

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 263 /2017 (S.B.)**

Mr. Sudhakar Pandurang Mahalkar,  
Aged about 72 years, Occ. Nil,  
Retired R/o Gurukul Nagar, near S.T. Stand,  
Ramtek, Tq. Ramtek, Dist. Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Revenue and Forest Department,  
Mantralaya, Mumbai through its Secretary-440 032.
- 2) Principal Chief Conservator of Forest,  
Head of Forest Force, Maharashtra State,  
Van Bhavan, Civil Lines, Nagpur-440 001.
- 3) Additional Principal Chief Conservator of Forest,  
Human Resources Management and Administration,  
Maharashtra State, Van Bhavan, Civil Lines,  
Nagpur-440 001.
- 4) Chief Conservator of Forest (Territorial),  
Nagpur Circle, Zero Miles, Civil Lines,  
Nagpur-440 001.
- 5) Deputy Conservator of Forest,  
Nagpur Division, Zero Miles, Civil Lines,  
Nagpur-440 001.

**Respondents.**

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**Ku. K.K. Pathak, S. A.Pathak, Advocates for the applicant.**

**Shri A.M. Khadatkar, P.O. for respondents.**

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**Coram :- Hon'ble Shri A.D. Karanjkar,  
Member (J).**

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## **JUDGMENT**

**(Delivered on this 6<sup>th</sup> day of February,2019)**

Heard Shri S.A. Pathak, learned counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant was appointed in service on 8/2/1968 as Forester and he was promoted in the year 1994 as Range Forest Officer. The charge sheet dated 14/8/1992 was served on the applicant. It was alleged that the applicant discharged his official duty negligently and due to his negligent conduct, the Forest Department sustained loss of Rs.1,87,425/-. The departmental inquiry was initiated. The Inquiry Officer submitted report dated 08/08/1996 holding that no misconduct was committed by the applicant. Thereafter, the applicant made representation vide Annex-A-6, dated 10/09/1996 as no action was taken on the report of the Inquiry Officer. Thereafter, order dated 07/10/2002 was passed and punishment was awarded by the Disciplinary Authority holding that the Disciplinary Authority disagreed with the report of the Inquiry Officer and by the order, three increments of the applicant were stopped permanently and direction was given to recover of the amount Rs. 1,87,425/- from the applicant in 36 instalments.

3. The applicant thereafter preferred departmental appeal before the respondent no.2. The various representations were made by the applicant to the government to decide the appeal, but it was in vain, thereafter on 17/11/2008 show cause notice was issued to the applicant, it was informed that the authority was of the view to modify the punishment as "25% pension of the applicant be deducted and the amount of Rs.1,87,425/- be recovered from the retiral benefits". The applicant submitted reply to the show cause notice. Thereafter there was no action. Consequently the O.A.No. 37/2010 was filed by the applicant for issuing direction to decide the appeal and accordingly direction was given to the government to decide the appeal within three months. In spite of this direction, as appeal was not decided within three months, Civil Application No.346/2011 in Contempt Petition (St.) No.1415/2011 was filed. Thereafter the appeal was decided on 04/11/2011. The applicant thereafter preferred the O.A.No.857/2014 wherein he challenged the order passed by the respondents to deduct 25% of the pension and to recover the amount of Rs. 1,87,425/- from the DCRG of the applicant. The Single Bench of MAT, Bench at Nagpur by its order dated 20/10/2015 decided the O.A. holding that as Rule 9 (2) of The Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (in short "MCS (D&A) Rules") was not complied with the punishment awarded was illegal. The learned

Single Bench issued direction the authority to comply rule 9 (2) of the MCS (D&A) Rules. Further it was directed that the matter be decided within 6 months from the date of the order and on failure the inquiry would stand closed.

4. The respondents thereafter sought time and got extension of time to decide the matter and ultimately show cause notice dated 30/07/2016 was served on the applicant under rule 9 (2) of MCS (D&A) Rules. The applicant submitted his explanation to the notice and thereafter the impugned order came to be passed by the respondents on 30/03/2017, modifying the punishment, to deduct 25% of the pension and to recover amount of Rs. 1,87,425/- from the DCRG.

5. It is mentioned in the impugned order at Annex-A-1 that as per direction issued by the MAT, Bench at Nagpur in O.A.857/2014 the matter was again proceeded and it was held that the Authority did not agree with the view of the Inquiry Officer. It is mentioned in the order that show cause notice dated 30/07/2016 was served on the applicant and he was given opportunity to submit his reply in his defence and thereafter the Disciplinary Authority passed the order.

6. In this case the substantial question is whether the disciplinary authority has discussed evidence which was before the

enquiry officer, for which it formed the view to disagree with the findings recorded by the enquiry officer. After reading Annex-A-1 it seems that it is nowhere mentioned in this order how the conclusions drawn by the Inquiry Officer were incorrect. As per the Rule 9 (2) of the MCS (D&A) Rules, the disciplinary authority when it is not inquiry officer has jurisdiction to disagree with the view of the Inquiry Officer and may record contrary findings, but it must be mentioned that the law is that even for disagreement with the findings recorded by the Inquiry Officer, there must be some cogent evidence on record for holding the delinquent responsible. Thus the legal position is that the disciplinary authority must discuss and point out what was the evidence in the inquiry which was not considered by the Inquiry Officer due to which he arrived to the wrong conclusion. It will not be proper and correct position in law to say that without assigning any sound reason, the disciplinary authority is permitted to disagree with the view of the Inquiry Officer when it is based on the evidence.

7. I have perused the inquiry report. The inquiry report is at page nos. 71 to 78 of the P.B. In the inquiry Shri R.A.Mane, RFO, Shri C.R.Raut, Forest Guard and R.V. Dhurve, Forest Guard, were examined. In the inquiry the complainant Shri Warkhede did not appear though he was called repeatedly. The learned Presenting Officer did not make any attempt to secure presence of Shri

Warkhade, ultimately on the basis of the documents and the evidence of three witnesses, the inquiry officer decided the matter. As there was absolutely no evidence, therefore, the Inquiry Officer exonerated the applicant.

8. It is observed in the report of the Inquiry Officer that as per evidence of RFO Shri R.A. Mane, it was necessary to remove the stock to Pauni Depot for the sale, because, the place where the stock was lying, was liable to be submerged in water in 1988. The Superior Officers had knowledge of this fact and later on that place was submerged in water in July, 1988 thereafter, the work to transport the wood was started. The wood stock was transported in between 29/05/1988 to 07/07/1988. This witness also accepted that as there was a mud it was difficult to drive the vehicles as wheels of the vehicles used to lock in the mud, therefore, some wood was used. This witness also admitted that the particular woods i.e. Rohana, Lendra, Garhadi, Salai, Moi, Bhera, Semal, Tendu, Dhoban, Salai, Bhavai was subject to speedy decay due to rain. On the contrary, this witness admitted that though there was a rain the applicant performed his duty properly and there was no misconduct or illegality. Similarly second witness Shri C.R. Raut and third witness Shri R.V. Dhurve have stated so. On the basis this evidence the Inquiry Officer held that there was no evidence to prove the misconduct and exonerated

the applicant. In this situation, before taking a contrary view, it was duty of the Disciplinary Authority to point out what evidence was before the Inquiry Officer which was sufficient to suggest that misconduct was committed by the applicant. It must be remembered that large quantity of wood was lying at the place which was under threat of water and natural calamity. It was responsibility of the Superiors to make necessary arrangement for the transportation of the wood stock, but it was not done. The applicant was Forester, he was not Watchman bound to perform 24 hours surveillance of the wood stock. It is not the case of the respondents that the applicant dishonestly removed the wood from that place or he permitted someone illegally to remove it. On the basis of the evidence collected in the inquiry, the Inquiry Officer has drawn the inference on the basis of the three witnesses examined in the enquiry that the loss was caused due to the natural calamity as the wood was not removed by the Forest superior officers though it was their duty to remove the wood before the commencement of the rainy season. There was no evidence before the Inquiry Officer how the applicant behaved in negligent manner.

9. As it was case of the respondents that the applicant performed his duty in negligent manner the department was bound to tender the evidence in the inquiry to establish the negligence of the

applicant. In this matter, it seems that while passing the order dated 30/03/2017 the Disciplinary Authority did not exercise power in true spirit of rule 9 (2) of MCS (D&A) Rules, but the Disciplinary Authority mechanically observed that the applicant was responsible. I have already discussed that there is no reason given in the show cause notice dated 30/07/2016 and the order impugned dated 30/03/2017 how error was committed by the Inquiry Officer, how the findings recorded by the Inquiry Officer were erroneous and were contrary to the evidence in the inquiry. No doubt the disciplinary authority had jurisdiction to take the contrary view, but as per law such view must be inconsonance with the evidence in the inquiry. As the impugned order is without any cogent reason to show how the Inquiry Officer committed error, the disciplinary authority had in fact no authority in law to disagree with the view of the Inquiry Officer. I, therefore, hold that the order impugned passed by the Inquiry Officer on 30/03/2017 is illegal, it cannot be sustained. Hence, following order :-

### **ORDER**

The impugned order dated 30/03/2017 is quashed and set aside. The respondents are directed to release the increments of the applicant which were withhold and also fix the pension of the applicant as per the law. The respondents are also directed to refund the amount recovered from the applicant in pursuance of the various



orders passed in this matter. The respondents shall comply this order within a period of four months from the date of this order. The O.A. stands disposed accordingly. No order as to costs.

**Dated** :- 06/02/2019.

**(A.D. Karanjkar)**  
**Member (J).**

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