

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.684/2014.**

**(S.B.)**

Shatrughna Shamrao Masram,  
Aged about 47 years,  
R/o Govt. Quarter NO. B/2/3/  
Ravinagar, Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Finance (Accounts & Treasury),  
Mantralaya, Mumbai-32.
2. The Zilla Parishad, Nagpur  
Through its Chief Executive Officer,  
Zilla Parishad, Nagpur

**Respondents.**

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Shri Bharat Kulkarni , the learned counsel for the applicant.  
Shri A.M. Ghogre, the Ld. P.O. for the respondent No.1.  
Shri Sheikh Majid, Ld. counsel for respondent No.2.

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

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**JUDGMENT**

(Delivered on this 19<sup>th</sup> day of January 2018).

Heard Shri Bharat Kulkarni, the learned counsel for  
the applicant and Shri A.M. Ghogre, the learned P.O. for respondent  
No.1. Shri Sheikh Majid, the learned counsel for respondent No.2.

2. In this O.A., the applicant has prayed for quashing and setting aside the order dated 3.3.2014 and 12.2.2013 whereby minor punishment of withholding one increment for one year has been awarded to the applicant.

3. The first order of punishment was passed by the Government on 12.3.2013 which reads as under:-

श्री. श. शा. मसराम, तत्कालीन लेख अधिकारी जिहा मीण विकास योजना, जिहा पण्ड, नागपूर यांच्यावर ठेवलेले करणी महाराष्ट्र नागरिक सेवा (शांत व अपील) नियम, १९७९ च्या नियम-१० खालील विभागीय चौकशीअंती, "यांची पुढील वेतनवाढ एक वर्षासाठी पुढील वेतनवाढवर पारणाम न करता रोखणे" हे शांत बजावण्यात येत आहे."

4. Against this order of punishment as referred above, the applicant filed an appeal before the Honble Governor of Maharashtra and vide order dated 3.3.2014, the Honble Governor of Maharashtra through the Honble Minister for Higher and Technical Education was pleased to reject the appeal and the order of punishment was confirmed. Against both these orders, this O.A. is filed. The learned counsel for the applicant submits that no witnesses were examined in the departmental enquiry and no opportunity to cross-examine the witnesses was given. Similarly, the documents were not supplied and, therefore, in the enquiry, principles of natural justice have not been followed.

5. The applicant belongs to M.F. and A.S., Class-II cadre (Maharashtra Finance and Accounts Service) and the respondent No.1 is the appointing authority and disciplinary authority. While he was working as Accounts Officer of Project Director in the office of District Rural Development Agency in Zilla Parishad, Nagpur from 16.8.2004 to 2.4.2008, a chargesheet was issued about alleged misconduct vide memorandum dated 8.6.2012 by respondent No.1. In the said chargesheet, it was alleged that the applicant has given technical sanction for the amount of Rs. 9,91,600/-, which was enhanced to Rs.10,91,600/- by the applicant. The applicant was directed to submit his defence within 10 days. The applicant accordingly submitted his defence statement on 4.9.2012 and gave details as to how he was not liable. But his explanation was not accepted. According to the applicant, as an Accounts Officer, he was no way concerned for irregularities in the work. He has not signed the documents and in fact he was on tour and, therefore, he was not responsible.

6. The learned counsel for the applicant submits that the enquiry was conducted as per Rule 10 of the M.C.S. (Discipline and Appeal) Rules, 1979 (in short Discipline and Appeal Rules) and no opportunity was given to him nor his explanation was properly considered.

7. In the reply affidavit, the respondents tried to justify the order. It is stated that, the applicant is involved in the crime registered against him and was punished and kept in custody for more than 48 hours and was suspended. The order of punishment is as per rules and regulations. The applicant has misused his official position to obtain pecuniary benefits while granting administrative approval to the altered / enhanced proposal and forged the account in the said proposal.

8. Perusal of the documents shows that the crime punishable u/s 420, 409, 468, 471, 120 (B) r/w section 34 of the Indian Penal Code has been registered against the applicant and the Government has accorded sanction to prosecute the applicant for the said crime. The question that is to be considered in this case is only whether the conduction of enquiry under Rule 10 of the Discipline and Appeal Rules against the applicant and imposing of punishment was proper. Admittedly, no evidence has been recorded in this case and only explanation of the applicant was obtained to the show cause notice.

9. The learned counsel for the applicant has invited my attention to the show cause notice which is dated 8.6.2012. Vide the show cause notice, applicant has been called to explain the charges and the relevant charge against the applicant was as under:-

जोडपत्र

पी.श. शा. मसराम, ( निलंबित), तत्कालीन लेखा अधिकारी, जिल्हा ग्रामीण विकास यंत्रणा, नागपूर यांच्याविरुद्धच्या **दोषारोपाच्या** बाबींचे विवरणपत्र.

बाब क्रमांक -१

जिल्हा ग्रामीण विकास यंत्रणा, नागपूरच्या उपअभियंत्यांकडून संपूर्ण ग्रामीण योजना २००६-०७ अंतर्गत आराखड्यातील कामांना प्राप्त झालेल्या अतिरिक्त निधीमधून, हिंणगा, काटोल, नरखेड, कळमेश्वर इत्यादी पंचायत समित्यांच्या अधिनस्त योजनांच्या प्रशासकीय मंजूरीसाठी व प्रथम हप्ता निधी वितरणाकरीता प्राप्त झालेल्या प्रस्ताव सहाय्यक लेखा अधिका-यांनी दिनांक २४.०४.२००६ रोजीच्या टिप्पणी अन्वये, श्री. पी.श. शा. मसराम ( निलंबित), तत्कालीन लेखा अधिकारी, जिल्हा ग्रामीण विकास योजना, जिल्हा परि ाद, नागपूर यांचेमार्फत प्रकल्प संचालक आणि मुख्य कार्यकारी अधिकारी, जिल्हा परि ाद, नागपूर यांच्या मंजूरीसाठी सादर केला होता.

२. सदर प्रस्तावात उपरोक्त योजनांपैकी काटोल तालुक्यातील पानवाडी ( मूळ गाव कोलू) पाणी साठवणूक बंधा-याच्या प्रस्तावाचा समावेश होता. सदर प्रस्तावात योजनेच्या नावात कोलू ऐवजी पानवाडी असा बदल करण्यात आलेला असताना आणि सदर बंधा-याची मूळ तांत्रिक मंजूरी रुपये ९,९१,६००/- ची असताना आणि प्रशासकीय मंजूरी व निधी वाटपाच्या प्रस्तावानुसार सदर किंमत रुपये १०,९१,६००/- अशी रुपये एक लाखाने वाढवून दर्शविण्यात आली असताना सदर प्रस्तावाची छाननी श्री. मसराम यांनी नि काळजीपणे केली व चुकीच्या प्रस्तावास मंजूरी दर्शवून प्रस्ताव वरि ठांच्या मान्यतेसाठी सादर केला, त्यामुळे प्रस्तावातील उपरोक्त त्रुटी वेळच्यावेळी निदर्शनास आल्या नाहीत.

३. वरीलप्रमाणे, नरखेड तालुक्यातील तारा बंधा-याच्या कामाची मूळ तांत्रिक मंजूरी रुपये ९, ८३, ८५०/- ची असताना आणि प्रशासकीय मंजूरी व निधी वाटपाच्या प्रस्तावानुसार सदर किंमत रुपये १२,८३,८५०/- अशी रूपये तीन लाखांनी वाढवून दर्शविण्यात आली असताना सदर प्रस्तावाची छाननी श्री. मसराम यांनी नि काळजीपणे केली व चुकीच्या प्रस्तावास मंजूरी दर्शवून प्रस्ताव वरि ठांच्या मान्यतेसाठी सादर केला. त्यामुळे, प्रस्तावात करण्यात आलेली रुपये तीन लाखाची वाढ वेळीच निदर्शनास आली नाही.

अशाप्रकारे, श्री मसराम यांनी महाराष्ट्र नागरी सेवा (वर्तवूक) नियम, १९७९ च्या नियम -३

(१)(दोन)चा भंग केला आहे.

10. Vide notice dated 13.8.2012, it was intimated to the applicant that in case he does not submit any explanation to the charge within 10 days, it will be presumed that he has to say nothing and necessary order will be passed *ex-parte*. To this show cause notice, the applicant has filed his explanation on 4.9.2012. Copy of which is placed on record at page No. 23 and 24 and thereafter the order of punishment has been passed on 12.3.2013. I have perused the order dated 12.3.2013 in which the appointing authority has drawn inference as under:-

श्री. श. शा. मसराम, यांचेवर्षासंपूर्णप्राथमिक योजनेंतर्गत पानवाडी पाणी साठवणूक बंधाराचे कामकाजासंदर्भात दुरुतरेवजात खाडाखोड करून जमिनी उपलब्ध करून देण्यासाठी सादर केलेल्या पत्रावाची तसेच मौझा ताराशवार, ता. नरखेड, जि. नागपूर येथे बांधण्यात येणाऱ्या साठवणूक बंधाराचे तांत्रिक मंजुरी अंदाजपत्रकात खाडाखोड करून जमिनी उपलब्ध करून देण्यासाठी सादर केलेल्या पत्रावाची बारकाईने शहाजशा न करता सदर पत्राव जमकाळजीपणाने मंजूर करण्यात या दोषारोपात अनुषंगाने".

11. As already stated, the applicant has denied all the allegations. I am really surprised as to how the Enquiry Officer came to the conclusion that the applicant has made interpolation in the documents by scoring the contents without examining any witnesses in that regard. As already stated, the crime has already been registered against the applicant for the said offence and, therefore, conclusion

drawn by the appointing authority seems to be without any substance and there is no evidence justifying the said inference. The appellate authority has also not considered this fact.

12. As per Rule 10 of the Discipline and Appeal Rules, (a) no order imposing on a Government servant any of the minor penalties, shall be made except after informing the servant in writing of the proposal to take action against him and of the imputation of misconduct or misbehavior on which it is proposed to be taken and giving him an opportunity of making such representations, as he may wish to make against those orders, (b) by holding an enquiry in the manner laid down in Rule 8 in every case in which the disciplinary authority is of the opinion that such enquiry is necessary, (c) taking into consideration the representation, if any, submitted by the government servant under clause (a) of this rule and record of enquiry, if any, held under clause (b) of this rule.

13. Sub-rule (2) of Rule 10 of the Discipline and Appeal Rules reads as under:-

Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation, if any, made by the Govt. servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Govt. servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative

effect for any period, (the words or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule 1(1) of the Rule 5) an enquiry shall be held in the manner laid down in sub-rules (3) to (27) of Rule 8, before making any order of imposing on the Govt. servant any such penalty.+

14. Perusal of reply in defence given by the applicant clearly shows that the applicant has flatly denied the allegations against him. Allegations against the applicant were serious and even the crime was registered against him for the said allegations. In such circumstances, the respondent authorities have not considered the applicant's explanation with a proper perspective. Had it been a fact that the applicant admitted allegations, enquiry under Rule 10 of the Discipline and Appeal Rules would have been permissible. However, the applicant has not admitted the allegations and the allegations against him in the show cause notice are grave in nature and, therefore, in such circumstances, the best way available for the respondents was to take action as per Rule 8 of the Discipline and Appeal Rules. Action under Rule 10 of the Discipline and Appeal Rules without considering the defence of the applicant was definitely not legal and proper. The appellate authority has also not considered it in all respects. The respondents will be at liberty to take disciplinary action under Section 8 of the Discipline and Appeal Rules against the applicant by giving him full opportunity, if it desires to do so.



15. In view of discussion in foregoing paras, I am, therefore, of the opinion that both the orders passed by the disciplinary authority are not legal and proper. Hence, the following order:-

**ORDER**

- (i) The O.A. is allowed.
- (ii) The Impugned orders dated 3.3.2014 and 12.3.2013 are quashed and set aside.
- (iii) The applicant's claim for regularization of period of suspension from 2.4.2003 to 20.7.2012 is rejected, since it is stated that the criminal trial is still pending against the applicant.
- (iv) No order as to costs.

Dt. 19.1.2018.

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