

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 628 OF 2017
(Subject – Minor Punishment)**

DISTRICT: NANDURBAR

Shri Mohit s/o Abhiman Mali,)
Age: 30 years, Occu. : Service,)
R/o At Post Kapadna, Tq. & Dist. Dhule) .. **APPLICANT**

V E R S U S

- 1) **The Chief Conservator of Forest**)
(Regional), Dhule,)
District Dhule.)
- 2) **The Deputy Director of Forests,**)
Nandurbar Forest Division,)
Shahada, Tq. Shahada,)
District Nandurbar.)
- 3) **The Assistant Conservator of**)
Forest (Regional and Wildlife),)
Nandurbar Forest Division,)
Shahada, Tq. Shahada,)
Dist.Nandurbar.) .. **RESPONDENTS**

APPEARANCE : Shri C.V. Bhadane, Advocate for the
Applicant.

: Shri V.R. Bhumkar, Presenting Officer for the
Respondents.

CORAM : B.P. PATIL, MEMBER (J).

DATE : 03.08.2018.

O R D E R

1. The applicant has challenged the order dated 12.06.2017 passed by the respondent No. 1 in the appeal

dismissing his appeal and confirming the order passed by the respondent No. 2 dated 01.02.2017 in the Departmental Enquiry withholding his annual increment for three years and treating his suspension period as suspension period for all the purposes by filing the present Original Application.

2. The applicant has joined the services as Watchman by the order dated 02.01.2013 issued by the respondent No. 2. Initially he was posted at Toranmal and thereafter he was transferred from one place to another place from time to time. Lastly, he was posted at Dhule under the establishment of respondent No. 1. It is contention of the applicant that he discharged his duties with utmost care and satisfaction under the establishment of the respondent authorities. He obeyed the directions and order issued by the respondent authorities from time to time. He proceeded on leave after obtaining prior permission from the concerned authorities and never remained absent on duty illegally.

3. On 18.03.2015, the Range Forest Guard, Navapur made complaint to the respondent No. 2 alleging that on 14.03.2015, the applicant was not present on duty and the seized Sandal wood was lying unattended in the Forest Area.

On the basis of the complaint made by the Range Forest Department, Navapur, the respondent No. 2 posted the applicant at Navapur and directed the Assistant Conservator of Forest (Territorial and wildlife), Nandurbar to make enquiry in the complaint. The respondent No. 3 conducted the enquiry and submitted report to the respondent No. 2. It has been mentioned in the report that the applicant was not present on 14.03.2015 and he had not discharged his duties with due responsibility. Because of the report and the alleged misconduct on the part of the applicant, he came to be suspended w.e.f. 24.04.2015. The respondent No. 2 has issued charge sheet to the applicant on 19.12.2015 leveling two charges. It is alleged that the applicant had committed misconduct by remaining absent on the duty and he had not discharged his duties in the interest of precious Forest Product. It is alleged that the applicant remained absent on duty from time to time and thereby violated the terms and conditions of the services. He had not attended the republic day function on 26.01.2014 and thereby committed misconduct. It is alleged that the applicant remained absent without obtaining prior permission of the respondents/competent authority and therefore, his leave were sanctioned without pay. It is alleged that the applicant committed misbehavior with the employees of

the Forest Department. It is further alleged that on 14.03.2015 the applicant was not present on duty to protect the precious seized goods and thereby committed misconduct.

4. The applicant has submitted his detailed reply to the charge sheet on 25.01.2016 and denied the charges levelled against him. It is his contention that he never disobeyed the orders of higher authority and never remained absent on the duty without prior permission of the higher authority and without getting leave sanctioned in advance. It is his contention that the false charges have been levelled against him regarding his misbehavior with the employees of Forest Department. It is his contention that on 26.01.2016, he attended the Flag Hosting Ceremony at village Khokrale in Grampanchayat office and he had produced the certificate to that effect. It is his contention that on 14.03.2015, he was on patrolling duty at the adjacent areas and therefore, the charge levelled against him regarding the absence on that day is baseless.

5. It is contention of the applicant that the respondent No. 2 had cancelled his suspension order vide order dated 01.03.2016 and communicated the same to the applicant on 01.04.2016. The applicant was posted at Toranmal Forest Area

and accordingly he joined his duties on the newly posted place and since then, he is discharging his duties.

6. It is contention of the applicant that the retired Superintending Engineer has been appointed as Enquiry Officer to make enquiry in the Departmental Enquiry. The Enquiry Officer conducted the enquiry and submitted his report to the respondent No. 2 on 13.12.2016. The respondent No. 2 issued notice proposing to impose penalty on him on the basis of enquiry report dated 13.12.2016, to which the applicant has given detailed reply on 25.01.2015. It is contended by the applicant in his reply that the enquiry officer had not given opportunity of hearing to the applicant to examine the witnesses on his behalf and to file his final explanation in defence and submitted report without following the principles of natural justice. After considering the reply of the applicant, the respondent No. 2 passed the order on 01.02.2017 which has been modified by the order dated 21.03.2017 imposing punishment of stopping annual increment for three years and treating the suspension period of the applicant as suspension period for all purposes.

7. The applicant has challenged the order passed by the respondent No. 2 before the respondent No. 1 by preferring an

appeal. The respondent No.1 passed the impugned order dated 12.06.2017 and rejected the appeal. It is contended by the applicant that the respondent No. 1 had not considered his contentions properly and he had not appreciated the evidence of the Disciplinary Authority and wrongly dismissed the appeal. The applicant has filed the present O.A. challenging the impugned order dated 12.06.2017 passed by the respondent No. 1, by which he confirmed the orders dated 01.02.2017 and 21.03.2017 issued by the respondent No. 2.

8. Respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. They have admitted the fact that the applicant is serving as Watchman in the Forest Department. They have denied the fact that the false charges have been levelled against the applicant and he was falsely subjected to the Departmental Enquiry. They have denied that the Enquiry Officer has not given fair opportunity to the applicant in the Departmental Enquiry. They have also denied that the respondent No. 1 has not considered the submissions of the applicant, while deciding his appeal. It is their contention that the applicant remained absent on duty illegally without obtaining prior permission of the higher authority. The respondent No. 2 had issued show cause notice and letter to the

applicant in that regard. It is their contention that on 14.03.2015, the Range Forest Officer, Navapur visited the place where the Sandal wood was kept and that time he found that the applicant was absent and he was not discharging his duties and he had not protected the seized Sandal wood, which was lying in the Forest area. Therefore, he submitted report on 18.03.2015 to the respondent No. 2 and requested to transfer the applicant immediately. On the basis of said report, the respondent No. 2 transferred the applicant and directed the ACF, Nandurbar to make enquiry in the complaint made against the applicant. The ACF, Nandurbar made the enquiry and submitted his report to the respondent No. 2 on 19.03.2015. He recorded the statement of the relevant witnesses and submitted that the applicant was not present on duty on 14.03.2015 and not discharging his official duties. It is their contention that the applicant had failed to discharge his duties and responsibilities. Therefore, the respondent No. 3 has submitted his report on 24.04.2015. On the basis of report of respondent No. 3, charge Sheet has been issued to the applicant accordingly. The applicant had given reply to the charge sheet and denied the allegations made against him. It is his contention that he never remained absent on duty and he attended the Republic Day Celebration ceremony at

village Khokrale. It is their contention that one Shri Dilip Hiranman Kunawat, retired Superintending Engineer was appointed as Enquiry Officer to conduct the enquiry in the Departmental Enquiry. The Enquiry Officer conducted the detailed enquiry giving opportunity of hearing to the applicant to defend himself. Thereafter, the Enquiry Officer submitted his report to the respondent No. 2. Thereafter, show cause notice has been issued to the applicant to show cause as to why the punishment should not be imposed on him for his misconduct. The applicant has replied to the said show cause notice. Thereafter, the respondent No. 2 has passed the impugned order dated 01.02.2017 punishing the applicant and withholding his annual increments for three years and treating his suspension period as suspension period for all purposes. Thereafter, he had modified the order by order dated 21.03.2017. It is their contention that the applicant has preferred an appeal against the said order before the respondent No. 1 and the respondent No. 1 had given the opportunity of hearing to the applicant and thereafter, rejected his appeal by order dated 12.06.2017 by recording the sound reasons. It is their contention that there is no illegality in the Departmental Enquiry and in the appeal proceeding. The applicant was held guilty of the charges levelled

against him and therefore, he was punished. It is their contention that the applicant has made false allegations and therefore, they prayed to reject the present Original Application.

9. I have heard Shri C.V. Bhadane, learned Advocate for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondents. I have gone through the documents on record and affidavits produced by both the parties.

10. Admittedly, the applicant was appointed as Watchman by order dated 02.01.2013 and he was posted at Toranmal. Thereafter, he was transferred from one place to another place from time to time. Lastly he was posted at Dhule under the establishment of respondent No.1. There is no dispute about the fact that on 18.03.2015, the Range Forest Guard, Navapur made complaint against the applicant with the respondent No. 2 alleging that on 14.03.2015 the applicant was not present on his duty throughout the night and had not protected the sandal wood lying in the Forest area. On the basis of report, the respondent No. 2 directed the Assistant Conservator of Forest (Territorial Wildlife), Nandurbar to make inquiry in the complaint and submit the report and he posted the applicant at Navapur. As per the directions of the respondent

No. 2, the respondent No. 3 conducted the enquiry and submitted his report to the respondent No. 2. On the basis of said report, the applicant has been suspended w.e.f. 24.04.2015 and charge sheet has been issued to him on 19.12.2015. The applicant has given reply to the charge sheet and thereafter, Enquiry Officer i.e. retired Superintending Engineer made enquiry in the Departmental Enquiry. He had given opportunity of hearing to the applicant and to defend himself and after considering the evidence of the Disciplinary Authority, he held the applicant guilty of the charges levelled against him and submitted his report to the respondent No. 2. The respondent No. 2 had issued show cause notice to the applicant on the basis of report submitted by the Enquiry Officer. The applicant has submitted his say. On considering his reply, the respondent No. 2 passed the order dated 01.02.2017 holding the applicant guilty of the misconduct and passed the order withholding his annual increment for three years and treating his suspension period as suspension period for all purposes. Admittedly, the applicant has preferred an appeal challenging the order passed by the respondent No. 2 dated 01.02.2017 before the respondent No. 1. The respondent No. 1 had given opportunity of hearing to the applicant and after considering the documents and evidence on

record, dismissed the appeal and upheld the order of the Disciplinary Authority by his order dated 12.06.2017.

11. Learned Advocate for the applicant has submitted that the Enquiry Officer has not conducted the enquiry properly and proper opportunity of hearing has not been given to the applicant to lead his evidence. He has further submitted that the false allegations were made against the applicant and the applicant has explained the said fact. He has submitted that there was no evidence on record to show that the applicant remained absent on the night of 14.03.2015 and failed to discharge his duties in protecting Sandal wood preserved there. He has submitted that on that night, the applicant was on patrolling duty and the duty to guard Sandal wood was not assigned to him and therefore, he cannot be held responsible for it. He has submitted that the Range Forest Guard, Navapur has not visited the place on that night and therefore, the applicant cannot be held guilty of the said charge. He has further submitted that so far as the other charges are concerned, the Disciplinary Authority has failed to adduce the sufficient evidence and therefore, the conclusion drawn in the enquiry holding him guilty of the misconduct is not proper. He has submitted that since the charges have not been proved against

him, the disciplinary authority ought to have exonerated him, but the disciplinary authority has not considered the said aspect and wrongly held him guilty and punished him. Therefore, he prayed to quash and set aside the impugned order passed by the disciplinary authority.

12. Learned Advocate for the applicant has further submitted that the appellate authority i.e. the Chief Conservator of Forest (Regional) Dhule i.e. respondent No. 1 has not considered the contentions raised by the applicant in the appeal. He has not scrutinized the evidence of the witnesses examined by the disciplinary authority properly and consequently wrongly rejected the appeal. He has further submitted that no proper opportunity of hearing was given to him by the respondent No. 1 while deciding his appeal and therefore, he prayed to quash and set aside the impugned order dated 12.06.2017 passed by the respondent No. 1 and the order dated 01.02.2017 and modified order dated 21.03.2017 passed by the respondent No. 2 by filing the present Original Application.

13. Learned Presenting Officer has submitted that the applicant remained absent on duty on the night of 14.03.2015 and failed to guard seized Sandal wood, which is precious item

and thereby failed to discharge his duties and committed misconduct. The Range Forest Guard, Navapur visited the place where the Sandal wood had been stored and at that time, he found that the applicant was absent and nobody was present there to protect Sandal wood. Therefore, the Range Forest Guard, Navapur remained present there for whole night and guarded Sandal wood and thereafter, he made report to the respondent No. 2 in that regard on 18.03.2015. He has submitted that the evidence of the Range Forest Guard, as well as, witnesses had been recorded during the course of enquiry and they supported the allegations made against the applicant. He has further argued that the evidence of the disciplinary authority is sufficient to show that the conduct of the applicant is not befitting to a Government servant. He remained absent without obtaining prior permission of the higher authority and thereby committed misconduct. Not only this, but he remained absent on Flag Hosting Ceremony held on 26.01.2014 and attended the said ceremony at other place without obtaining prior permission of the higher authority. The said conduct of the applicant amounts misconduct and therefore, the enquiry officer rightly held him guilty of the misconduct. He has submitted that on the basis of report of enquiry officer, the disciplinary authority has issued the

show cause notice to the applicant and after receiving the reply of the applicant, passed the impugned order imposing penalty. He has submitted that as there were serious lapses on the part of the applicant while discharging his duties, the disciplinary authority i.e. the respondent No. 2 passed the appropriate order imposing punishment.

14. Learned Presenting Officer has further submitted that the respondent No. 1 has decided the appeal of the applicant after considering the evidence on record and he has recorded reasons, while dismissing appeal of the applicant. He has submitted that there is no illegality in the impugned order dated 01.02.2017 passed by the respondent No. 2 and the order dated 12.06.2017 passed by the respondent No. 1 in appeal and therefore, he supported the impugned orders. Therefore, he prayed to dismiss the present Original Application.

15. On perusal of the record, it reveals that one of the allegations made against the applicant is that on 14.03.2015 he was not present on night duty. The Sandal wood worth Rs. 57 lacks had been seized in forest office. The applicant has duty to guard the said seized precious item, but he remained absent on duty. The Range Forest Guard visited the place where the goods

were stored. On 14.03.2015 at 12.30 midnight, the applicant was not present there and therefore, the Range Forest Officer, Navapur stayed there throughout night, but the applicant had not turned to the place where he was posted. Therefore, on 18.03.2015 the Range Forest Officer, Navapur made report to the respondent No. 2 and requested to transfer the applicant. Thereafter, the enquiry has been conducted by the Assistant Conservator of Forest (Regional and Wildlife), Nandurbar and he had submitted report to the respondent No. 2 in that regard. On the basis of the report, the applicant has been suspended and he has been transferred. Thereafter, charge sheet has been issued against the applicant regarding his misconduct along with other events of his misconduct. The applicant was in habit to proceed on leave without getting it sanctioned by his higher authority. Not only this, but on 26.01.2014, the applicant remained absent for Flag Hosting Ceremony arranged on account of Republic day. On the contrary, he has come with a case that he attended the Flag Hosting Ceremony of village Khokrale in Grampanchayat office, but the applicant has not obtained prior permission of his higher authority in that regard and therefore, it amounts misconduct on the part of the applicant. The Enquiry Officer appointed by the disciplinary authority made an enquiry in the

charges leveled against the applicant. The disciplinary authority examined as many as witnesses to prove the charges leveled against the applicant. All the witnesses supported the allegations made against the applicant. Opportunity of cross examination has been given to the applicant, but nothing useful to the defence of the applicant came out during the cross examination and therefore, the enquiry officer arrived at conclusion that the charges leveled against the applicant have been proved and held the applicant guilty of the misconduct and submitted his report on 13.12.2016. On the basis of report of the enquiry officer, the respondent No. 2 i.e. the disciplinary authority issued show cause notice proposing punishment on 05.01.2017 to the applicant, to which the applicant has given reply on 25.01.2017. On considering the reply of the applicant, the disciplinary authority i.e. the respondent No. 2 passed the impugned order dated 01.02.2017 and thereby punished the applicant and withheld his annual increment for three years and also treated his suspension period as suspension period for all purposes. The reasoned order has been passed by the disciplinary authority. Therefore, I do not find illegality in the impugned order passed by the respondent No. 2 imposing punishment on the applicant for his misconduct.

16. The respondent No. 1 i.e. the appellate authority had considered the appeal of the applicant and grounds raised therein and after giving an opportunity of hearing to the applicant, dismissed the appeal. The respondent No. 1 has also passed the reasoned order, while dismissing the appeal on 12.06.2017. Each and every ground raised by the applicant in appeal has been considered by the respondent No. 1 while deciding the appeal of the applicant. There is no illegality and irregularity in the order dated 12.06.2017 passed by the respondent No. 1 dismissing the appeal of the applicant. Therefore, in my opinion, no interference is called for in the impugned orders passed by the respondent Nos. 1 and 2.

17. The evidence on record shows that the Sandal wood worth Rs. 56 lack was stored in the forest office, where the applicant was posted and it was precious item and therefore, it was the duty of the applicant to guard the same. The applicant remained absent on 14.03.2014 and he had not reported to the duty throughout the night. On the contrary the applicant denied the said charge and claimed that he was on patrolling duty on that night. No evidence has been adduced by the applicant to show that he was on patrolling duty on that night. Had it been a fact that the applicant was really on patrolling duty on that

night, definitely he would have produced the patrol book or other evidence in that regard, but no such evidence has been adduced by the applicant and therefore, same falsifies the contention of the applicant in that regard. This shows that there was gross negligence on the part of the applicant while discharging his duties and this amounts misconduct.

18. Not only this, but the incidence cited by the enquiry officer and evidence of the disciplinary authority in that regard show that the applicant proceeded on leave without getting it sanctioned from his higher authority on several occasions. Not only this, but he remained absent for Flag Hosting ceremony on 26.01.2014 and left the headquarters without obtaining prior permission of the higher authority. All these facts show that the applicant was in habit of enjoining leave without getting it sanctioned in advance. The conduct of the applicant amounts misconduct and therefore, the disciplinary authority has rightly imposed the punishment on the applicant. The appellate authority i.e. the respondent No. 1 has rightly upheld the order of the respondent No. 2. There is no illegality in the impugned order dated 01.02.2017 passed by the respondent No. 2 and the order dated 12.06.2017 passed by the respondent No. 1. Therefore, no interference is called for in it. Therefore, in my

opinion, there is no merit in the present Original Application and it deserves to be dismissed.

19. In view of the discussions in foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 03.08.2018.

(B.P. PATIL)
MEMBER (J)

KPB S.B. O.A. No. 628 of 2017 BPP 2018 Minor Punishment