

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
ORIGINAL APPLICATION NO. 1015 OF 2015**

DISTRICT :NASHIK

Shri Dada Namdeo Ghoderao (Talathi))
R/o Shubham Park, Bldg. No.8,)
Flat No.2, Uttam Nagar,)
Navi Nasik)...Applicant

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai 21)

2. The Sub-Divisional Officer Niphad,)
In the office of the Sub-Division,)
Niphad, Dist. Nasik)

3. The Divisional Commissioner,)
Nasik, Nasik Division,)
Nasik.)...Respondents

Shri R.M. Kolge, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : **Justice Shri A.H. Joshi, Chairman**

DATE : **04.02.2016.**

ORDER

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent.

2. Heard both sides.

3. Applicant has challenged the order dated 2.7.2013 whereby Applicant is suspended and order dated 24.3.2015 by which applicant's suspension is not reviewed.

4. It is evident that Applicant's suspension is ordered under Rule 4(1) of M.C.S. (D & A) Rules 1978. Factual background is that Applicant was caught by team of Anti



Corruption Bureau while accepting money by way of bribe as a gratification towards discharge of official duty. He is also served with a charge sheet and the D.E. is pending.

5. Applicant is due to retire on 31.5.2016.

6. Applicant pleads that he is getting 50% subsistence allowance.

7. Applicant claims that in similar case a similarly placed Talathi is reinstated on certain conditions. Averments contained in O.A. are in relation to said point seen in para 6.9 of O.A. which reads as below:-

“ The Applicant states that in the same review which is undertaken by the Divisional Commissioner, Nasik in respect of the applicant, that in respect of one Shri. Manoj Kisan Navale who has been suspended who is similarly situated like the applicant though the charges leveled against him may not be in the same case but the charge sheet in the criminal case is similar to that of the Applicant. But in this case though the departmental as well as criminal cases was pending, the Sub-divisional officer, Nasik Division, Nasik review to reinstate him in a non-executive post and directed to give a posting except his home town and taluka place. Therefore, the different treatment is given to the Applicant while undertaken the review in respect of the Applicant which caste invidious discrimination in the matter of revocation of the suspension.”

(quoted from page no. 6, para 6.9 of O.A.)

8. The averment contained in paragraph no.6.9 of O.A. are replied in the affidavit in reply as follows:-

“13. With reference to para no.6.9, I say that the contentions of this para are not true & correct, hence not admitted by these respondents. It is submitted that, case of Shri Manoj Kisan Navale is quite different from the applicant. It is submitted that, there is no other case or departmental inquiry of any kind of misconduct is pending against Shri Manoj Navale like the applicant, hence the applicant is not entitled to make comparison of himself with the case of Shri Manoj Navale.”

(quoted from page nos.51 & 52 of the O.A.)

9. Perused the review committee proceedings. The Applicant's case is considered on certain points, minutes whereof are at item no.22 thereof.

10. Case of Shri Manoj Kisan Navale, the person about whom the discrimination is pleaded, it is seen at page no.27 which is item no.21 of the minutes.

11. The narration of the Applicant's case and Shri Manoj Kisan Navale is quoted for ready reference as follows:-

<p>श्री. दादा नामदेव घोडेराव (निलंबित तलाठी आहेरगांव ता. निफाड जि. नाशिक.</p> <p>पदनाम- महसूल -उप विभागीय अधिकारी निफाड भाग निफाड</p>	<p>श्री. मनोज किसन नवाळे (निलंबित) तलाठी नायगांव ता. सिन्नर जि. नाशिक</p> <p>पदनाम- महसूल उप विभागीय अधिकारी निफाड भाग निफाड</p>
<p>श्री. दादा नामदेव घोडेराव सजा आहेरगांव, मौजे पाचोरे वाणी ता. निफाड जि. नाशिक येथे कार्यरत होते. तक्रारदार श्री. प्रविण विश्वास गंवादे रा. पंचवटी जि. नाशिक यांनी, त्यांची आई सौ. कल्पना गंवादे यांचे नावे असलेली पाचोरे वणी शिवारातील शेती जमीनीची खातेफोड तक्रारदार वडील श्री. विश्वास गंवादे व कुमार प्रवण गंवादे यांचे नावे करून आणून देवून ७/९२ उतारा देणेसाठी तक्रारदार श्री. गंवादे यांच्याकडून दि.१५.०६.२०१३ रोजी पंचासमक्ष रु.४०,०००/- मागणी करून तडजोडीअंती रु. २०,०००/- रुपयांची मागणी करून ती रक्कम पंचासमक्ष स्विकारतांना त्यांना रंगेहाथ पडकण्यांत आले. त्यांचेविरुद्ध दि. १५/६/२०१३ रोजी पिंपळगांव पोलीस स्टेशनला गु.रं.न. १०/२०१३ ला.प्र.का.क.७ १३ (१) (ड) सह १३ (२) प्रमाणे दाखल होवून त्यांना अटक करणेत आली. त्यामुळे कार्यालयांचे आदेश दिनांक २/७/२०१३ अन्वये निलंबित करणेत आले आहे. त्यानुसार निफाड येथील मा. न्यायालयामध्ये स्पेशल केस नं. ०३/२०१४ न्याय प्रविष्ट आहे. श्री. घोडेराव यांचेविरुद्ध विभागीय चौकशी सुरू करणेत आली आहे.</p> <p>दिनांक २४/०३/२०१५ रोजी झालेल्या निलंबन आढावा समितीच्या बैठकीमध्ये नियुक्ती प्राधिकारी यांनी श्री. घोडेराव (निलंबित) तलाठी आहेरगांव यांचेवर लाचलुपपत प्रतिबंधक अधिनियमाअंतर्गत त्यांचेवर गुन्हा दाखल असून विभागीय चौकशी सुरू आहे. या व्यतिरिक्त कार्यालयीन कामकाजात श्री. घोडेराव हे रानवड ता. निफाड या सजेवर कार्यरत असतांना त्यांनी वारस फेरफार नोंद मंजूर नसतांना देखील दुस-या इसमांची नावे टाकून ७/९२ उतारा दिला या कारणाने त्यांचेविरुद्ध विभागीय चौकशी दि.२/९/२०१३ रोजी प्रस्तावित करणेत आली आहे. त्यामुळे डी.एन. घोडेराव (निलंबित) तलाठी आहेरगांव ता. निफाड यांचे निलंबन सुरू ठेवावे असे बैठकीचे वेळी नियुक्ती प्राधिकारी उप विभागीय अधिकारी निफाड यांनी बैठकीत सांगितले. यास्तव श्री. घोडेराव यांचे निलंबन सुरू ठेवावे असा निर्णय समितीने घेतला.</p>	<p>श्री. मनोज किसन नवाळे तलाठी सजा नायगांव ता. सिन्नर जि. नाशिक येथे कार्यरत होते. तक्रारदार श्री. झानेश्वर सुर्यभान बोराडे रा. शिंदे ता. सिन्नर, जि. नाशिक यांनी मौजे ब्राम्हणवाडे शिवारातील शेत गट नं.३२४ मधील १० गुंठे शेत जमिन श्री. संजय शिंदे यांचेकडून खरेदी घेतली. खरेदीच्या कागदपत्रावरून तलाठी नायगांव यांचे ६ ड चे रेकर्डला तक्रारदार यांचे आई-वडीलांचे नांवाची नोंद करून तसा ७/९२ उतारा तक्रारदार यांना देण्यासाठी दि.१८/८/२०१३ रोजी तक्रारदार यांचेकडेस पंच साक्षीदार यांचे समक्ष रु.१५,०००/- रुपयांची लाचेची मागणी करून तडजोडीअंती रु.१३,०००/- रुपयांची लाच सिन्नर बस स्थानकाजवळील महात्मा फुले पुतळयाजवळ स्विकारतांना श्री. नवले तलाठी यांना रंगेहाथ पडकण्यांत आले. त्याबाबत सिन्नर पोलीस स्टेशन येथे गु.र. नं.१७/२०१३ ला.प्र.का.क.७ १३ (१) (ड) सह १३ (२) प्रमाणे गुन्हा दाखल करण्यांत आला. त्यांना विशेष न्यायालयाने १५ दिवसांची रिमांड मंजूरी दिली. त्यामुळे कार्यालयांचे आदेश दि.३०/८/२०१३ अन्वये दि. १५/८/२०१३ पासून निलंबित करण्यांत आले श्री. नवाळे यांना ७५ टक्के निर्वाह भत्ता अदा करणेत येत आहे. श्री. नवाळे (निलंबित) तलाठी नायगांव ता. सिन्नर यांचेविरुद्ध खटला दाखल करणेत पत्र क.आस्था/कावि/१२९/२०१४ दिनांक २९/०४/२०१४ अन्वये परवानगी देणेत आली आहे. त्यांचे विरुद्ध विभागीय चौकशी सुरू करणेत आली आहे. सदस्थितीत निलंबित कर्मचारी श्री. नवाळे यांचेविरुद्ध मे. कोर्टात दावा सुरू आहे. तसेच विभागीय चौकशीची कार्यवाही सुरू आहे. त्यामुळे त्याचा सेवा कालावधी पाहता त्यांचे निलंबन रद्द करून सेवेत पुनःस्थापित करणेत यावी असे अभिप्राय नियुक्ती प्राधिकारी यांनी नमूद केले आहेत.</p>

(extracted from column no.20 and 21 of page no.26 and 27 of the O.A.)



12. It is seen that the reasons on which Committee declined to review the Applicant's suspension are disclosed in the minutes of committee which are seen at page no.26 of paper book and the text thereof is quoted in left hand side column in foregoing paragraph no.11.

13. In the background that certain reasons are seen in the minutes, now the reasons which are offered i.e. offered for defending present O.A. are totally different from the reasons which were/are on record at page no.26 of paper book which are reproduced in foregoing paragraph no.11 for ready reference.

14. While defending the present O.A. the reliance is placed on the averments contained in paragraph no.13 of the affidavit in reply which are quoted in foregoing paragraph no.8. The underlined portion in the quotation reveals that it is a new ground or circumstance which was neither before the committee nor it was relied upon by the Committee while taking decision.

15. It is evident that the committee was oblivious to:-

- (1) The fact that there existed other reasons as to whether the Applicant's suspension should not be reviewed.
- (2) That in the same meeting, the Committee is going to consider as has considered the case of similar nature and reviewed the suspension, as has happened in case of Manoj Kisan Navale.

16. The difference of view as is seen in the case of the Applicant and in case of Shri Manoj Kisan Navale could be possible only when and only if the committee did not apply its own mind but has acted upon the reconsideration of the text contained in the office note as submitted before the Committee. Had the Applicant taken steps to summon the original record of the Committee, these facts could have become evidence. However, now calling to the said record does not appear to be necessary since the record which is produced is adequately eloquent to evidence writ large non application of mind.

17. This type of obliviousness to grounds which are now pleaded as available and obliviousness to decision of the case at Sr.No.21 in the list i.e. the case of Shri Manoj

Kisan Navale can happen only in a case where column nos. 1 to 5 of the chart are already prepared and are put up, and committee simply signs it.

18. All that is conclusive from the conduct of Respondent emerging from the averments contained in paragraph no.13 of reply is that, now the Respondent No.3 is attempting to supplant the reasons, which course is impermissible.

19. Therefore the decision of review committee deserves to be quashed and set aside being arbitrary, discriminatory and even lacking conscious and responsible application of mind by it.

20. In the result, the Review Committee ought to reconsider Applicant's case in the light of grounds on which case of Shri Manoj Kisan Navale was considered, and based on facts and record, pending misconduct allegedly committed by the Applicant, in case it is still pending for enquiry and decision.

21. The review committee is directed to reconsider the Applicant's case afresh on its own merit within two months from the date of receipt of this order.

22. Accordingly O.A. is partly allowed with costs.

Sd/-

(A.H. JOSHI, J.)
CHAIRMAN