/10/2011 he received a show cause notice from respondent no.4 , wherein it was alleged that as the work was not done by the applicant, therefore, it was necessary to initiate the departmental inquiry and to recover the wages and allowances of the applicant for that period.

5. The applicant replied that notice thereafter, without considering the submissions of the applicant charge sheet was served on him and thereafter the respondent no.4 passed the impugned order on 15/05/2012 directing to recover amount Rs.48,723/- from the salary of the applicant. It is contention of the applicant that the impugned order passed by respondent no.4 is vague, as the earlier notice issued to him was contradictory with the office record. It is submitted that the

documentary evidence before the respondent no.4 was disclosing that no misconduct was committed by the applicant and the measurement work was done and the measurement CD and map were also deposited in the office, but disregarding all these facts the respondent no.4 mechanically passed the order to recover large amount from the applicant. It is contended that impugned order is illegal and it be quashed and set aside.

6. The application is resisted by the respondent nos. 1 to 3 and they have justified the action. It is contended that the work assigned to the applicant was not done by him. The CD's of the work and the map were not deposited in the office and this evidence was sufficient to draw inference that work was not done by the applicant. It is submitted that the respondent no.4 the Disciplinary Authority rightly issued show cause notice to the applicant called his explanation, they issued charge sheet and following the procedure under Rule 10 of the Maharashtra Civil Services (Conduct) Rules,1979 passed the impugned order. According to the respondents, there is no legal error or perversity in the order, therefore no interference is required.

7. I have heard oral submissions on behalf of the learned counsel for the applicant and the respondents. My attention is invited to the letter dated 18/04/2009. This letter was written by the Taluka Inspector, Land Records, Tumsar to the applicant and to Shri P.M.

Goswami. After reading this letter, it seems that at the relevant time the applicant and Shri Goswami both were serving as Surveyor. It was informed to them by the Taluka Inspector of Land Record, Tumsar that in the month of August, 2007 both of them measured village Jharali, Tq. Tumsar by means of ETS machine and they had deposited the CD of the measurement in the office. By that letter both were called upon to collect the CD from the office and to upload the CD in the office of District Superintendent of Land Record, Bhandara. On the basis of this letter, it is submitted that this letter in fact is sufficient to destroy the case of the Department. My attention is invited to the show cause notice dated 18/10/2011 issued by the Deputy Superintendent of Land Records, Tumsar. In this show cause notice, it is mentioned that the applicant and Mr. Goswami both were deputed and directed to measure village Jharali by means of ETS machine. It is mentioned that, that work was done by the applicant on 13/08/2007 as seen from the record of the office. It was informed by the notice that the applicant did not submit the print of the measurement map or the CD in the office. That for this reason the applicant was called upon to explain why disciplinary action shall not be taken against him and why the amount from his salary should not be recovered.

8. After reading the show cause notice one fact is clear that in this show cause notice it was mentioned that as per the record in the office of the Deputy Superintendent of Land Record, Tumsar there were documents recording the measurement of village Jharali as done by the applicant. The only allegation was that the print of the map and the CD were not deposited in the office. On perusal of letter dated 18/04/2009, it seems that it was specifically mentioned that the measurement was completed and CD were deposited in the office of Taluka Inspector of Land Record. In letter dated 18/04/2009 it was not alleged that the print of map was not deposited in the office. Therefore, there is substance in the contention of the applicant that without examining the official record, the show cause notice was issued and in fact the show cause notice is contradictory to the letter written by the Taluka Inspector of Land Record, Tumsar.

9. Now I would like to examine the memorandum of charges and the imputations. In the imputations, it was alleged that the applicant did not submit any document and measurement map, measurement CD in the office and therefore, was guilty of misconduct. Herein I would like to point out that the letter dated 18/04/2009 written by the Taluka Inspector of Land Records, Tumsar contradicts this case of the department and without considering this official record the respondent no.4 passed the order on 15/05/2012 directing to recover

amount Rs.48,723/- from the applicant. After reading the order it appears that no cogent reason is recorded how misconduct was committed by the applicant what was that misconduct. It is simply observed that the reply given by the applicant to the show cause notice was contradictory. On the contrary it is mentioned in the order that the applicant did not re-measure village Mouza Jharali. It is important to note that the applicant was never directed to re-measure the village. Even in the show cause notice it was not case that initially he was directed to measure village Jharali, the measurement was done and lateron direction was given to re-measure village Jharali. Thus it seems that the impugned order is passed by respondent no.4 without application of mind and without considering the official record. The order is passed disregarding the letter written by the Taluka Inspector Land Records, Tumsar. I am, therefore compelled to say that the finding recorded by respondent no.4 that the applicant was guilty of misconduct is not based on evidence.

10. The law is that the Tribunal or Court should not normally interfere in the findings recorded in the domestic inquiry by the Inquiry Officer so also in the punishment. The exception to the rule is where the findings recorded by the Inquiry Officer are perverse or not based on evidence or when the punishment is shockingly disproportionate that gives authority to the Tribunal or the Court to interfere. In the

present case considering the letter dated 18/04/2009 the contents of the show cause notice and the cryptic order passed by the disciplinary authority respondent no.4, I am compelled to say that without considering the evidence this order is passed. The law is that non-consideration of evidence is illegality, therefore the impugned order cannot be sustained. Hence, the following order –

ORDER

The O.A. stands disposed off. The order dated 15/05/2012 passed by the respondent no.4 directing to recover amount Rs.48,723/- of the salary and the allowances from the applicant is hereby set aside. If the amount is recovered, it be re-paid to the applicant within a period of two months from the date of this order. The order passed by the Appellate Authority i.e. respondent no.3 on 16/10/2012 is also hereby set aside. No order as to costs.

Dated :- 12/12/2018.

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

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