

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.330 OF 2018**

**DISTRICT : PUNE**

Smt. Vishakha H. Kakde. )  
Working as Awal Karkun in the Office of )  
Special land Acquisition Officer No.19, )  
Having office at 3<sup>rd</sup> Floor, Old Zilla )  
Parishad Offie, Opp. Sasoon General )  
Hospital, Pune – 11 and residing at H-2, )  
Pune Vidyapeeth Teachers Quarters, )  
Pune – 7. )...**Applicant**

**Versus**

1. The Food Distribution Officer, Pune. )  
Office at Wing-A, Behind Central )  
Building, Near Pune Railway Station )  
Pune – 1. )
2. The District Collector. )  
Pune. )
3. The State of Maharashtra. )  
Through Principal Secretary )  
[Revenue], Revenue & Forest Dept., )  
Mantralaya, Mumbai – 400 032. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 09.03.2020**

## **JUDGMENT**

1. The Applicant has challenged the impugned order dated 09.09.2016 passed by Respondent No.1 (Disciplinary Authority) whereby the punishment of withholding of two increments with cumulative effect was imposed and confirmed by Appellate Authority by order dated 21.04.2017 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as follows :-

The Applicant was working as Awal Karkun on the establishment of Respondent No.1 – Food Distribution Officer, Pune. In 2016, she allegedly committed misconduct by ignoring the directions given by the Office in the matter of Aadhar Seeding [Data Entry]. The Respondent No.1, therefore, issued notice dated 03.08.2016 to the Applicant as to why her two increments with cumulative effect should not be withheld as contemplated under Rule 5(iv) of Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 (hereinafter referred to as ‘Rules of 1979’ for brevity). The Applicant submitted reply on 10.08.2016 denying the allegation of misconduct. However, the Respondent No.1 by order dated 09.09.2016 rejected her explanation and held her guilty for misconduct. Consequently, he imposed punishment of withholding of two increments with cumulative effect invoking Rule 5(iv) of ‘Rules of 1979’. The Applicant challenged it unsuccessfully by filing appeal before Respondent No.2 – Collector, Pune who rejected the appeal by order dated 21.04.2017. The Applicant has challenged these orders in the present O.A.

3. Having heard Shri A.V. Bandiwadkar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for

the Respondents, the present O.A. needs to be disposed of only on one legal issue without going into other factual aspects.

4. Shri Bandiwadekar, learned Advocate for the Applicant pointed out that the Respondent No.1 though imposed punishment of withholding two increments with cumulative effect, no regular Departmental Enquiry (D.E) was conducted as mandatory under 'Rules of 1979'. He has further pointed out that the Respondent No.1 issued only show cause notice under Rule 10 of 'Rules of 1979', as if it is minor punishment but imposed punishment of withholding two increments with cumulative effect, which requires regular D.E. being affecting pensionary benefits of the Applicant. In this behalf, he referred to Rule 10(2) of 'Rules of 1979'.

5. Shri A.J. Chogule, learned Presenting Officer fairly conceded that no proper procedure has been followed while imposing the punishment and matter be remitted back to the Disciplinary Authority for taking appropriate action in accordance to 'Rules of 1979' afresh.

6. Whereas, Shri A.V. Bandiwadekar, learned Advocate for the Applicant opposed the remand of matter on the ground that considering the alleged misconduct and the period in which it took place, the matter need not be remanded back and O.A. be allowed in totality.

7. As stated above, admittedly, only after giving show cause notice, the punishment of withholding of two increments with cumulative effect has been imposed by Respondent No.1 and the same has been confirmed by Respondent No.2 in appeal. Indeed, such punishment having effect on the pension of the employee, the Disciplinary Authority was under obligation to initiate regular D.E.

but passed the impugned orders without regular enquiry in total ignorance of basic tenets of law.

8. At this juncture, it would be apposite to reproduce Rule 10 of 'Rules of 1979', which is as follows :-

- “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 misbehaviour 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 misbehaviour; and
  - (e) consulting the Commission, where such consultation is necessary.
- (2) Notwithstanding anything contained in Clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation, if any, made by the Government servant under Clause (a) of the sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, [x x x] an inquiry shall be held in the manner laid down in sub-rules (3) to (27) of Rule 8, before making any order of imposing on the Government servant any such penalty.
- (3) The record of the proceedings in such cases shall include –
- (i) a copy of the intimation to the Government servant of the proposal to take action against him;

- (ii) a copy of the statement or imputations of misconduct or misbehaviour delivered to him;
- (iii) his representation, if any;
- (iv) the evidence produced during the inquiry;
- (v) the advice of the Commission, if any;
- (vi) the findings of each imputation of misconduct or misbehaviour; and
- (vii) the orders on the case together with the reasons therefor.”

9. Thus, Rule 10 prescribes procedure for imposing minor penalties. The penalties are classified as minor and major penalties in Rule 5 of ‘Rules of 1979’. True, withholding of increment is minor penalty. However, one needs to read Rule 5 with Rule 10(2) of ‘Rules of 1979’. Rule 10(2) starts with non-absolute Clause stating that notwithstanding anything contained in Clause (b) of sub-rule (1) where punishment is of withholding increments, which is likely to affect adversely pension of the Government servant or to withhold increment for a period exceeding three years or to withhold increments with cumulative effect of any period, then enquiry has to be conducted in the manner as laid down in sub-rule (2) to (27) of Rule 8 of ‘Rules of 1979’, which *inter-alia* provides for regular D.E. Suffice to say, where punishment is of withholding increment which have adverse effect on the pension to such Government servant, then the Disciplinary Authority is required to follow regular procedure of initiation of D.E. under Rule 8 of ‘Rules of 1979’. However, this aspect has been completely glossed over and Respondent No.1 imposed the punishment, as if it is minor punishment. The said aspect is also totally ignored by the Appellate Authority i.e. Respondent No.2 – District Collector, Pune.

10. As such, the impugned order suffers from material illegality and consequently, bad in law. The matter, therefore, deserves to be remitted back for enquiry afresh. I am not in agreement by the submission advanced by the learned Advocate for the Applicant that matter need not be remitted to the Disciplinary Authority. As the impugned orders are quashed on legal ground, it would be

appropriate that the Department should follow the correct legal procedure of law.

11. The totality of aforesaid discussion leads me to conclude that the impugned orders dated 09.09.2016 and 21.04.2017 are not at all sustainable in law and deserves to be quashed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The impugned orders dated 09.09.2016 and 21.04.2017 are quashed and set aside.
- (C) The matter is remitted back. The Respondent No.1 shall follow the procedure contemplated in Rule 10(2) of 'Rules of 1979' and entire exercise shall be completed within four months from today.
- (D) No order as to costs.

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

Mumbai  
Date : 09.03.2020  
Dictation taken by :  
S.K. Wamanse.