

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.636/2010.

Anandrao Kisanji Gajbhiye,
Aged about 48 years,
R/o Saoli,
Distt.Chandrapur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-32.
2. The Settlement Commissioner and
Director of Land Records (M.S.),
Pune.
3. The Dy. Director of Land Records,
Nagpur Region, Nagpur.

Respondents.

Shri R.V. Shiralkar, Ld. Advocate for the applicant.
Shri S.C. Deshmukh, Ld. P.O. for the respondents.

Coram:- The Hon'ble Shri B. Majumdar
Member (A).

Dated:- 17th April, 2013.

Order

The applicant, a Taluka Inspector of Land
Records has filed the present O.A. aggrieved with the order

of punishment of stoppage of promotion. Brief facts of the case are as follow:-

2. On 30.8.2005, a chargesheet U/s 8 of the M.C.S. (Discipline and Appeal) Rules, 1979 was served on the applicant alongwith an order of departmental enquiry. The single charge served on the applicant is that he had manipulated land records to increase the area belonging to a private party by showing lesser area in an adjacent Government Survey number and thus he did not protect Government interests. On 29.4.2008, the Inquiry Officer submitted his report. As per his report, the charge levelled against the applicant could not be proved in absence of witnesses/proof. On 30.8.2008, the Deputy Director of Land Records (R.3) as the disciplinary authority issued an order exonerating the applicant on the basis of the findings of the Inquiry Officer. On 15.12.2008, the Settlement Commissioner and Director of Land Records (R.2) issued an order under Rule 25 (1) of the M.C.S. (Discipline and Appeal) Rules, 1979, reviewing the order

dated 30.8.2008 issued by respondent No.3 and directed respondent No.3 to carry out necessary examination and take a decision as deemed fit. Respondent No.3, after hearing the applicant on 13.5.2009 issued an order of review and concluded as follows:-

“

”

Thus, as per the above order, respondent No.3 came to the conclusion that the charge against the applicant has been proved and he is found to be guilty. On 29.6.2009, respondent No.2 issued a Memorandum to the applicant by way of a show cause notice. The said Memorandum, after recording in details the reasons for his not agreeing with respondent No.3's order dated

30.8.2008, after reviewing the same under Rule 25 (1) of the M.C.S. (Discipline and Appeal) Rules, 1979 asked the applicant to show cause as to why punishment under Rule 23 (2) (c) and Rule 5 (a) (1) of the M.C.S. (Discipline and Appeal) Rules, 1979, punishment of stoppage of his promotion should not be inflicted on him. The applicant vide his communication dated 21.7.2002 addressed to respondent No.2 requested for certain documents to be supplied to him and prayed that he should also be granted an opportunity to present his say personally. Respondent No.2 thereafter directed respondent No.3 to supply the above documents to the applicant. Respondent No.3 on 31.8.2009 asked the applicant to collect these documents from his office and thereafter as per records of the office despatch register, the documents were despatched by post to the applicant on 17.9.2009. On 3.5.2010, respondent No.3 informed respondent No.2 that the applicant did not collect the documents nor did he submit his explanation in response to the Memorandum dated 29.6.2009. On 24.5.2010, respondent No.2 issued an order under Rule

23 (2) (c) (5) and Rule 5 (a) (1) of the M.C.S. (Discipline and Appeal) Rules, 1979, inflicted the punishment of stoppage of promotion of the applicant. It is the legality of this order which is impugned and challenged in the O.A.

3. The applicant has challenged the impugned order of punishment on the grounds that no opportunity was granted to him for rebutting the documents relying on which the order of punishment was issued by respondent No.2 by exercising the powers under Rule 25 of the M.C.S. (Discipline and Appeal) Rules, 1979, the documents relied on by respondent No.2 in this regard did not form part of the enquiry proceedings, the Superintendent of Land Records, as the appellate authority had personally verified the measurement of the property involved in the departmental enquiry, no illegality was committed by him and before the impugned order of punishment dated 24.5.2010 was issued and no opportunity was given to him to be heard, even though vide in his representation dated 21.7.2009, he had specifically requested for such an opportunity to be granted.

4. The respondents, in reply to the O.A. submitted that the applicant had committed grave irregularity by increasing the area of certain city survey sheets by illegally removing the same from Government land in violation of directions issued by his superiors. There were earlier incidences of the applicant being found guilty of manipulation by erasing the entries in Record of Rights for which he was placed under suspension. He was involved in the past in purchasing property through illegal and corrupt ways and following this, he was also punished after departmental enquiry was conducted against him. There were also other cases in which the applicant was involved in irregular activities involving land records and a criminal case was also lodged against him in the year 2006 which is still pending. After the Enquiry Report was received by respondent No.2 and after examining the order of exoneration dated 30.8.2008 issued by respondent No.3, respondent No.2 had decided to review the departmental enquiry case under Rule 25 (1) of the M.C.S. (Discipline

and Appeal) Rules, 1979. Thereafter, he issued the order for revision dated 15.12.2008, giving reasons as to why he disagreed with the Enquiry Report and the order dated 30.8.2008. In compliance with the above order, respondent No.3 issued his revised report vide his letter dated 13.5.2009. Respondent No.2, after he was satisfied with the above report in revision, took a decision to inflict the punishment on the applicant and he also issued a show cause notice dated 29.6.2009 to the applicant. The applicant did ask for some documents while replying to the show cause notice and, though he was directed to obtain the same from the office of Respondent No.3, he did not do so. According to the respondents, after granting such an opportunity to the applicant to have his say, the impugned order dated 24.5.2010 came to be issued.

5. I have Heard Shri R.V. Shiralkar, the learned counsel for the applicant and Shri S.C. Deshmukh, the learned P.O. for the respondents. I have also gone through the records in file.

6. The learned counsel for the applicant submitted that the impugned order of punishment was passed by respondent No.2 by way of a review of the order in departmental enquiry and the order of exoneration issued by respondent No.3, the disciplinary authority. However, instead of only reviewing the contents of the report of the departmental enquiry as provided under Rule 9 of the M.C.S. (Discipline and Appeal) Rules, 1979, respondent No.2 relied on the order vide which respondent No.3 reviewed his earlier order of exoneration to punish the applicant. Thus, the impugned order is illegal, as the same is based on extraneous considerations. It is also submitted by the learned counsel for the applicant that the applicant was not given an adequate opportunity to reply to the show cause notice dated 29.6.2009, as his written request for supply of certain specific documents was not acceded to. The applicant did not receive any communication including the one dated 31.8.2009 asking him to collect the documents from the office of respondent No.3. Under Rule 26 of the

M.C.S. (Discipline and Appeal) Rules, 1979, it was mandatory for the respondents to serve every order, notice or any document issued under the M.C.S. (Discipline and Appeal) Rules, 1979 in person or to communicate to him by registered post. Thus, according to the learned counsel for the applicant, the legal obligation of the respondents to grant an opportunity of personal hearing to the applicant was not discharged by them.

7. The learned P.O. opposed the O.A. by submitting that the charges of manipulation and falsification of documents to favour private parties by diverting land from the Government Survey number, is a very serious one. The applicant has a past history of committing serious irregularities including criminal offences for which he has been facing departmental action as well as criminal prosecution. The applicant had carried out certain illegalities as per the charge levelled against him in the departmental enquiry with regard to favouring the private owners of Survey Nos. 255 & 256 as it came to the notice

of the respondent No.2 when he examined the records of departmental enquiry under Rule 25 (1) of the M.C.S. (Discipline and Appeal) Rules, 1979 and accordingly he directed respondent No.3 to review his earlier order exonerating the applicant. Respondent No.3, on reviewing of his earlier order of exoneration came to the clear conclusion that the charge levelled against the applicant has been proved and he is found guilty and elaborate reasons in support of his conclusion are recorded in the said order of revision dated 13.5.2009. It is further submitted by the learned P.O. that the communication dated 31.8.2009 vide which the Respondent No.3 asked the applicant to collect the documents which he required from the former's office, was officially despatched to him as per records in the Outward Register of the office of Respondent No.3. This was a simple communication directing the applicant to attend the office of Respondent No.3 to collect the documents. According to the learned P.O., this communication cannot be construed to be an order or notice forming the process of conducting a departmental

enquiry and hence Rule 26 of the M.C.S. (Discipline and Appeal) Rules, 1979 is not relevant in this regard.

8. Having heard the arguments of both the sides and after going through some documents placed before me, I find that the main issue that needs to be adjudicated in the present case is the legality of the impugned order of punishment dated 24.5.2010 issued by respondent No.2. Respondent No.2, after receiving the report of Enquiry Officer and the order dated 30.8.2008 vide which respondent No.3 as the disciplinary authority had exonerated the applicant in the departmental enquiry decided to disagree with the said order and using the provisions of Section 25 (1) of the M.C.S. (Discipline and Appeal) Rules, 1979, he directed respondent No.3 to review his decision. While doing so, respondent No.2 elaborated on the various reasons as to why he felt that the order of exoneration needed to be reviewed. Respondent No.3 thereafter reviewed his earlier decision of exoneration and communicated the same to respondent No.2.

Respondent No.3's order also elaborates on the reasons why he was convinced that his earlier order needed to be reviewed. Thereafter relying on respondent No.3's order in review, respondent No.2 issued the impugned order after issuing a show cause notice.

9. It is now necessary to examine the impugned order dated 24.5.2010. In this order, respondent No.2 elaborates on the reasons for directing respondent No.3 to review his order of exoneration. For this, respondent No.2 invoked the provisions of Rule 25 (1) of the M.C.S. (Discipline and Appeal) Rules, 1979. Prior to 29.6.2009, respondent No.2 had issued a show cause notice to the applicant asking him to explain as to why punishment of stoppage of promotion should not be inflicted on him. The show cause notice also gives an elaborate account of the reasons as to why respondent No.2 disagrees with the findings of the Enquiry Officer and the order of exoneration issued by respondent No.3. The impugned order states that respondent No.2 is inflicting the punishment of

stoppage of promotion on the applicant under Rule 23 (2) (c) (5) and Rule 5 (a) (1) of the M.C.S. (Discipline and Appeal) Rules, 1979.

10. It is necessary to examine the provisions of Rule 25 (1) and Rule 23 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 which have been invoked by respondent No.2 to issue a show cause notice and the order of punishment to the applicant. Rule 25 (1) of the M.C.S. (Discipline and Appeal) Rules, 1979 states as follows:-

“25.(1)- Notwithstanding anything contained in these rules, the Governor or any authority subordinate to him to which an appeal against an order imposing any of the penalties specified in rule 5 of these rules lies may, at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any order made under these rules or under the rules repealed by rule 29 of these rules from which an appeal lies but against which no appeal has been

preferred or orders against which no appeal lies, after consultation with the Commission where such consultation is necessary, and may-

- (a) confirm, modify or set aside the order; or*
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or*
- (c) -----*
- (d) -----*

Thus, the above rule empowers the Government/Appellate Authority to suo-motu examine the records of order and revise any order made under these rules.

Rule 23 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 states as follows:-

“23. Consideration of appeal.

(1).....

(2) In the case of an appeal against order imposing any of the penalties specified in rule 5 of these rules or enhancing any penalty imposed under that rule, the appellate authority shall consider-

- (a) whether procedure laid down in these rules has been followed, and if not, whether such non compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;***
- (b) whether the findings of the disciplinary authority are warranted by the evidence of the record; and***
- (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate, or severe, and pass orders-***
- (i) confirming, enhancing, reducing or setting aside the penalty; or***
- (ii) remitting the case to the authority which had passed the order appealed against, with such directions as it may deem fit in the circumstances the case:***

Provided that-

- (i) the appellate authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;***
- (ii)***
- (iii)***
- (iv)***

Thus, the above rule empowers the appellate authority to consider enhancing any penalty imposed by the disciplinary authority.

11. On examination of the above provisions of Rules 23 and 25 of the M.C.S. (Discipline and Appeal) Rules, 1979, it seems clear that respondent No.2 as an appellate authority has the power to examine the documents and other evidence suo motu, disagree with the orders of punishment and order of exoneration issued by respondent No.3/disciplinary authority, review his conclusion based on findings of the Enquiry Officer and then issue a revised order to confirm, enhance, revise or set aside the penalty. Accordingly, following these provisions, respondent No.2 disagreed with the findings of the Enquiry Officer and the order of exoneration issued by respondent No.3 and then issued a show cause notice dated 29.6.2009 and the order of punishment dated 24.5.2010.

12. The applicant's grievance is that after receiving the show cause notice on 21.7.2009, he had asked for some documents and also for personal hearing. It is his submission that the letter dated 31.8.2009 issued by respondent No.3 asking him to collect the documents from his office was not served on him. The applicant relies on the decision of the Supreme Court in case of **Yoginath Damodar Bagde V/s State of Maharashtra (AIR 1999 SC 3730)**, in which it was held that before the disciplinary authority decides to disagree with the findings of the Enquiry Officer, it is required to provide an opportunity to the delinquent officer by informing him about his tentative disagreement. According to the applicant and his counsel, respondent No.2 while deciding to disagree with the report of the Enquiry Officer and agreeing with the revised order of respondent No.3 holding that the charge in departmental enquiry is proved against the applicant, provided no opportunity to the applicant before he decided to disagree with the findings of the Enquiry Officer. The applicant's other grievance is that respondent No.2, while

reviewing the departmental enquiry and relying upon the review order of respondent No.3 dated 30.8.2008 could not have relied upon the order of review dated 13.5.2009 vide which respondent No.3 had revised his earlier order of exoneration and found the applicant to be guilty. According to him. as per the provisions of Rule 9 of the M.C.S. (Discipline and Appeal) Rules, 1979, respondent No.2 as the appellate authority, while was differing with the findings of the Enquiry Officer, could not have relied upon any report or documents which did not form part of the Inquiry Report.

13. Thus, the issue that needs to be settled is whether **Yoginath Bagde's** case is applicable to the present case and if so, whether the impugned order of respondent No.2 is in violation of Apex Court's order in **Yoginath Bagde's** case. The learned P.O. had submitted that **Yoginath Bagde's** case is an interpretation of Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979, whereas the impugned order is not issued under Rule 9 (2)

of the M.C.S. (Discipline and Appeal) Rules, 1979 and it is issued under Rule 25b(1) and 23 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979. It is difficult to agree with this view point. It is true that the impugned order is not issued under Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979. However, the impugned order clearly states that respondent No.2 disagrees with the order of exoneration dated 30.8.2008 issued by respondent No.3 and having differed with the said order, respondent No.2 decided to inflict minor punishment on the applicant by relying upon the subsequent order in review dated 13.5.2009 issued by respondent No.3 vide which respondent No.3 had concluded that the charge is proved. Two issues are material here. The first issue is that the Disciplinary Authority (R.3) vide his order dated 13.5.2009 reviewed his earlier order dated 30.8.2008 by disagreeing with the findings of the Enquiry Officer. **Yoginath Bagde** deals with the question whether the Disciplinary Authority can differ with

the findings of the disciplinary authority and then proceed to inflict punishment on delinquent officer in a case where the Enquiry Officer has exonerated him, as is the case of the present applicant. In **Yoginath Bagde**, the Apex Court, after examining the provisions of Rule 9 of the M.C.S. (Discipline and Appeal) Rules, 1979 had held that before the disciplinary authority finally disagrees with the findings of the Enquiry Officer, it must record its reasoning in this behalf and afford an opportunity to the delinquent officer to be heard.

14. Para 29 of the judgment of the Apex Court which is relevant is reproduced as below:-

“We have already extracted Rule 9 (2) of the M.C.S. (Discipline and Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own

findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9 (2) and it has to be held that before the Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the Inquiring Authority so that delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the findings of "not

guilty” already recorded by the Inquiring Authority was not liable to be interfered with”.

15. It is to be noted that following **Yoginath Bagde**, vide Notification dated 10.6.2010, the following sub-rule 2 (A) was added to Rule 9 of the M.C.S. (Discipline and Appeal) Rules, 1979—

“2 (A)-The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4)”.

In **Yoginath Bagde’s** case, the Apex Court has laid down the law that the authority competent to inflict punishment on a delinquent officer in a case where he has been exonerated in department enquiry, cannot take a decision contrary to the findings of the Enquiry Officer without first conveying the tentative reasons to differ with the Enquiry Officer to the delinquent officer and granting him an opportunity to be heard. So the question that needs to be

answered is whether respondent No.3's findings communicated to respondent No.2 on 13.5.2009 are in conformity with law laid down in **Yoginath Bagde's** case. Respondent No.3's findings are that the charge in departmental enquiry against the applicant is proved and he is found guilty. Respondent No.3 has reached this conclusion by reviewing his earlier order without first communicating to the applicant his tentative reasons of disagreement with enquiry. It is true that respondent No.3 did hear the applicant on 29.12.2008 prior to taking his decision dated 13.5.2009, but there is nothing on record to show that he had conveyed the tentative reasons of disagreement to the applicant. Hence, it is to be held that respondent No.3's decision to disagree with the Enquiry Officer is not in conformity with **Yoginath Bagde**.

The second issue is that respondent No.2 as an Appellate Authority, under Rules 23 and 24 and relying on the revised findings of respondent No.3, the Disciplinary Authority, vide his impugned order dated 24.5.2010 held that

respondent No.3's order exonerating the applicant by agreeing with the views of the Enquiry Officer was not sustainable. Having held so, respondent No.2, on the basis of findings of respondent No.3 in his reviewed order dated 13.5.2009 holding the applicant as guilty of the charge in the departmental enquiry, inflicted the punishment on the applicant. Thus, the impugned order is issued by relying on the findings of respondent No.3 which have different forms those of the Enquiry Officer. I have already held that communication dated 13.5.2009 is itself bad in law, as it is not in conformity with **Yoginath Bagde**. Hence, the impugned order is clearly not sustainable and needs to be quashed and set aside. Similarly, the communication dated 13.5.2009 vide which respondent No.3 conveyed to respondent No.2 that the charge against the applicant is proved also needs to be quashed and set aside. I, therefore, dispose of the O.A. in terms of the following directions:-

- (a) The communication dated 13.5.2009 by respondent No.3 in review of his earlier order dated 30.8.2008 is quashed and set aside.

- (b) The impugned order dated 24.5.2010 issued by respondent No.2 is quashed and set aside.
- (c) The matter is remanded to respondent No.3. He is directed to proceed further with the departmental enquiry from the stage of reviewing his earlier order dated 30.8.2008, in compliance with the order dated 15.12.2008 issued by respondent No.2. In case he disagrees with the findings of Enquiry Officer, he will convey his tentative reasons of disagreement to the applicant and thereafter take a final decision.
- (d) Liberty is granted to the applicant to approach this Tribunal, if he is aggrieved with an order passed by respondent No.2 and respondent No.3 in compliance with the directions at (c) above.
- (e) There are no orders as to costs.

(B. Majumdar)
Member (A)

