

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 158 OF 2015

DISTRICT : SATARA

Shri Shripati Bhimrao Garad,)
Occ : Retd, R/at: Plot No. 1/2,)
Row House No. G-1/2)
Swanand Fort View, Manglai Colony)
Shahu Nagar, Godoli, Satara-1.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary)
Public Works Department,)
Mantralaya, Mumbai 400 032.)
2. The Secretary to Governor of)
Maharashtra, Raj Bhavan,)
Mumbai.)
3. The Secretary,)
General Administration Dept,)
Mantralya, Mumbai.)
4. The President / Secretary,)
M.P.S.C, Mumbai.)...**Respondents**



Shri K.R Jagdale, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 04.03.2016


PER : Shri R.B. Malik (Member) (J)

ORDER

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application unfortunately can be disposed of on a very short point and the reason why we have mentioned so will become clear as the discussion progresses.

3. This Original Application has been brought against the order of removal from service, which order was challenged in appeal, but decided as "पुनर्विलोकन" which might mean revision at the most because review lies before the same authority.



4. We have perused the record and proceedings. It is not at all necessary for us to delve into the factual aspects of the matter. It would be suffice to mention that on the allegations of misconduct involving financial impropriety a Departmental Enquiry (D.E) hereinafter came to be instituted against the Applicant. Ultimately the Disciplinary Authority vide his order dated 27.2.2008 made the order against the Applicant for removal from service forthwith. That order was carried in appeal, but it was decided as revision as already mentioned above. Although, it is a little strange that such a course of action should or could have been adopted, but the fact remains that as per the elementary tenet of law of appeals, wherein the appeal is statutorily provided or provided by the governing rules, it becomes a substantive right of the person aggrieved and for all practical purposes that is a final avenue to challenge the findings on facts also and hence the momentous significance thereof. That proceedings, therefore, is required to be heard and decided as an appeal and not as a revision or any other proceedings which by the very nature of things has constricted scope for the one that was aggrieved by the order made by the authority of the first instance. That goes to the root of the matter and we must mention quite unhesitantly that it would be illegal and it vitiates the whole process. Though remand of the matter cannot be a common place order, but the above discussion must have shown that, that is the only order that will have to be



made herein. Although, we shall lay down the outer time limit for the disposal of the appeal.

5. The order dated 28.11.2014, Exh-J, P.113 of the Paper Book stands hereby quashed and set aside. The matter stands remanded to the Appellate Authority from the stage of receipt of the order of the Disciplinary Authority above referred to. The Appellate Authority shall hear the appeal after affording an opportunity of being heard to the present applicant and dispose it of within a period of three months from today. The decision thereof shall be communicated to the Applicant within one week thereafter.

6. The Original Application is accordingly disposed of in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 04.03.2016
Dictation taken by : A.K. Nair.