

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO. 205/2012**

Dr. Anil S/o Namdeorao Wankhede  
Aged about 45 years, Occ : Service  
R/o : Officer of Special Duty,  
Super Speciality Hospital, Amravati.

**Applicant**

- **Versus** -

- (1) The State of Maharashtra  
Through its Secretary,  
Public Health Department,  
Mantralaya, Mumbai - 32.
- (2) Commissioner, Family Welfare and  
Director, National Rural Health Mission,  
State of Maharashtra, Arogya Bhavan,  
3<sup>rd</sup> Floor, St. Georges Hospital Compound,  
Demallo Road, Mumbai - 01.
- (3) Deputy Director of Health Services,  
Akola Region,  
Lady Hospital Compound, Akola.
- (4) Chief Executive Officer,  
Z. P., Amravati.
- (5) Civil Surgeon,  
General Hospital, Amravati.

**Respondents**

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Shri N. D. Thombre, Advocate for the applicant  
Shri Vinay Dahat, Advocate for respondent no. 4  
Smt M. A. Barabde, P. O. for the respondent nos. 1 to 3 and 5

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**Coram : - The Hon'ble Shri B. Majumdar,  
Member(A)**

**Dated :- January 18, 2013**

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**ORAL ORDER**

Shri. N. D. Thombre, learned counsel for the applicant, Shri. Vinay Dahat, learned counsel for the respondent no. 4 and Smt. M. A. Barabde, learned P.O. for the respondent nos. 1 to 3 and 5.

2. The matter is heard and decided at the admission stage with the consent of the parties.

3. The applicant is a Medical Superintendent (Group A). When he was working at the Rural Hospital, Tiwasa, Amravati, there was a case of alleged misuse of public welfare fund and an audit by private auditors came to be conducted in that behalf. An order dated 6-2-2012 was issued by the Commissioner, Family Welfare (R-2) for recovery of Rs. 1,03,238/- from the applicant. Thereafter on 29-3-2012, the Chief Executive Officer, Amravati (R-4) issued an order directing the applicant to deposit

the above amount. These are the orders which are challenged by filing the present O.A. The applicant's grievance is that the impugned order of recovery has been issued on the basis of a complaint made by an MLA and audit carried out by private auditors. No show cause notice was served on the applicant prior to issue of the impugned order nor was he provided with a copy of the audit report.

4. From the reply filed by the respondent nos. 2 and 3, it is seen that the recovery was ordered as certain irregularities were detected when the audit of funds under the National Rural Health Programme was carried out by the private auditors and hence the recovery was ordered against the applicant. It is also admitted by the respondent nos. 2 and 3 that only a demand for recovery was issued and no show cause notice in that regard was issued to the applicant.

5. The recovery of an amount due to loss caused to Government by negligence or breach of orders comes under the category of minor penalties as per Rule 5(1)(iii) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Rule 10(1)(a) also specifies that no minor penalty can be imposed on a Government servant except after giving him a reasonable opportunity of making representation as he may wish to make against the proposal. It is clear from the records and the

submissions made by the respondents that no show cause notice whatsoever was issued to the applicant prior to ordering recovery of Rs. 1,03,238/- vide the impugned orders dated 6-2-2012 and 29-3-2012. The impugned orders are therefore not in conformation with the Rules 5 and 10 of the Discipline and Appeal Rules. Hence these orders deserve to be quashed and set aside. I therefore order as follows.

- (a) The impugned orders dated 6-2-2012 and 29-3-2012 are quashed and set aside.
- (b) The respondents are however at liberty to proceed against the applicant by strictly following the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.
- (c) There are no orders as to cost.

The O.A. stands disposed of in terms of the above order.

Sd/-

(B. Majumdar)  
Member(A)

ayw/-