

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 186 OF 2014

DIST. : PARBHANI

Akhil Ahmad s/o Abdul Hameed,
Age 52 years, Occ. Service
As Electrician Mechanic
(presently compulsorily retired),
Department of Agriculture
Under Seed Testing Officer,
Seed Testing Laboratory, Parbhani,
R/o Near Ekminar Masjid, Dargah Road,
Parbhani. --

APPLICANT

VERSUS

1. The State of Maharashtra,
(copy to be served on the
Chief Presenting Officer,
MAT, Aurangabad)
2. The Commissioner for Agriculture,
Pune Region, Pune.
3. The Divisional Joint Director of
Agriculture, Latur Region, Latur.
4. The District Superintendent Agriculture
Officer, Parbhani, Dist. Parbhani.
5. The Sub Divisional Agriculture Officer,
Parbhani, Dist. Parbhani. --

RESPONDENTS

APPEARANCE : Shri S.D. Joshi, learned Advocate for the
applicant.
: Smt. Resha S. Deshmukh, learned
Presenting Officer for respondents.

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**CORAM : HON'BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)**

O R D E R

(Passed on =====)

[PER :- Shri B.P. Patil, Member (J)]

1. The applicant has challenged the order dated 20.7.2013 passed by the disciplinary authority imposing punishment of compulsory retirement on him and the order of the appellate authority rejecting his appeal on 7.4.2014 by filing the Original Application.

2. The applicant is B.A. and he has completed the course of Mechanical Electrician from the Industrial Training Institute. He has entered the service as Electrician by the order of Assistant Director of Agriculture, Aurangabad and was posted at Parbhani. It is a Class-III post (now a Group – C post). Since the date of joining, the applicant discharged his duties seriously and honestly. Despite putting serious and honest service, the respondents denied him the benefits of time scale promotion on the ground of adverse remarks, though the same were not communicated to him. Resultantly he was required to work in a

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lower pay scale. Being aggrieved by the said action of the respondents, the applicant approached Hon'ble Bombay High Court, Bench at Aurangabad by filing Writ Petition no. 2708/2011. Hon'ble High Court passed order dated 29.9.2011 in the said writ petition and thereby directed the respondents to grant the benefits of time scale promotion to the applicant. The respondents have not challenged the said order of Hon'ble High Court before any higher forum and therefore it became final. The applicant submits that the act of the applicant in approaching the High Court was not liked by the respondents and, therefore, they were in search of some opportunity to indulge the applicant in some delinquency.

3. It is the contention of the applicant that he holds some agricultural land situated at Jintur – Parbhani Road. The said land was sought to be encroached upon by leading politician at Parbhani and therefore the applicant was required to file various applications before the revenue authorities. He filed Regular Civil Suit nos. 74/2006 and 12/2006 in the Civil Court at Jintur. He succeeded in R.C.S. no. 12/2006. He used to prosecute the suits and, therefore, he had to attend the Civil Court and has to leave the headquarters as and when required. He used to look

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after the said proceedings without affecting to his official work as Electrician Mechanic. He used to attend the Court in connection to his Suits by proceeding on leave with prior permission of his superiors.

4. On 17.12.2011, when the applicant was discharging the work and was carrying out the work of testing the earthing at about 12.00 to 12.20 p.m., a sparking took place in the supply of electricity at the laboratory and the cables caught fire and as a result of this the white papers kept in the laboratory were burnt. It was a pure accident and the applicant had no role in it, but making capital of the said incident, the applicant was placed under suspension for holding a departmental enquiry against him. The charge-sheet was served on the applicant on 15.10.2012 alleging that, he was absent without informing the head of the office and he was found responsible for fire on north-east direction of the laboratory on 17.12.2011. The applicant has denied the said charges leveled against him. The Enquiry Officer conducted the enquiry and submitted his report on 12.5.2013 holding that both the charges leveled against the applicant have been proved. The respondent no. 2, who is disciplinary authority, considered the reply of the applicant and

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passed the final order on 20.7.2013 and imposed a punishment of compulsory retirement from the service in view of provisions of rule 5 (1) (vii) of the M.C.S. (Discipline & Appeal) Rules, 1979. The applicant challenged the said order before the Commissioner of Agriculture, Pune on 27.8.2013. But as the said appeal has not been decided within a period six months by the appellate authority and therefore the applicant has filed the present original application in view of sec. 20 of the Administrative Tribunals Act, 1985 with a prayer to treat that the applicant's appeal has been rejected.

5. It is the contention of the applicant that the Enquiry Officer has not conducted the enquiry properly. There was no substantial material before the Enquiry Officer to hold the applicant guilty. It is the contention of the applicant that he has no role in the fire caught in the Seed Testing Laboratory due to short-circuit. The Enquiry Officer has found the applicant guilty that short-circuit has been caused because of carelessness of the applicant in the duty. It is his contention that the Enquiry Officer has not followed the principles of natural justice. The disciplinary authority has imposed the punishment, which is disproportionate. Therefore, he prayed to allowed the original

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application and to quash the impugned order dated 20.7.2013 issued by the Divisional Joint Director of Agriculture, Latur Region, Latur imposing punishment of compulsory retirement against the applicant in view of provisions of rule 5 A (1) (7) of the M.C.S. (Discipline & Appeal) Rules, 1979, and also sought directions to the res. nos. 1 to 5 to reinstate the applicant in the service.

6. The res. nos. 1 to 5 have filed affidavit in reply and resisted the contentions of the applicant. They have denied that they tried to involve the applicant by searching his faults as he had filed writ petition before the Hon'ble High Court, Aurangabad Bench challenging the order of denying benefits of time scale promotion to him. They have denied that the applicant has been falsely involved in the incident of fire due to short circuit. They have denied that the principles of natural justice have not been followed by the Enquiry Officer while conducting departmental enquiry against the applicant. They have also denied the contention of the applicant that the punishment imposed on him is disproportionate.

7. It is their contention that the applicant was the only employee in the Seed Testing Office, Seed Testing Laboratory,

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Parbhani holding the post of Electrician to look after the matters related to electricity. It is their contention that the applicant was absent from duties from 1.9.2011 to 16.12.2011 for 87 days. The applicant enjoyed the leave without obtaining prior permission of the superior authority. He submitted his leave applications after enjoying the leave. It is their contention that the applicant admitted that he remained absent from duties from 5.12.2008 & 6.12.2008 in his application dated 8.12.2008 submitted to the Seed Testing Laboratory, Parbhani and assured that he would not commit such mistakes in future. Thereafter also he had also given such assurances to the concerned authority time & again.

8. It is their contention that on 17.12.2011 the applicant has admitted that he was working with the inspecting grounding and earthings work. It is their contention that grounding and earthing was important in circuit operation and electrical safety of equipments / machineries in the laboratory as well as in the building. While working on electrical tasks one is required to shut down the main electric current but as the applicant being an electrician he did not take care of such simple thing and he went on working unwisely, consequently the fire took place. In

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the fire the material kept in the Seed Testing Laboratory had been burnt. The employees of Seed Testing Laboratory controlled the fire and if the employees of Seed Testing Laboratory had not shared to extinguish the fire, at once the whole Seed Testing Laboratory would have been burnt and turned into ashes and how many lives might have lost / affected one cannot imagine and estimate. It is their contention that the fire took place due to negligence of the applicant. The applicant had not submitted his report regarding the incident of fire in the Seed Testing Laboratory and he repaired the burnt wiring by engaging private electrician without permission of the Head of the Office. The Seed Testing Officer, Parbhani submitted a detailed report to the res. no. 3 and accordingly the res. no. 3 issued a show cause notice to the applicant as to why he should not be suspended. The applicant has not submitted satisfactory reply to the said show cause notice and therefore the res. no. 3 being appointing authority and disciplinary authority had suspended the applicant by order dated 13.2.2012. The charge sheet dated 15.10.2012 has been issued to the applicant and he submitted vague and meaningless explanation to it. Therefore, departmental enquiry has been initiated against the applicant, Enquiry Officer was

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appointed. The Enquiry Officer conducted the enquiry and submitted his report to the res. no. 3. The res. no. 3 after considering the report of the Enquiry Officer found that the applicant had violated the provisions of rule 3.1 (1), (2), (3) of the M.C.S. (Conduct) Rules, 1979 and therefore imposed punishment of compulsory retirement on him by passing the impugned order. They have admitted the fact that the applicant had preferred appeal dated 26.8.2013 before the res. no. 2. The res. no. 2 heard the same and rejected it on 7.4.2014. It is their contention that all the charges leveled against the applicant has been proved and therefore the disciplinary authority imposed the punishment, which is proportionate to the charges leveled against him. It is their contention that there is no merit in the original application and therefore they prayed to dismiss the same.

9. We have heard Shri S.D. Joshi, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondents.

10. The learned Advocate for the applicant submitted that the applicant is working as Electrician Mechanic in the Office of Seed

Testing Officer, Seed Testing Laboratory, Parbhani and since the date of his joining he was discharging his duties seriously and honestly. The applicant holds some agricultural land situated at Jintur – Parbhani Road. The said land was encroached upon by the leading politician at Parbhani and therefore the applicant was required to file various applications before the revenue authorities and the Regular Civil Suit nos. 74/2006 and 12/2006 in the Civil Court at Jintur. He succeeded in R.C.S. no. 12/2006. He was required to attend the Civil Court in relation to his proceedings and has to leave the headquarters as and when required. He was looking after the said proceedings without affecting to his official work as Electrician Mechanic. He attended the Court in relation to his R.C.S. by proceeding on leave with prior permission of his superiors.

11. The learned Advocate for the applicant has submitted that despite putting serious and honest service, the respondents denied the applicant the benefits of time scale promotion on the ground of adverse remarks, though the same were not communicated to him and therefore he was required to work in a lower pay scale. Being aggrieved by the said action of the respondents, the applicant approached Hon'ble Bombay High

Court, Bench at Aurangabad by filing writ petition no. 2708/2011. Hon'ble High Court passed order dated 29.9.2011 in the said writ petition and thereby directed the respondents to grant the benefits of time scale promotion to the applicant. The respondents have not challenged the said order of Hon'ble High Court before any higher forum and therefore the said order had become final. The applicant submits that the act of the applicant in approaching the High Court was not liked by the respondents and therefore they were searching of some opportunity to indulge the applicant in some delinquency.

12. On 17.12.2011, the applicant was discharging the work and was carrying out the work of testing the earthing at about 12.00 to 12.20 p.m., a sparking took place in the supply of electricity at the laboratory and the cable caught fired and as a result of this the white papers kept in the laboratory were burnt. It was a mere accident and the applicant had no role in it. By making capital of the said incident, the applicant was placed under suspension for holding the departmental enquiry against him. The charge-sheet was served on the applicant on 15.10.2012 alleging that, he was absent without informing the head of the office and he was found responsible for fire on

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north-east direction of the laboratory on 17.12.2011. The applicant has denied the said charges leveled against him. The Enquiry Officer conducted the enquiry without giving proper opportunity to the applicant to defend himself and it was conducted without following the principles of natural justice. The Enquiry Officer submitted his report on 12.5.2013 holding that both the charges leveled against the applicant have been proved. The respondent no. 3, who is appointing and disciplinary authority, considered the reply of the applicant and passed the final order on 20.7.2013 and imposed a punishment of compulsory retirement from the service in view of provisions of rule 5 (1) (vii) of the M.C.S. (Discipline & Appeal) Rules, 1979. He has submitted that the applicant has challenged the said order before the Commissioner of Agriculture, Pune on 27.8.2013 and it was rejected.

13. The learned Advocate for the applicant has submitted that none of the charges are proved against the applicant, but the Enquiry Officer has wrongly held him guilty. He has submitted that the punishment imposed on the applicant is disproportionate and harsh and therefore he prayed to allow the original application and impose lesser punishment considering

the fact that the family members are depending upon the applicant. In support of his submission he has placed reliance on the judgment of Hon'ble Supreme Court in the case of **KRUSHNAKANT B. PARMAR VS. UNION OF INDIA AND ANOTHER [(2012) 3 SCC 178]**, wherein the applicant remained absent unauthorizedly for 36, 32 & 234 days. He was charged for not maintaining devotion to the duty and his conduct was of unbecoming of Government servant. On the basis of allegations the Enquiry Officer held him guilty of the charges and the disciplinary authority passed the order of dismissal. The said order has been affirmed by the appellate authority i. e. Central Administrative Tribunal & Hon'ble High Court but the Hon'ble Apex Court has set aside the order passed by the disciplinary authority and affirmed by appellant authority Central Administrative Tribunal & Hon'ble High Court and the applicant was reinstated in the service.

14. The learned P.O. has submitted that the applicant was in habit to remain absent from duty without getting leave sanctioned or without obtaining permission from his superior authority. He has submitted that the applicant remained absent unauthorizedly for 87 days during 1.9.2011 & 16.12.2011. He

has attracted our attention to a chart submitted at paper book page 83 of the reply mentioning the period of absence of the applicant. He has submitted that the applicant has no devotion towards his duty and it amounts to dereliction in duty and the conduct of the applicant was of unbecoming a Government servant.

15. The learned P.O. has submitted that on 17.12.2011, the applicant was discharging the work and was carrying out the work of testing the earthing and at about 12.00 to 12.20 p.m., a sparking took place in the supply of electricity at the laboratory and the cable caught fire and as a result of this the material kept in the laboratory were burnt. It is his submission that grounding and earthing was important in circuit operation and electrical safety of equipments / machineries in the laboratory as well as in the building. While working on electrical tasks one is required to shut down the main electric supply but as the applicant being an electrician he did not take care of such simple thing and he went on working unwisely, consequently the fire took place. In the fire the material kept in the Seed Testing Laboratory had been burnt. The other employees of Seed Testing Laboratory controlled the fire and if they had not shared to

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extinguish the fire, at once the whole Seed Laboratory would have been burnt and turned into ashes and how many lives might have lost / affected one cannot imagine and estimate. He has submitted that the applicant had not disconnected the supply when he was doing the work of testing and therefore sparking took place in the cable and fire had been taken place. He has submitted that in the fire papers were burnt. He has submitted that due to negligence of the applicant fire took place and it was caused because of negligence of the applicant while discharging the duty. The applicant had not taken the proper care while doing his duty. He has submitted that the disciplinary authority has adduced the evidence in that regard and the Enquiry Officer had held the applicant guilty after considering the same. He has submitted that the applicant had not informed about the fire to the superior authority and he got repaired the damaged cables from private electrician without permission of the superior authority. This amounts to misconduct on his part and therefore he supported the order of the disciplinary authority retiring the applicant compulsorily. He has further submitted that the appeal of the applicant dated 27.8.2013 challenging the punishment of compulsory retirement

has been rejected by the appellate authority by the order dated 7.4.2014 as there was no substance therein. Therefore, he prayed to reject the O.A.

16. On perusal of documents on record, it reveals that the applicant remained absent from duties for 87 days without applying for the leave. His absence was treated as unauthorized absence. It is the defense of the applicant that he had obtained permission from the authority and his leave was not sanctioned, but he failed to produce the documents in that regard before the Enquiry Officer and therefore the Enquiry Officer has rightly recorded the finding against the applicant that the applicant remained absent unauthorizedly. The applicant has also failed to produce the documents regarding leave sanctioned to him in the O.A. also. In the absence of sufficient documents, it is difficult to accept the contention of the applicant in that regard and therefore, in our view, there is no substance in the submission advanced on behalf of the applicant in that regard.

17. As regards the second charge regarding negligence on the part of the applicant on 17.12.2011 because of which there was fire on north-east direction of the laboratory, the evidence has

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been adduced by the disciplinary authority that the applicant was doing the work of testing of grounding and earthing without taking proper care. Because of negligence of the applicant fire took place and in the fire the material kept in the Seed Testing Laboratory had been burnt and turned into ashes. The applicant has not denied the incidence of fire in the Seed Testing Laboratory but he had denied the fact that fire took place because of his negligence. The witnesses examined before the Enquiry Officer have supported the fact that the fire broke out due to negligence of the applicant and he has not taken reasonable care while doing the said work. Because of fire breakout due to short circuit the Government property had damaged. It is material to note that the applicant had not made a report regarding fire to his superior authority. Not only this, but he had not made an attempt to get the said place inspected by the Government Inspector to find out the exact cause of fire. Instead of it he got repaired of the cables with the help of private electrician. The said conduct of the applicant is not befitted to the Government employee and therefore, in our view, the finding recorded by the disciplinary authority that the applicant was negligent while discharging the duties and because of his

negligence incidence of fire took place in the Seed Testing Laboratory is proper, correct & legal. Therefore, we do find fault in the finding recorded by the disciplinary authority in that regard.

18. The period of 87 days absence of the applicant as per the chart at page 83 of the O.A. was unauthorized and willful. Nothing has been brought on record by the applicant to show that it was because of compelling circumstances in which it was not possible for the applicant to report for duty or to inform the concerned authority. Therefore, in our view, the punishment imposed against the applicant by the disciplinary authority on account of above said charges cannot be said to be disproportionate.

19. We have gone through the decision relied on by the applicant. In that case the applicant was prevented to attend the duty and was not allowed to sign the muster as per his defence and relying on it and considering the fact that the applicant's absence was not willful, the Hon'ble Supreme Court has quashed and set aside the punishment. But the facts in the present case are different than the fact in that case. It is not the case of the

present applicant that he was prevented from attending the duty and he was not allowed to sign the muster. On the contrary, the applicant came with a case that he applied for leave and it was sanctioned, but no evidence has been produced by him in that regard. There is no substantial material on record in that regard and therefore the decision relied upon by the applicant is not useful to the applicant in the present O.A.

20. Therefore, we do not find much substance in the contentions of the applicant. Considering the facts and circumstances of the case, in our view, the punishment imposed on the applicant is just and proper, considering the seriousness of the charges leveled against him. Therefore, in our view, there is no need to interfere in the decisions of the disciplinary & appellate authorities. There is no merit in the O.A. Consequently, the Original Application stands dismissed without any order as to costs.

MEMBER (J)

VICE CHAIRMAN