

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.861/2012. (D.B.)

Dnyaneshwar Sheshrao Tasre,
Aged about years,
Occ- Service,
C/o Taluka Agriculture Officer,
District Superintending Agriculture Officer,
Kadimbagh Nursery, Civil Lines,
Nagpur.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Rural Development and
Water Conservation,
Mantralaya, Mumbai-400 032.
- 2) The Commissioner of Agriculture (M.S.),
Pune.
- 3) The Divisional Joint Director of Agriculture,
Nagpur Division, Nagpur.
- 4) The District Superintending Agriculture Officer,
Wardha, Tehsil and Distt. Wardha.

Respondents

Shri Sheikh Majid, the learned counsel for the applicant.
Shri V.A. Kulkarni, the learned P.O. for respondents.

Coram:-Shri Shree Bhagwan, Vice-Chairman and
Shri Anand Karanjkar, Member (J)

ORAL JUDGMENT

(Delivered on this 4th day of June 2019.)

Per:-Member (J)

Heard Shri Sheikh Majid, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for the respondents and perused the documents filed on record.

2. The applicant was working as Taluka Agriculture Officer at Arvi, District Wardha from 1.12.1998, he was also holding the additional charge of Taluka Agriculture Officer at Karanja (Ghadge), District Wardha from 8.11.2001 to 9.7.2002. The applicant was directed to construct earthen Nala bunding at Bori Block No. 1/2. The Nala bunding work was sanctioned by respondent No.1 and construction was commenced on 8.3.2002.

3. The site of construction was located in the field of a farmer who raised objection and, therefore, the fact was informed by the applicant to the higher authority and the location was shifted with permission of the higher authority. In the meantime, due to heavy rains on 17th June 2002 the work which was completed, was washed out.

4. This matter was raised in the Legislative Assembly and a decision was taken by the Government to serve chargesheet on the applicant for the misconduct. Accordingly on 29.1.2005, chargesheet was served on the applicant. It was alleged that

disregarding the circulars dated 3.1.1976 and 31.8.1978, wrong location was selected by the applicant. That site was not suitable to construct Nala and due to improper and technically defective work, Nala work which was incomplete washed away and thereby loss of Rs. 2,92,410/0 was caused to the Government. Second allegation was that the applicant on his own accord changed the location of the site and in breach of rules without authority, commenced the work. Charge No.3 was that due to lack of supervision and negligence of the applicant, work was technically defective and, therefore, he was responsible for the loss. It was alleged that due to misconduct of the applicant, loss was caused to the Government and consequently the applicant was liable to contribute the amount of Rs. 73,103/-.

5. Reply was submitted by the applicant to the chargesheet and he denied the charges. Thereafter there was enquiry. The Inquiry Officer on the basis of evidence came to the conclusion that charge No.1 was not proved, charge No.2 was proved and charge No.3 was partly proved. Report of the Inquiry Officer was served on the applicant. The applicant submitted his reply and thereafter the Disciplinary Authority passed the impugned order dated 15.12.2011 which is at Annexure A-1.

6. It is submission of the applicant that in absence of evidence, finding is recorded by the Inquiry Officer that the applicant was responsible for the loss caused to the Government. It is contended that the consent was given by the higher authority to change the location of the site. But this fact was disregarded. Second contention is that, due to heavy rains, work was washed out. It was the contention that the applicant was not responsible for it. It was submitted that due to non consideration of these facts, material prejudice is caused to the applicant.

7. It is contention of the applicant that, the Inquiry Officer did not follow the mandatory provisions under Rule 8 (20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (In short "Discipline and Appeal Rules") and consequently the enquiry is vitiated.

8. The respondents have filed their reply which is at page No.59 and have justified the findings recorded by the Inquiry Officer and punishment awarded. It is contention of the respondents that principles of natural justice were followed. Opportunity was given to the applicant to submit reply to the chargesheet, he was permitted to participate in the departmental enquiry and lead evidence. It is submitted that the findings recorded by the Inquiry

Officer are based on evidence. The findings are not perverse or contrary to rules. Therefore, no interference is required in this matter.

9. So far as Rule 8 (20) of the Discipline and Appeal Rules is concerned, it is submitted that the rule is directory and not mandatory and consequently there is no substance in this O.A.

10. We have heard oral submissions on behalf of the applicant and the respondents. Legal position is settled that the Tribunal or Court cannot sit in appeal and re-appreciate the evidence and record own conclusion. Scope of the proceeding before the Tribunal is very limited. The Tribunal can interfere in the matter only when there is no evidence at all in support of conclusion drawn by the Inquiry Officer or findings recorded are perverse or contrary to law. After perusing the report of the Inquiry Officer and reply submitted by the applicant to the chargesheet, we have no doubt that the applicant himself, without permission in writing of the higher authorities changed the location of the site and this was misconduct. Therefore, apparently finding on charge No.2 recorded by the Inquiry Officer is correct and legal. After perusing the report of the Inquiry Officer, it seems that the principles of natural justice were followed. Opportunity to lead evidence was given to the applicant.

10. So far as the contention of the applicant that Rule 8 (20) of the Discipline and Appeal Rules is mandatory is concerned, this submission is based on law laid down in case of **Vijay Shamrao Bhale V/s Godavari Garments Limited, Aurangabad and another reported in 2011 (2) Mh.L.J.983.** The Hon'ble Division Bench of the High Court has laid down that later party of Rule 8 (20) of the Discipline and Appeal Rules is mandatory and it was obligatory on the Inquiry Officer to question the delinquent when the delinquent not entered the witness box and examined as a witness. In the present matter, it seems that the delinquent / applicant did not examine himself as a witness and, therefore, it was incumbent on the Inquiry Officer to follow the procedure under Rule 8 (20) of the Discipline and Appeal Rules, but it was not done and, therefore, we are of the firm view that there is a legal flaw in the enquiry.

11. In view of the above facts, in our opinion, it is suitable to set aside the impugned punishment and remand the matter to the Inquiry Officer to question the applicant and give him opportunity to explain the material against him. In the result, we proceed to pass the following order:-

ORDER

- (i) The O.A. is partly allowed.

- (ii) The impugned punishment is set aside.
- (iii) The Disciplinary Authority is directed to remand the matter to the to the Inquiry Officer for complying with the Rule 8 (20) of the Discipline and Appeal Rules and then to decide the matter.
- (iv) Compliance shall be done within a period of six months from the date of this order.
- (v) No order as to costs.

(Anand Karanjkar)
Member (J)

(Shree Bhagwan)
Vice-Chairman

Dt. 4th June 2019.

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