

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.797 OF 2020

**DISTRICT: PUNE
SUBJECT: STOPPAGE OF
INCREMENTS**

Smt. Rekha Vijaysing Solankhe,)
Age – 43 years, Working Deputy Collector,)
Land Acquisition No.2, Satara, Permanently Residing)
at Naadbramha Society, Warje, Pune.)... **Applicant**

Versus

- 1) State of Maharashtra,)
Through The Principal Secretary,)
Revenue and Forest Department)
Mantralaya, Mumbai-400 032.)
- 2) The Divisional Commissioner,)
Pune Division, Poona Club Amphi Theatre,)
Council, Bund Garden Road, Camp,)
Pune-411 001.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 10.12.2021.

JUDGMENT

1. The Applicant who is serving in the cadre of Deputy Collector has challenged the order of punishment dated 25.01.2017 passed by Respondent No.2 – Divisional Commissioner, Pune Division thereby imposing punishment of withholding three increments without cumulative effect and also challenged the order dated 07.10.2019 passed by Respondent No.1 (Appellate Authority) thereby modified punishment by imposing punishment of withholding of one increment of three years

without cumulative effect, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. While Applicant was serving as Deputy Collector/Land Acquisition Office, Sangli, she was served with charge-sheet dated 26.07.2016 under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred as 'Rules of 1979' for brevity) by Respondent No.2 - Divisional Commissioner and explanation was sought within 10 days. The charges were pertaining to repeated absenteeism as well as in-subordination and dereliction in discharging duties. The Applicant submitted her reply dated 26.09.2016 denying the charges as well as explained in detail as to how charges are incorrect and pleaded not guilty. However, Respondent No.2 - disciplinary authority by order dated 25.01.2017, imposed the punishment of withholding of three increments without cumulative effect. In appeal, punishment is modified to withholding of one increment for three years without cumulative effect. These orders are under challenge in the present O.A.

3. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned orders *inter-alia* contending that *ex-facie* the order passed by disciplinary authority is not in consonance with provisions of Rule 10 particularly, Rule 10(1)(d) and (e) of 'Rules of 1979'. She has further pointed out that as per these provisions, the disciplinary authority has to record findings of each imputation of misconduct but in present case, the disciplinary authority has not recorded any such findings of imputation and without discussing the explanation given by the Applicant, summarily imposed punishment in very casual manner. She further pointed out that the appellate authority too failed to see whether imputation are correct and simply modified the punishment without any discussion on the charges leveled against the Applicant. Learned Advocate for the Applicant further raised the issue of non consultation with M.P.S.C. by disciplinary authority as required under Rule 10 of 'Rules of 1979'.

4. Learned P.O. fairly concedes that there is no discussion or findings on each imputation leveled against the Applicant and faced with these situations and prayed for remand of the matter. As regard consultation with M.P.S.C., she submits that appellate authority while deciding appeal has taken approval of M.P.S.C.

5. In view of submission advanced at Bar, the issue posed for consideration is whether the impugned order passed by disciplinary authority is in consonance with Rule 10(1)(d) and (e) of 'Rules of 1979'.

6. At this stage, it would be apposite or reproduce Rules 10(1)(d) and (e) in its entirety for ready reference, which is as under:-

“10. Procedure for imposing minor penalties.-(1) Save as provided in sub-rule (3) of Rule 9, no order imposing on a Government servant any of the minor penalties shall be made except after.-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

(b) holding an inquiry in the manner laid down in Rule 8, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary.

(c) taking into consideration the representation, if any, submitted by the Government servant under Clause (a) of this rule and the record of inquiry, if any, held under Clause (b) of this rule:

(d) recording a finding on each imputation of misconduct or misbehavior: and

(e) consulting the Commission, where such consultation is necessary.”

7. Thus, the reading of above provision, it is manifest that even if for imposing minor penalties, the disciplinary authority is under obligation to record findings on each imputation and misconduct after taking into consideration the representation submitted by the Government servant

and is also required to consult M.P.S.C., whether such consultation is necessary.

8. Reverting back to the charge-sheet (Pg.14 to 16 P.B.), there are 9 charges leveled against the Applicant for repeated absenteeism on various dates, non-payment of some compensation to the Trust Shri Adishta Vihalai, Gram Mandir thereby causing harassment to Trust, disobedience of the direction issued by superior for disbursing compensation of Land Acquisition.

9. The Applicant has submitted detail Reply (Pg.17 to 31 of P.B.) thereby explaining how the charges are incorrect and not maintainable. As regard unauthorized absence on 22.01.2016, 17.02.2016, 18.02.2016 and 05.03.2016, she has categorically stated in her Reply that she was very much present in Sangli Office. As regard, absence on 17.09.2016, she stated that she was on leave. As regard, absence from 03.01.2013 to 01.07.2013 from 02.07.2013 to 08.09.2013 which is one of the charge, she stated that leave was already granted to her, and therefore, the question of allegation of unauthorized absence does not survive. As regard absence from 03.02.2015 to 30.04.2015, 05.05.2015 to 30.05.2015 and 01.06.2015 to 12.06.2015 as alleged, she stated that she was on maternity leave. As regard, charges of delay in payment of compensation to Trust, she stated that it is pending since 1999 and there was some over-payment as noticed in Audit Report and that was required to be recovered before the payment to the Trust. She further denied to have disobeyed the orders of superior. This is the sum and substance of the Reply filed by the Applicant.

10. Needles to mention, in view of Reply submitted by the Applicant, it was incumbent on the part of disciplinary authority to consider the representation on its merit verifying Office record and record findings on each imputation. However, surprisingly, the disciplinary authority passed the order holding the Applicant guilty stating that the Applicant

has not produced sufficient evidence to rebut charges. All that, the discussion about the findings is in Para No.4, which is as under:-

“४. सदर ज्ञापनास श्रीमती रेखा सोळंके यांनी दिनांक ०२/१२/२०१६ रोजी अभिवेदन दिले आहे, तथापी सदर खुलाशाचे अवलोकन केले असता दोषारोपांशी संबंधित अभिवेदन केलेले नाही, अगर दोषारोप फेटाळणेइतपत सबक पुरावे सादर केले नाहीत. उलट दोषारोपाशी विसंगत खुलासा व असंबंधपणे वरीष्ठ अधिकारी यांचेवर आरोप केले आहेत. सबब श्रीमती रेखा सोळंके याचा खुलासा अमान्य करून मी एस. चोक्कलिंगम् विभागीय आयुक्त तथा शिस्तभंग प्राधिकारी खालील प्रमाणे आदेश करीत आहे.”

11. As stated above, it was obligatory on the part of disciplinary authority to consider each imputation in the light of representation made by the Applicant by verifying Office record, but he did not apply mind and in the one-go, imposed the punishment which is in blatant violation of Section 10 Rule 10(d) of 'Rules of 1979'. Suffice to say, non-application of mind is obvious. Apart the disciplinary authority did not consult M.P.S.C. as provided under Rule 10 of 1(e) of 'Rules of 1979'. There is nothing in the order passed by disciplinary authority to show as to why consultation with M.P.S.C. was dispensed with. Surprisingly, it is appellate authority who consulted M.P.S.C.

12. Appellate authority too did not took any pain to find out whether the charges leveled against the Applicant are proved and findings is recorded by the disciplinary authority as mandated by 'Rules of 1979'. The appellate authority simply modified the punishment without hearing appeal on merit.

13. Suffice to say, there is absolutely no discussion on the merit of the charges muchless reasons. The impugned punishment order of disciplinary authority as well as appellate authority suffers from material illegalities and liable to be quashed.

14. Though, learned Advocate for the Applicant opposed remanding the matter to disciplinary authority, in my considered opinion, there

being no decision on merit with findings on each imputation of misconduct, matter needs to be remitted to disciplinary authority to pass the order afresh, even if the alleged misconduct is of 2013 to 2016, so that there is no miscarriage of justice and rule of law & discipline should prevail. The submission advanced by learned Advocate for the Applicant that the Applicant has already suffered for 5 years and remanding to disciplinary authority would amount to punishment is totally unpalatable and rejected.

15. The totality of the aforesaid discussion leads me to sum-up, impugned order of punishment passed by disciplinary authority and appellate authority are totally unsustainable in law and matter needs to be remitted to disciplinary authority to consider the representation of the Applicant and shall decide the matter on its own merit in observance with Rules 10 of 'Rules of 1979'. Hence, the following order.

ORDER

- a) The Original Application is allowed partly.
- b) The impugned order dated 25.01.2017 and 07.10.2019 are quashed and set aside.
- c) Matter is remanded back to the disciplinary authority, so as to decide it afresh in observance of the provision of Rules 10 of 'Rules of 1979' within one month from today without fail.
- d) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 10.12.2021
Dictation taken by: N.M. Naik.