

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 735 OF 2013

DIST.: NANDURBAR

Shri Shravan Yashwant Khairnar,
 Age : 54 Years., Occu: Service,
 As Peon at Tahsil Office,
 Akrani, Taluka-Akrani,
 Dist. Nandurbar
 Permanent R/o Abhiruchi Apartment,
 Room No. 3, Gondoor Airport Road,
 Dhule, Dist. Dhule.

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APPLICANT

VERSUS

1. The State of Maharashtra,
 Through its Secretary,
 Revenue and Forest Department,
 Mantralaya, Mumbai-400 032.
2. The Divisional Commissioner,
 Nashik Division, Nashik.
3. The Collector, Nandurbar,
 Dist. Nandurbar.

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RESPONDENTS

APPEARANCE : Shri D.J. Patil, learned Advocate holding
 for Shri A.V. Patil, learned Advocate for
 the Applicant.

: Smt. Resha S. Deshmukh, Learned
 Presenting Officer for Respondents.

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

DATE : 18.08.2017.

O R D E R**[Per- Hon'ble Shri B.P. Patil, Member (J)]**

1. The applicant has challenged the impugned order passed by the respondent no. 2 on 30.08.2013, dismissing appeal of the applicant against the order passed by the respondent no. 3 on 7.11.2012, by filing present O.A.

2. The applicant joined services on the establishment of respondent no. 3 as a Peon on 16.07.1992 and since then, he was discharging his duties honestly and sincerely and to the best of his ability. He received two advance increments for good work in the year 2001. During the year 2002-03, he was transferred at various places by transfer orders dated 15.07.2002, 22.08.2002, 21.03.2003 and 26.05.2003. In view of the transfer order dated 26.05.2003, he joined at Tahsil Office, Akrani as a Peon, on a vacant post. After attending the duties, he fell ill. Therefore, he proceeded on Medical Leave. After availing the Medical Leave when he went to join his duties, he was not allowed to join. The applicant

was under bonafide impression that he would be allowed to resume his duties, but thereafter, no communication has been received to him from the respondents. Therefore, on 1.4.2010, the applicant sought information under Right to Information Act from the respondents and at that time, he came to know that notices dated 1.7.2004, 19.7.2004 and 12.08.2004 have been issued to him. In fact, he never received the said notices from the respondents.

3. On 16.12.2009, he received notice dated 6.7.2009, by which he was called upon to show cause as to why his services should not be terminated for his absence. He has given explanation to the said notice by his reply dated 21.12.2009 narrating all the above facts. He has admitted in his reply that no Departmental Enquiry was conducted and no opportunity of hearing was given to him. Again he received another show cause notice dated 14.09.2010 with the similar contents, in which it was alleged that he was working with the political party and he was President of Dhule District of Rashtriya Janta Dal and it amounts misconduct on his part. He replied to the said

notice on 4.10.2010 and denied charges leveled against him. It is his further contention that the Talathi had obtained signature of his wife on some document, but did not hand over documents to her. It is his further contention that he never received subsistence allowances during the suspension period, but the respondents were acting in highhanded manner. Therefore, he approached this tribunal by filing O.A. No. 1043 of 2010 challenging the show cause notices dated 6.7.2009 and 14.09.2010 and also claimed substances allowance and prayed to reinstate him by revoking suspension order. This Tribunal was pleased to dispose of the O.A. No. 1043 of 2010 on 3.2.2011 observing that the applicant was given opportunity to file explanation to the show cause notice.

4. Thereafter, the applicant approached to the Hon'ble High Court by filing W.P. No. 2839/2011. The Hon'ble High Court disposed of the said W.P. on 31.07.2012 by giving direction to the respondents to pass appropriate order in the Departmental Enquiry, within a period of eight weeks from the date of order and if no final

order is passed, then to consider desirability of continuing him under suspension.

5. Thereafter, charge sheet came to be served on him leveling four charges including charges of absentee period, nonappearance before the Civil Surgeon and affiliation to political party. The applicant filed his preliminary defence statement denying all the charges leveled against him. Thereafter, enquiry has been conducted. The Enquiry Officer held him guilty of the charges no. 1 and 2 as regards his absenteeism and held that charges as regards nonappearance before the Civil Surgeon and his affiliation with the political party were not proved. The report of the Enquiry Officer has been submitted to the respondent no. 3 disciplinary authority. The Disciplinary Authority passed the impugned order dated 7.11.2012 and thereby permanently stopping his two increments of the applicant having effect on the further increments and also the suspension period of the applicant between 16.05.2005 and 7.11.2012 was directed to be treated as not to be computed while calculating service period of the applicant. The period between 5.6.2003 and

15.05.2003, was treated as absence of the applicant. The applicant has challenged the said order before the respondent no. 2 by preferring an appeal on 18.12.2012. The respondent no. 2 dismissed the appeal by impugned order dated 30.08.2013 and upheld the order passed by the respondent no. 3. Being aggrieved by the said order, the applicant has filed the present O.A. on the ground that both the respondents i.e. respondent nos. 2 and 3 have not considered the case properly and they have wrongly held guilty to him. Therefore, he prayed to allow the present Original Application and to quash the impugned orders passed by the respondent nos. 2 & 3.

6. The respondent no. 3 resisted the contention of the applicant by filing his affidavit in reply. He has contended that the impugned orders passed by the respondent nos. 2 & 3 are proper and legal. He has admitted the fact that the applicant was serving as a Peon on his establishment. It is his contention that the transfer orders dated 15.07.2002, 22.08.2002, 21.03.2003 & 26.05.2003, were passed on the administrative ground and

headquarter of the applicant was not changed, but by order dated 26.05.2003, the applicant was transferred to the office of Tahsildar, Akrani. He has contended that the applicant remained absent in the office of Tahsildar, Akrani, after his joining duties without obtaining prior approval from the concerned Tahsildar. The applicant breached the provisions of the Maharashtra Civil Services (Leave) Rules, 1981 and Maharashtra Civil Services (Conduct) Rules, 1979. Therefore, the Tahsildar, Akrani issued notices to him on 1.7.2004, 19.07.2004 & 12.08.2004 and served the same on the applicant, but the applicant had not given his explanation/reply to the said notices. Therefore, again one show cause notice dated 6.7.2009 has been issued in view of the principle of natural justice to give opportunity of being heard to the applicant and thereby, called his explanation within seven days. The applicant has given his explanation dated 21.12.2009. It was brought to the notice of the Tahsildar, Akrani that the applicant was involved in the political activities and he was elected as Dhule District President of Rashtriya Janta Dal on the basis of news published in the daily newspaper. The

Tahsildar made report in that regard on 30.04.2005. The said news has been confirmed by the Superintendent of Police by his report dated 3.5.2005. The act of the applicant to involve in the active politics, when he was serving as a Government servant, is a misconduct and therefore, another show cause notice dated 14.09.2010 has been issued to the applicant, to which the applicant submitted his say on 4.10.2010. It is his further contention that the applicant has not accepted his suspension order and therefore, it was served on his wife. He has not disputed the fact that the O.A. No. 1043/2010 filed by the applicant as well as W.P. No. 2839/2011 filed before the High Court Bench at Aurangabad and orders passed therein. It is his contention that as the applicant remained absent without permission and without getting approval to his leave and he was involved in the political activities, charge sheet has been issued to him. The Departmental Enquiry had been conducted by the Enquiry Officer by giving proper opportunity to the applicant and by following principles of natural justice. The Enquiry Officer held the applicant guilty of the two charges out of four charges and

submitted his report to respondent no. 3. Considering the report of the Enquiry Officer, the respondent no. 3 passed the order dated 7.11.2012 and imposed punishment against the applicant accordingly. He has not disputed the fact that the applicant has challenged the said order by filing appeal before the respondent no. 3 and the respondent no. 3 dismissed the appeal on 30.08.2013. He has denied that the respondent nos. 3 and 2 had not considered the case of the applicant properly. It is his contention that the respondent nos. 2 and 3 have passed the orders as per the provision of the Maharashtra Civil Services Rules and there is no illegality in it. Therefore, he prayed to dismiss the Original Application.

7. We have heard Shri D.J. Patil, learned Advocate holding for Shri A.V. Patil, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondents. We have perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

8. Admittedly, the applicant joined service as a Peon on the establishment of Respondent No. 3 w.e.f. 16.07.1992. There is no dispute about the fact that during the year 2002-03, the applicant has been transferred by order dated 15.07.2002, 22.8.2002, 21.03.2003 & 26.05.2003 in the different post at Nandurbar only. Admittedly, by transfer order dated 26.05.2003 the applicant has been transferred to Tahsil office, Akrani. Admittedly, the applicant joined his new posting in the Tahsil Officer, Akrani and thereafter, he went on medical leave without getting sanction to leave or taking approval of Tahsildar, Akrani w.e.f. 5.6.2003 to 30.11.2003. Therefore, he has not joined his duties w.e.f. 1.12.2003. It is not much disputed that the notices dated 1.7.2004, 19.7.2004 & 12.8.2004 had been issued to the applicant, but the applicant had not given reply to the said notices. There is no dispute about the fact that the applicant was placed under suspension. Admittedly, the applicant sought information under Right to Information Act from the respondent and at that time necessary information has been supplied to him. Admittedly, the show cause notices

dated 6.7.2009 and 14.9.2010 had been served to him, to which he was filed his reply on 21.12.2009 and 4.10.2010. Admittedly, the applicant then approached this Tribunal by filing O.A. No. 1043 of 2010 and prayed to set aside the impugned show cause notices dated 6.7.2009 and 14.09.2010 and to revoke the suspension order and to reinstate him on the post of Peon and also sought direction to pay subsistence allowances to him. The O.A. came to be disposed of on 3.2.2011, as the O.A. was premature and the opportunity was given to the applicant to show cause. The applicant has challenged the decision of the Tribunal before the Hon'ble High Court, Bench at Aurangabad by filing W.P. No. 2839/2011, which was disposed of on 31.07.2012, with a direction to respondents to pass appropriate orders in the D.E. within a period of eight weeks from the date of order and if no final order is passed, then consider the desirability of continuing the petitioner under suspension. Copies of the said orders are at paper book page nos. 37, 38, 39 & 40 respectively. Thereafter, the applicant received charge sheet and Departmental Enquiry was initiated against him. The Enquiry Officer

conducted the Departmental Enquiry in respect of 4 charges leveled against the applicant and he submitted his report on 23.08.2012 to the respondent no. 3 holding him guilty of the charges no. 1 and 2 and exonerated him from the charges No. 3 & 4. The respondent no. 3 after giving opportunity of being heard to the applicant, passed impugned order dated 7.11.2012 and accordingly, punished the applicant. The applicant challenged the said order before the respondent no. 2 by filing appeal. The said came to be dismissed by the respondent no. 2 on 30.08.2013.

9. Learned Advocate for the applicant has submitted that the applicant has given explanation by explaining the true fact before the respondent no. 3, when he received show cause notices. He has submitted that after enjoying medical leave, the applicant approached Tahsildar, Akrani and requested him to allow him to join duties, but the then Tahsildar had misrepresented him and had not permitted him to join duties under quire that he had to obtain the approval from the higher authority. He

has argued that the applicant waited for the communication from the Tahsildar, but no communication has been received to him from the Tahsildar. He has submitted that even suspension order has not also been served on the applicant. It was served on his wife, but no document has been handed over to her at that time. He has submitted that the then Tahsildar, Akrani had prepared false documents i.e. show cause notices and on the basis of the said notices, false inquiry has been initiated against the applicant. He has further submitted that absence of the applicant from duty was not willful and it was because of the misrepresentation made by the then Tahsildar, Akrani. He has submitted that the Enquiry Officer has not considered the said aspect properly, though the applicant produced evidence in that regard. He has submitted that the respondent nos. 2 and 3 had also not considered the said aspect, while passing the impugned orders dated 7.11.2012 and 30.8.2013. He has submitted that the applicant got two advance increments for good work rendered by him in the year 2001 and he never disobeyed the orders of superior officers. But the said

aspects had not been considered by the Enquiry Officer, Disciplinary Authority, Appellate Authority because Divisional Officer wanted to punish him. He has submitted that the punishment awarded to the applicant is disproportionate and harsh. Therefore, he prayed to allow the Original Application and to quash and set aside the impugned orders dated 7.11.2012 and 30.08.2013 passed by the respondent no. 3 and 2 respectively.

10. Learned Presenting Officer has submitted that the applicant remained absent, immediately after he joined his duties in the office of Tahsildar, Akrani. He joined his duties on 3.6.2003 and proceeded on medical leave from 5.6.2003, without getting approval or sanction from the competent authority. She has submitted that thereafter he filed the application for grant of Medical leave, but no medical leave was at his credit. After enjoining medical leave, he had not joined the duties and therefore, it amounts misconduct on the part of the applicant. She has submitted that the several notices were issued to the applicant, with a direction to join duties immediately, but the applicant had not obeyed the orders of superior

authority. Therefore, show cause notices had been issued to him, but the applicant had not given his explanation. Therefore, Departmental Enquiry had been initiated against the applicant. She has submitted that the opportunity of being heard has been given to the applicant and after hearing him, the Enquiry Office submitted his report. On the basis of Enquiry Report, the respondent no. 3 passed impugned order dated 7.11.2012. She has submitted that the respondent no. 2 has also considered the contentions raised by the applicant in the appeal and after considering the same, he has rejected the appeal filed by the applicant challenging the order of the respondent no. 3 dated 7.11.2012 by his order dated 30.08.2013. She has submitted that there is no illegality in the impugned orders passed by the respondent nos. 2 and 3. Therefore, he prayed to reject the present Original Application.

11. On going through the documents on record, it is crystal clear that the applicant joined his duties on 16.07.1992 as a Peon in the office of Tahsildar, Akrani in view of the transfer order dated 26.05.2003. On 5.6.2003

he proceeded on leave without getting approval to it. He failed to appear before the Medical Board. Not only this, but he had not joined the duties after enjoying medical leave. He remained absent thereafter. Therefore, notices had been issued to him in that regard, but he had not given reply to it. Therefore, show cause notices dated 6.7.2009 and 14.9.2010 had been issued. Thereafter, Departmental Enquiry has been initiated against him. He had given opportunity of being heard in the Enquiry and on considering the evidence adduced by the disciplinary authority, the Enquiry Officer has held that the charges regarding his absentee had been proved against him. He has been exonerated from the charges as regards affiliation to political party and nonappearance before the Civil Surgeon. On the basis of report of the Enquiry Officer, the respondent no. 3 passed the impugned order dated 7.11.2012. The applicant challenged the said order before the respondent no. 2 by preferring appeal, but the appeal was dismissed by the respondent No. 2 on 30.8.2013. All these facts show that an opportunity was given to the applicant to defend himself at each and every stage of

proceeding. The applicant was at fault. Initially he had not given reply to the notices issued to the Tahsildar and respondent no. 3 regarding his absenteeism. He had not joined his duties since the year 2003. Therefore, Departmental Enquiry has been initiated against him. All these facts show that the conduct of the applicant is not befitted as Government servant and it amounts misconduct in view of the provisions of the Maharashtra Civil Services (Leave) Rules, 1981 and Maharashtra Civil Services (Conduct) Rules, 1979. Therefore, the Enquiry Officer has rightly held him guilty on the charges regarding his absenteeism. The respondent no. 3 had considered the report of the Enquiry Officer, facts and circumstances of the case and imposed the penalty as provided under Maharashtra Civil Services Rules. The penalty awarded against the applicant cannot be said to be disproportionate or harsh considering the long spell of absence of the applicant on duty since the year 2003. The respondent no. 3 has rightly rejected the appeal preferred by the applicant. There is no illegality in the impugned orders dated 7.11.2012 and 30.08.2013 passed by the respondent nos.

