IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.1144 OF 2018

DISTRICT: THANE
SUBJECT: PUNISHMENT OF STOPPAGE OF ONE INCREMENT

Shri Pravin Pundlik Pednekar,
Aged 48 Yrs, Working as Senior Grade Auditor,
in the Office of Assistant Director, Local Funds
Accounts, Alibaug, Dist. Raigad, R/o. 1-1,
Rachana Apartments, Sector-14, Diwale Gaon,
C.B.D. Belapur, Navi Mumbai. ... **Applicant**

Versus

1) The Director,
Local Fund Accounts, (M.S.),
Having Office at Konkan Bhawan, 6th Floor,
C.B.D. Belapur, Navi Mumbai.

2) The State of Maharashtra,
Through Principal Secretary,
Accounts and Treasuries, Finance Department
Having Office at Mantralaya, Mumbai - 400 032. ...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 22.09.2022.

JUDGMENT

1. The Applicant has challenged punishment order dated 10.12.2015 passed by disciplinary authority thereby imposing punishment of withdrawing of two increments for three years with cumulative effect and also challenged order of appellate authority dated 23.11.2017 whereby punishment has been modified into withdrawing of one increment for

two years with cumulative effect invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts are as under:-

The Applicant was serving as Senior Grade Auditor. He was subjected to disciplinary enquiry by issuance of chargesheet for the alleged misconduct of 2010. This misconduct was pertaining to irregularities in the Audit of Gram Panchayat. Though chargesheet was issued under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 the enquiry officer was appointed and procedure of regular D.E. was adopted by enquiry officer. The Applicant submitted his reply to the chargesheet denying the charges. Thereafter witnesses were examined and defence statement was also filed. At the end of enquiry, the enquiry officer by his report dated 13.07.2015 exonerated the Applicant from all the charges. However, disciplinary authority without furnishing copy of enquiry report to the Applicant and without recording his tentative reasons for disagreement with the findings of the enquiry officer and without giving any opportunity of hearing, passed the impugned order dated 10.12.2015 thereby imposing punishment of withdrawing of two increments for three years with cumulative effect. Being aggrieved, the Applicant has filed appeal raising all the grounds particularly non supply of copy of enquiry report and copy of order of disagreement. But appellate authority only modified the punishment into withdrawing of one increment for two years with cumulative effect by order dated 23.11.2017. It is on this background the Applicant challenged punishment orders 10.12.2015 and 23.11.2017.

3. Today when the matter is taken up for hearing, learned Advocate for the Applicant submits that without touching other aspects, O.A. can be decided on single issue of non-compliance of Rule 9(2) of Rules, 1979. He has pointed out that compliance of Rule 9(2) is mandatory were disciplinary authority proposed to disagree with the finding recorded by

the enquiry officer and in the absence of it there is breach of natural justice and it vitiates the enquiry.

4. Learned P.O. fairly stated that enquiry officer has exonerated the Applicant from all the charges and there is no such record of compliance of Rule 9(2) by the disciplinary authority. However, she sought to contend that even if there is no compliance of Rule 9(2) the Applicant was given full and fair opportunity of hearing before enquiry officer, and therefore question of prejudice does not survive.

5. In view of above without touching all other issue raised in O.A., this O.A. can be decided on the ground of non-compliance of Rule 9(2) of Rules, 1979.

6. True, initially Department had issued chargesheet quoting Rule 10 of Rules, 1979 which contemplates procedure for imposing minor penalty. However, instead of adopting procedure of minor penalty, enquiry officer was appointed, witnesses were examined and defense statement was also filed. As such, though chargesheet were issued under Rule 10 for minor punishment the procedure for regular D.E. is contemplated under Rule 8 has been followed. Indeed, as per Rule 10 (2) where after considering the representation made by delinquent, Department proposed to withhold increment with cumulative effect in that event, enquiry shall be held in the manner laid down under Rule 8 of Rules, 1979 before making any order of punishment. Rule 10(2) read as under:-

> "10 (2). Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case proposed, after considering the representation, if any, made by the Government servant under Clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, (x x x) and inquiry shall be held in the manner laid down in sub-rules (3) to (27) of Rule 8,

> before making any order of imposing on the Government servant any such penalty."

7. As such, there has to be regular D.E. where punishment of withdrawing increment with cumulative effect is passed being evil consequence on pension. Rule 8 contains detail procedure to be followed by the enquiry officer and submission of report to the disciplinary authority. Once enquiry officer submits his report to disciplinary authority, then disciplinary authority has to take necessary action on the enquiry report in terms of Rule 9 of Rules, 1979. Here Rule 9(2) of Rules 1979 is material, which is as under:-

> "9. (2) The disciplinary 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, a 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 fifteen days, irrespective of whether the report is 1{ favourable or not to the said Government servant}.
>
> (2-A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) ad (4)."

8. It is thus manifest that where disciplinary authority disagrees with the finding recorded by the enquiry officer, obligation is cast upon the disciplinary authority to record his tentative reasons for disagreement and to supply the copy to enquiry officer as well as tentative reasons to a Government servant who shall be required to submit his representation and on receipt of his representation if found unsatisfied disciplinary authority has to pass further order. Whereas, as per Rule 2(a) disciplinary authority shall consider the representation if any submitted by a Government servant and has to record finding for further proceeding in the matter.

9. Whereas, in present case surprisingly though enquiry officer has exonerated the Applicant, disciplinary authority failed to comply with Rule 9(2) of Rules, 1979. Disciplinary authority neither recorded his tentative reasons for disagreement with the finding recorded by the enquiry officer nor supplied copy of enquiry report to the delinquent and straightaway imposed punishment of withdrawing of two increments for three years with cumulative effect holding that charges are proved. This being the position there is denial of opportunity of hearing before imposing punishment which is in blatant contravention of Rule 9(2) of Rules, 1979.

10. That apart, perusal of impugned order even does not indicate that the appellate authority was conscious or aware about negative finding recorded by the enquiry officer except mention of submission of enquiry report in reference clause in the body of the order. There is absolutely no discussion or consideration as to what was the finding of the enquiry officer and how it was wrong and why disciplinary authority disagreed with the findings recorded by the enquiry officer.

11. On the contrary the perusal of impugned order of the disciplinary authority reveals that after receipt of report of enquiry officer the remarks or opinion of Joint Director, Local Fund Account, Pune was called for. He submitted his confidential letter dated 09.10.2015. Thus, the disciplinary authority has adopted novel procedure by calling the opinion of the Joint Director on the report of enquiry officer and he seems to have been influenced by his opinion which ultimately resulted in the imposition of punishment. Even the said confidential opinion given by the Joint Director was also not supplied to the Applicant for fair play. The Applicant has raised this ground specifically as one of the grounds to challenge the impugned order.

12. As rightly pointed out by learned Advocate for the Applicant, the issue of effect of non-giving opportunity to the delinquent where

disciplinary authority disagrees with the enquiry officer is no more *res-integra* in view of decision of Hon'ble Supreme Court ***(1999) 7 Supreme Court Cases 739 (Yoginath D. Bagde V/s. State of Maharashtra & Anr.)*** in that case also there was negative report of the enquiry officer but disciplinary authority without giving opportunity of hearing to the delinquent imposed punishment. In Para 31 of the Judgment, Hon'ble Supreme Court held as under:-

> "31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

13. Notably, when the Hon'ble Supreme Court delivered the Judgment in 1999 that time Rules 1979 were silent on the point of issuance of copy of enquiry report and recording of tentative finding but Hon'ble Supreme Court held that being constitutional right of delinquent it cannot be taken away. Hon'ble Supreme Court held that it is in consonance with the requirement of Article 311 (2) of the Constitution which provides that person shall not be dismissed or removed or reduced in rank except after enquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of this charges. It is after the decision of Hon'ble Supreme Court in ***Yoginath D. Bagde's case*** **(cited supra)** Rule 9 (2) and 2(a) has been incorporated in Rules, 1979 by amendment in 2010.

14. Learned P.O. made feeble attempt to contend that even if there is no compliance of Rule 9(2) of Rules, 1979 the delinquent has to establish that prejudice is caused to him and in absence of it mere failure of the disciplinary authority to supply the enquiry report does not vitiate the punishment. In this behalf she made reference to the ***(1993) 4 Supreme Court Cases 727 (Managing Director, ECIL, Hyderabad V/s. B. Karunakar & Ors.)***. In this case Hon'ble Supreme Court observed Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case, and further observed that where even after furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice. Indeed, in the present case we have M.C.S. (Discipline & Appeal) 1979 and Rule 9(2) specifically mandates recording tentative reasons or disagreement with the finding of enquiry officer and submission of copy of enquiry report to delinquent before imposing punishment. In present case enquiry officer has given clean chit to the Applicant from all charges. Therefore it was mandatory on

the part of delinquent authority to comply with Rule 9(2) of Rules, 1979 which are brought in statute byway of amendment by 2010. This being the situation the Judgment of Hon'ble Supreme Court in ***B. Karunakar & Ors.'s* case (cited supra)** is hardly of any assistance to the learned P.O.

15. In this reference may be made to the decision of Hon'ble High Court in **Writ Petition No.4590 of 1987 (Sheshrao Raut v/s. State of Maharashtra)** decided on 21.04.1989 wherein enquiry officer recorded finding that out of 15 charges framed against the employee only one charge was proved and recommended minor penalty of two increments. However, disciplinary authority without hearing employee reversed finding of enquiry authority, holding the Applicant guilty of all 15 charges and imposed punishment. Hon'ble High Court held that such order of disciplinary authority without hearing delinquent is void and breach of Article 311 (2) of the Constitution of India and delinquent was reinstated.

16. The totality of the aforesaid discussion leads me to sum up that delinquent did not get reasonable and fair opportunity of hearing to defend himself because of utter failure on part of disciplinary authority to comply with Rule 9(2) of Rules 1979 which is fatal to the punishment imposed by disciplinary authority as well as appellate authority. The impugned punishment orders are therefore liable to be quashed on this legal ground without touching other aspects. Hence, the order.

ORDER

A) The Original Application is allowed.

B) Impugned punishment order dated 10.12.2015 & 23.11.2017 are quashed and set aside.

C) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 22.09.2022
Dictation taken by: N.M. Naik.

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