

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.360 OF 2022**

**DISTRICT : MUMBAI  
SUBJECT : MAJOR  
PUNISHMENT**

Mr. Namdeo Ramchandra Pakhare, )  
Aged 54 years, (DOB: 15.08.1968) )  
Occu. Working as Senior Clerk at Home Guard )  
Quarter, Home Guard, Commandant General, )  
MS, Mumbai. )  
R/at. Government Colony, 95/1, Near Joggers Park, )  
Bandra (E), Mumbai 51. ) ... **Applicant**

**Versus**

- 1) The Commandant General Home Guard, )  
Old Secretariate Annex Building, 3<sup>rd</sup> Floor, )  
M.G. Road, Mumbai-32. )
- 2) The Secretary, )  
Home Department, 12<sup>th</sup> Floor, )  
New Administrative Building, Mantralaya, )  
Mumbai - 32. )... **Respondents**

**Shri Kishor R. Jagdale, learned Advocate for the Applicant.**

**Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)  
DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 25.08.2023.**

**PER : DEBASHISH CHAKRABARTY, MEMBER (A)**

**JUDGMENT**

1. The O.A. has been filed by invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 by the Applicant Shri N.M. Pathare working as Sr. Clerk in the office of

Commandant General Home Guards against the order passed by him as the Disciplinary Authority on 20.05.2019 after Departmental Enquiry conducted under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and confirmation of the order by Appellate Authority dated 28.07.2021.

2. The Applicant was represented by Shri K.R. Jagdale, learned Advocate and Smt. K.S. Gaikwad, learned Presenting Officer represented the Respondents.

3. The Applicant was initially appointed on 03.09.1986 to post of Class IV in the office of the Commandant General Home Guards. Later on he was promoted on 14.09.2005 as Clerk and subsequently as Senior Clerk on 01.07.2015.

4. The Commandant General Home Guards as Disciplinary Authority had instituted Departmental Enquiry against the Applicant on 11.10.2013 under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 in which 8 charges were framed against him regarding failure to discharge the duties and responsibilities of 'Cashier'.

5. The order of Departmental Enquiry was served on Applicant on 08.11.2013 with directions to submit his written statement of Defence within 10 days. The Applicant submitted his written statement of Defence to the Enquiry Officer on 10.03.2014 denying all the charges on grounds that he did not have requisite knowledge of working as 'Cashier' and the discrepancies in the entries found in the Cash Book were due to the lack of regular supervision of his work part of the DDO and Administrative Officer.

6. The Enquiry Officer submitted his Enquiry Report with all relevant documents to the Commandant General Home Guards and Disciplinary Authority on 15.03.2014. The Enquiry Officer in his findings has come

to the conclusion that except Charge No.5 which is partly proved all the remaining Charges No.1,2,3, 4, 6, 7 and 8 were established against the Applicant.

7. The Commandant General Home Guards and Disciplinary Authority served the Applicant with Show Cause Notice on 14.07.2014 as to why punishment under Rule 5 (5) of the MCS (Discipline & Appeal) Rules, 1979 should not be imposed on him as Charges 1, 2, 3, 4, 6, 7 and 8 had been established except Charge No.5 which was partly proved and directed the Applicant to submit his explanation in 15 days. The Disciplinary Authority had also proposed recovery of 60% of the total loss to the State Government of Rs.76,478.80/- amounting of Rs.45,887/- from the Applicant.

8. The Applicant submitted his written representation to the show cause notice on 11.08.2014 to the Commandant General Home Guards and Disciplinary Authority denying the acceptance of the findings in the Enquiry Report and rejecting the representation of punishment under Rule 5(5) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and recovery of Rs.45,887/-. The Applicant pleaded that he be exonerated from the Departmental Enquiry.

9. The Commandant General Home Guards and Disciplinary Authority in his order dated 20.05.2019 imposing punishment under Rule 5(5) of the MCS (Discipline & Appeal) Rules, 1979 had come to the following observations:-

“तसेच रोखपाल पदाचे कामकाज करताना आपणाला जर काही नियमांबाबत अथवा अन्य अवगत नसल्यास किंवा अडचणी भासत असल्यास त्याचवेळी मुख्यालयात संपर्क साधून त्याबाबत मार्गदर्शन घेता आले असते किंवा सहायक संचालक यांचेशी संपर्क साधून रोख नोंदवही अद्ययावत ठेवणे, रोखनोंदवही लिहीणे, मासिक गोषवारे काढणे किंवा अन्य बाबत माहिती करून घेता आली असती. तथापि यापैकी कोणत्याही मार्गाचा अवलंब आपणाकडून झालेला नाही, हि वस्तुस्थिती आहे. आपण रोखपाल असताना नियमबाह्य रकमा आहरित तर त्याबाबतही रोखपाल म्हणून या बाबी मुख्यालयास अवगत करण्याची आपली प्रथम जबाबदारी होती. तथापि मुख्यालयास काहीही अवगत करण्यात आलेले नाही, हि वस्तुस्थिती आहे.”

10. The Commandant General Home Guards and Disciplinary Authority imposed the following Major Punishment on the Applicant under Rule 5 (5) of the MCS (Discipline & Appeal) Rules, 1979

**“- आदेश -**

वरील प्रमाणे कार्यालयीन कर्तव्य पार पाडण्यात आपणाकडून झालेल्या निष्काळजीपणाबाबत महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या भाग ३ नियम ५ (५) अन्वये ३ (तीन) वर्षाकरिता, भावी वेतनवाढीवर परिणाम न करता, वरिष्ठ लिपीक या पदावरील समयश्रेणीतील खालच्या टप्प्यावर आणण्याची शिक्षा बजावण्यात येत आहे.”

The Departmental Enquiry was instituted against the Applicant on 11.10.2013 under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 thus resulted in order of Major Punishment being passed under Rule 5 (5) of the MCS (Discipline & Appeal) Rules, 1979 on 20.05.2019 by the Commandant General, Home Guard and Disciplinary Authority and the Applicant was brought to the lower stage in the pay scale of the post of Senior Clerk for 3 years without affecting his future Annual Increments.

11. The Applicant had subsequently on 16.07.2019 filed an Appeal with the Appellate Authority under Rule 17 of the MCS (Discipline & Appeal) Rules, 1979 against the order passed by the Commandant General Home Guards and Disciplinary Authority on 20.05.2019.

12. The Appellate Authority vide order dated 28.07.2021 passed under Rule 23(3) of the MCS (D & A) Rules, 1979 rejected the appeal filed by the Applicant and upheld the order of the Disciplinary Authority passed on 20.05.2021.

13. The Appellate Authority in his order dated 28.07.2021 under provisions of Rule 23(3) of MCS (Discipline & Appeal) Rules, 1979 has come to the following findings and conclusion.

“निष्कर्ष :- सदर प्रकरणी अपिलार्थी श्री.नामदेव रामचंद्र पाखरे, तत्काली रोखपाल, समादेशक, होमगार्ड बृहन्मुंबई याी सुनावणी दरम्यान केलेले अभिवेदन आणि अपिल अर्जात उपस्थित केलेले मुद्दे विचारात घेतले, विभागीय चौकशी संबंधित कागदपत्रे, विभागीय चौकशीच्या समाकलन अहवाल निष्कर्षासहित तपासण्यात/अवलोकित

करण्यात आला. प्रस्तुत प्रकरणी अपिलार्थी यांनी रोखपाल म्हणून कार्यरत असताना रोखपाल पदावरील कर्तव्य व जबाबदा-या जसे की कार्यालयातील रोखनोंदवही नियमितपणे लिहिणे, दैनंदिन व मासिक गोषवारा काढणे, इत्यादी कार्ये नियमितपणे व काळजीपूर्वक केल्या नाहीत ही बाब स्पष्ट आहे सदर रोखपाल पदाची जबाबदारी पार पाडत असताना अपिलार्थींनी त्यांचे वरिष्ठ अधिकारी, डी.डी. ओ.सहाय्यक संचालक किंवा मुख्यालयातील संबंधित कामकाज हाताळणा-या कर्मचारी/अधिकारी यांचे अपिलार्थी यांनी तसे न करता रोखनोंदवही उशिराने लिहिणे, दैनंदिन व मासिक गोषवारा काढण्यात दिरंगाई करणे खर्च केलेल्या धनादेशाच्या नोंदी त्वरीत न घेणे, इत्यादी बाबी निदर्शनास येतात परंतु रोखपाल पदाचा नियत कार्यातील उपरोक्त कसुरी मागे आर्थिक लाभ मिळविण्याचा अपिलार्थी यांचा उद्देश नव्हता किंबहुना अपिलार्थी यांना काही आर्थिक लाभ झाल्याचे दिसून येत नाही. प्रस्तुत प्रकरणी अपिलार्थी यांना रोखपाल म्हणून नियुक्ती देताना त्यांचे लेखा विषयक पात्रता, रोखपाल कार्याचे प्रशिक्षण, कामाचा अनुभव तसेच त्यांची क्षमता याबाबींचा सखोल विचार/चौकशी करून त्यांची रोखपाल पदावर नियुक्ती देणे (डी.डी.ओ.) श्री.सैदणे यांच्यावर देखील विभागीय चौकशी प्रस्तावित होती. परंतु अंतिम आदेशात केवळ अपिलार्थी यांच्यावरच शिक्षेची कार्यवाही दिसून येत आहे. आहरण व संवितरण अधिकारी (डी.डी.ओ.) हे रोखशाखेचे प्रमुख असल्याकारणाने ते सुध्दा उपरोक्त कसुरीस जबाबदार आहेत. तरी फक्त अपिलार्थी यांनाच केवळ दोषी ठरवून इतकी कठारे शिक्षा देणे नैसर्गिक न्यायतत्वानुसार वाजवी ठरणार नाही. अपिलार्थी यांनी रोखपाल पदाच्या कर्तव्यात केलेली दिरंगाई व हयगय स्वतःचा आर्थिक लाभ व्हावा या उद्देशाने केली होती किंवा कसे याबाबत ठोस अशा निष्कर्षाप्रत पोहोचता येईल अशी स्थिती दिसून येत नाही. तथापि अपिलार्थी यांनी रोखपाल या पदावर नियुक्ती नंतर या पदाच्या कर्तव्य व जबाबदा-यांची माहिती घेतली नाही. तसेच रोखपाल पदाचे कामकाज करताना काही नियमाबाबत अथवा अन्य अडचणीबाबत त्याचवेळी मुख्यालय किंवा सहाय्यक संचालक यांचेशी संपर्क साधून आपले नियम कर्तव्य पूर्ण केले नाही ही बाब नाकारता येणार नाही. प्रकरणाचे स्वरूप तसेच अपिलार्थी यांचा सेवाभिलेख पाहता महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम २३(३) अन्वये मला प्रदान करण्यात आलेल्या अधिकारान्वये खालीलप्रमाणे मी निर्णय घेतला आहे.”

14. The Affidavit-in-Reply filed by Commandant General Home Guards and Disciplinary Authority as Respondent No.1 in the present O.A.No.360 of 2002 on 12.04.2023 had affirmed that there was serious negligence of work on part of the Applicant that he should have known the duties and responsibilities of the post of 'Cashier' and thus there was failure of the 'Applicant' to get guidance from his superiors. The following are the material affirmation made in the Affidavit-in-Reply by Respondent No.1, dated 12.04.2023.

“4. With reference to contents of paragraph No.6.6, I say that the Applicant was posted as a cashier in the Office of the Commandant, Home Guard, Greater Mumbai. He made a serious negligence in his work. This was endorse in the Internal Audit Report dated 1-4-2007 to 31-03-2010. Copy of the Internal Audit Report enclosed herewith as **Exhibit R-1.**

8.1. The Applicant was appointed to the post of cashier, he should know the duties and responsibilities of the said post. Also, it cannot be denied that while working as a cashier, he did not fulfill his assigned duties by contracting the head of the office, Headquarters or the Assistant Director (Accounts) regarding the problems related with the cashier post.

14. With reference to contents of paragraph No.7.6, I submit that the contents therein are matter of record. Though, there was no misappropriation of Govt. money found in the matter, but the Applicant made the serious negligence in his work as already proved in the Internal Audit, P.E. and D.E.”

15. The Internal Audit Report filed with the Affidavit-in-Reply of Respondent No.1 dated 12.04.2023 has also mention that it was the overall responsibility of the 'DDO and Administrative Officer' to ensure all entries are made in the Cash Book based on the provisions of Maharashtra Treasury Rules, 1968.

16. The provisions of Maharashtra Treasury Rules, 1968 thus become relevant to ascertain to what extent the Appellant who worked as the 'Cashier' directly under the 'DDO and Administrative Officer' had failed to fulfil his role and responsibilities on maintaining the Cash Book. The extract of these rules referred to in the charge sheet are reproduced below:-

**Rule “98. (2)** The following rules shall be observed by all departmental officers who are required to receive and handle cash :-

(i) Every Officer receiving money on behalf of the Government should maintain a cash book in Form M.T.R. 4.

(ii) All monetary transactions should be entered in the cash book as soon as they occur and attested by the head of the office in token of check.

(iii) The cash book should be closed regularly and completely checked. The head of the office should verify the totaling of the cash book or have this done by some responsible subordinate other than the writer of the cash book, and initial it as correct.

(iv) At the end of each month, the head of the office should verify the cash balance in the cash book and record a signed and dated certificate to that effect mentoring therein the balance both in words and figures. The certificate should also be recorded on the monthly cash account, primary abstract or account current, where such account,

abstract or account current is required to be submitted to the Accountant-General. Such certificates must be signed by the head of the office who should invariably date the signature.

(v) When Government moneys in the custody of a Government Officer are paid into the treasury or the Bank, the head of the office, making such payments should compare the Treasury Officer's or the Bank's receipt on the challah or his pass-book with the entry in the cash book before attesting it and satisfy himself that the amounts have been actually credited into the treasury or the Bank. When the number of payments made in a month is more than ten and the total amount involved therein exceeds Rs.1,000 he should, as soon as possible after the end of the month, obtain from the treasury a consolidated receipt for all remittances made during the month, which should be compared with the posting in the cash book.

**104. (1)** The head of an office, where money is received on behalf of the Government must give the payer a receipt duly signed by him after he has satisfied himself before, signing the receipt and initialling its counterfoil, that the amount has been properly entered in the cash book. If the circumstances so justify, he may at his discretion authorise any other officer subordinate to him, whether gazetted or non-gazetted, to sign such receipts for him.

**277 (2)** If for any reason, payment cannot be made within the course of the month, the amount drawn for the payee shall be refunded by short drawing in the next bill ; his pay or allowances may be drawn :-,new under rule 270 when the occasion for making the payment arises :

Provided that if in the opinion of the head of the office this restriction is likely to operate inconveniently, the amount of undisbursed pay or allowances may, at his option, be retained for any period not exceeding three months, but this concession shall not be availed of unless the head of the office is satisfied, that proper arrangements can be made for the safe custody of the sums retained.

The above provisions of Maharashtra Treasury Rules, 1968 referred to in the Charge-Sheet against the Applicant, places full responsibility of maintenance of Cash Book on the Head Office who in

this case was the 'DDO and Administrative Officer'. Against this backdrop it will not be out of context to mention that the work of DDO and Administrative Officer who had the important duty of supervising the work of Applicant as Cashier was discharged by one Shri A.R. Saindane who retired as Superintendent from the Office of Commandant General of Home Guards on 29.02.2012 and the Departmental Enquiry instituted against him on the same day along with the Applicant on 11.10.2013 for alleged misconduct committed during 01.04.2004 to 19.09.2010 when he worked as DDO and Administrative Officer was quashed and set aside by the Tribunal by its Order in O.A. 41 of 2014 dated 26.08.2015.

17. The Tribunal relying on the provisions of the Maharashtra Treasury Rules, 1968 which lays emphasis on the role and responsibility of the 'Head of Office' regarding Cash Book and taking in to due consideration that the Departmental Enquiry against the immediate Supervisory Officer. Shri A.R. Surdane, retired Superintendent in the Office of Commandant General of Home Guards has been quashed and set aside finds that it would amount of travesty of justice; if the entire burden of responsibility now has to be borne only by the Applicant. Further, the Commandant General of Home Guards who is also Disciplinary Authority has now affirmed in his Affidavit-in-Reply of 12.04.2023 that *"Though, there was no misappropriation of Govt. money found in the matter, but the Applicant made the serious negligence in his work as already proved in the Internal Audit, P.E. and D.E."*

18. The Hon'ble Supreme Court of India in ***Union of India and Others V/s. Subrata Nath 2022 Live Law (SC) 998*** in its order dated 23.11.2022 has quoted from ***Union of India and Ors. V/s P. Gunasekaran (2015) 2 SCC 610*** as reproduced below the principles which had been laid down by which the High Court or the Tribunals can call upon the Disciplinary/Appellate Authority to reconsider the penalty imposed.



*"22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/ Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary /Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."*

19. The Tribunal while agreeing with the findings recorded by the Appellate Authority in his Order of 28.07.2021 but is of the considered opinion that the Major Penalty imposed on the Applicant is undoubtedly disproportionate to the established charge of serious negligence at work and its continuation thus would shock the conscience of Tribunal. The order of the Disciplinary Authority dated 20.05.2000 and Appellate Authority order dated 28.07.2021 bringing Applicant's pay as Sr. Clerk to the lower stage of time scale for 3 years without effect on his Annual Increment therefore, deserves to be quashed and set aside. The Appellate Authority is directed to reconsider his decision of awarding Major Penalty and instead pass orders to impose on the Applicant any Minor Penalty under MCS (Discipline and Appeal) Rules, 1979.

### **ORDER**

- A) The Original Application is partly Allowed.
- B) The Orders of the Disciplinary Authority dated 20.05.2019 and Appellate Authority dated 28.07.2021 are quashed and

set aside and the case accordingly is remanded back to the Appellate Authority to decide on imposing any Minor Penalty under MCS (Discipline & Appeal) Rules, 1979 in consonance with his findings and pass appropriate Orders within 3 months.

C) No order as to costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 25.08.2023  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_