

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.779/2010**

Smt. Chanda w/o Sanjay Magar,  
Aged about 41 years,  
Occ-Service,  
R/o Govt. Tribal Girls' Hostel,  
Mama Chowk, Civil Lines, Gondia.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Tribal Development,  
Mantralaya, Mumbai-32.
2. The Commissioner,  
Tribal Development (M.S.),  
Nasik.
3. The Additional Commissioner,  
Tribal Development,  
Nagpur Region, Nagpur.
4. The Project Officer,  
Integrated Tribal Development Project,  
Chimur, Distt. Chandrapur.

**Respondents.**

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Shri N.R. Saboo, the Ld. Advocate for the applicant.  
Mrs. M.A. Barabde, the Ld. P.O. for the respondents.

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**Coram:- S.S. Hingne, Member (J).**

**Dated:- 25<sup>th</sup> July, 2014.**

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**Order**

The applicant / Warden was removed from service by the Additional Commissioner, Tribal Development, Nagpur (R.3) vide order dated 2.6.2003 (Annexure A-6, P.31). The order came to be passed on the basis of admission of charges levelled against the applicant. Feeling aggrieved thereby, the applicant preferred an appeal before the Commissioner, Tribal Development, Nasik (R.2). The appellate authority vide order dated 4.2.2004 (Annexure A-8,

P.36) allowed the appeal and set aside the order of removal from service, but punishment of withholding of increments for three years was imposed. Feeling aggrieved thereby, the applicant has preferred this O.A.

2. Heard Shri N.R. Saboo, the learned counsel for the applicant and Mrs. M.A. Barabde, the learned P.O. for the respondents.

3. At the outset, the learned counsel for the applicant submits that in view of the decision in **Anil Amrut Atre V/s District and Sessions Judge, Aurangabad reported in 2002 (3), Mh. L.J. 750**, matter can be disposed of. With the consent of both the parties, the matter is heard on the legal point only.

4. The learned counsel for the applicant submits that in view of the ratio laid down by full bench of the Bombay High Court, it was necessary for the appellate authority to give an opportunity to the applicant of personal hearing, even though Rule 23 of the M.C.S. (Discipline and Appeal) Rules, 1979 (in short "the Rules") is silent on this point. Rule 23 of the Rules deals with consideration of appeal. Sub-rule (2) of Rule 23 of the Rules runs as under:

*"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".*

It is observed in **Anil Amrut Atre's** case cited (supra) that the word "consider" means there should be an application of mind by the Appellate Authority. Personal hearing should be given to the appellant and reasons should be recorded for coming to the conclusion by the Appellate Authority.

5. Undisputedly, in the instant case, no such opportunity was given to the applicant by the Appellate Authority before passing the order dated 4.2.2004. The order also does not disclose that the appellant therein was heard.

The learned counsel for the applicant and the learned P.O. submit that the matter may be remanded to the appellate authority for decision according to law.

6. Consequently, the O.A. is partly allowed and the impugned order dated 4.2.2004 passed by the Joint Commissioner, Tribal Development, Nasik is quashed and matter is remanded back to the appellate authority and the appellate authority (R.2) to decide the appeal afresh in the light of the observations made above and give an opportunity of hearing to the applicant and to apply the mind and record the reasons within three months from the receipt of the record.

(S.S.Hingne)  
Member (J)

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