

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 22 / 2017 (S.B.)

Prashant S/o Pundalikrao Bhende,
Aged about 39 Yrs., Occupation : Service,
R/o Sant Tukdoji Ward, Hinganghat,
Taluka Hinganghat & District Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary, Revenue Department,
Mantralaya, Mumbai- 400 032,
- 2) The District Collector,
Wardha, Taluka and District Wardha.
- 3) The Sub Divisional Officer,
Hinganghat, Tah. Hinganghat,
Dist. Wardha.

Respondents

Shri S.N.Gaikwad, the Id. Advocate for the applicant.

Shri A.M.Khadatkar, the Id. P.O. for the respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.

JUDGMENT

PER : VICE CHAIRMAN

Judgment is reserved on 07th August 2019.

Judgment is pronounced on 07th August 2019.

Heard Shri S.N.Gaikwad, Id. counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the respondents.

2. The applicant Shri Prashant S/o Pundalikrao Bhende hereinafter referred as applicant. He is working on the post of Talathi at the relevant time the applicant was posted at Derda (Sawangi). The respondent no. 3 issued chargesheet under Section 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, vide order dated 28/05/2014 (Annexure-A-1, Pg. No. 13) and levelled six charges against the applicant as per P.B., Pg. No. 14. Applicant submitted his reply vide letter dated 09.06.2014 (Annexure-A-2, P.B., Pg. Nos. 16 to 23). However,

disciplinary authority appointed enquiry officer for enquiry and detail enquiry was conducted by enquiry officer. The enquiry report was submitted by enquiry officer to Sub Divisional Officer and Disciplinary Authority, Hinganghat vide letter dated 22/12/2014 (Annexure-A-6, P.B., Pg. No. 47 to 57[both inclusive]). As per the finding of enquiry officer as per P.B., Pg. No. 57, applicant has been exonerated from all the six charges.

3. Disciplinary Authority issued show cause letter dated 25/03/2015 (Annexure-A-7, P.B., Pg. No. 58) along with copy of enquiry report. Applicant vide his letter dated 10.04.2015 (Annexure-A-9, Pg. No. 61) has replied to show cause notice.

4. The Disciplinary Authority vide his letter dated 04.09.2015 (Pg. No. 65 & 66) imposed following punishment as per Section 5 (4) of M.C.S. (Discipline and Appeal) Rules, 1979. **Three increments were stopped with permanent effect** and it was ordered to be made effective with immediate effect.

5. Applicant made an appeal to the respondent no. 2, vide his letter dated 14.10.2015 (Pg. Nos. 67 to 74[both inclusive]). Appellate Authority i.e. respondent no. 2, vide his Appeal No. 02/2016 order dated 06.06.2016 (Pg. No. 75 to 78[both inclusive]) modified the order dated 14.10.2015 of Disciplinary Authority as follows:-

Instead of three increments, two increments were stopped with permanent effect. Respondents in their reply have not justified action taken by Disciplinary Authority for not following procedure laid down in para no. 9 (2) of M.C.S. (Discipline and Appeal) Rules, 1979. Para no. 9 (2) reads as follows:-

"2.The discipline authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, as copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not the said Government servant.]"

6. The above Rule 9 (2) makes clear that as a matter of natural justice, if disciplinary authority differs with the findings of enquiry officer, the concerned employee should have been

given enough opportunity including personal hearing before passing any order against him by differing report submitted by enquiry officer in the interest of natural justice. On this point, the Id. Counsel for the applicant has relied upon the Judgment of Hon'ble High Court in the case of **Hanumant S/o Trimbak Mali Vs. Disciplinary Authority in Shape of The Honourable District and Sessions Judge, Osmanabad, reported in 2019 (3) Mh.L.J. Pg. No. 320**. I would like to refer relevant para no. 15 & 16 of the said Judgment, which are as below:-

"15. As per Rule 9 (2) of Discipline and Appeal Rules, if the Disciplinary Authority does not agree with the finding of Inquiry Officer and holds him guilty, it shall record its reasons for such disagreement and as held in J.A.Naikasatam (Supra), it should give opportunity of hearing to the delinquent. The order of disciplinary authority does not show the compliance of the above procedure, in tune with the principles of natural justice.

16. In the light of these facts, the impugned order is not sustainable. Hence, the petition is allowed. The impugned order is set aside. The petitioner is exonerated of the charges in the inquiry held against him. The necessary consequences shall follow."

7. In our O.A. in hand also the disciplinary authority has not given the opportunity of personal hearing to the delinquent before passing the order of punishment dated 04.09.2015 (Annexure-A-10, Pg. No. 65 & 66[both inclusive]). Similarly, respondent no. 2 has also not followed the principle of natural justice before passing order dated 06.06.2016 in Appeal No. 02/2016. Hence, both these orders are required to be quashed and set aside. Accordingly, I pass the following order:-

ORDER

1. O.A. is allowed in terms of relief sought J (ii) and order dated 04.09.2015 of disciplinary authority (Annexure-A-10, P.B, Pg. No. 65 & 66 [both inclusive]) and order in appeal dated 06.06.2016 (Annexure-A-12, Pg. Nos. 76 to 78[both inclusive]) in Appeal No. 02/2016 are quashed and set aside.

2. If any, financial loss has been caused to the applicant till today, due to those orders, it should be restored to the applicant **within four weeks** from the date of this order.
3. No order as to costs.

(Shri Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.
Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 07/08/2019.
and pronounced on

Uploaded on : 08/08/2019.