

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR

ORIGINAL APPLICATION NO.352/2015.

Premlal Dodkuji Tembhurkar,
Occ-Retired,
Nashik Nagar, Bhandara.

Applicant.

-Versus-

1. State of Maharashtra,
Through its Secretary,
Department of Revenue,
Mumbai-400 032.

2. The Collector,
Bhandara.

Respondents.

Shri M.L. Bhure, Advocate for the applicant.
Shri M.I. Khan, P.O. for the respondents.

CORAM: S.S. Hingne, Member (J)

Date:- 11th July, 2015.

Order

Heard Shri M.L. Bhure, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant, a retired Revenue Inspector, has filed this O.A. challenging the order dated 27.2.2015 (Annexure A-I, P.16) passed by the Collector, Bhandara alleged to be punishment.

3. The applicant while working as Revenue Inspector had faced enquiry on certain charges. The Enquiry Officer submitted the report on 19.5.2014 (P.42) holding that all the three charges are

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proved against the applicant. The applicant came to be retired on 30.4.2014. The order of superannuation is not placed on record.

4. Consequent to the Enquiry Report, the Collector, Bhandara issued a show cause notice to the applicant on 19.8.2014 (after retirement of the applicant) (Annexure A-10, P.41) to which the applicant on 28.8.2014 gave the reply (Annexure A-11, P.53).

5. The impugned order dated 27.2.2015 (Annexure A-I, P.16) is passed under Rule 5 of the M.C.S. (Discipline and Appeal) Rules, 1979 (in short Discipline and Appeal Rules) treating the period of suspension as such for all purposes. The learned counsel for the applicant ardently argued that Rule 5 of the Discipline and Appeal Rules mentions the penalties which are only of two types, minor and major. According to him, the period of treating the suspension does not fall in either of categories, as such cannot be treated as punishment. The applicant was under suspension from 9.4.2012 and suspension was revoked from 18.10.2013.

6. The learned counsel for the applicant urged that regulation of suspension period is to be done by passing separate order under Rule 72 of the M.C.S. (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as Joining Time Rules). In sum, according to him, the impugned order does not fall in the category of punishment

and or order or passed under Rule 72 of the Joining Time Rules and as such the order cannot be legal and valid.

7. The above factual aspects and legal provisions are no longer in dispute. Thus on the receipt of the Enquiry Report, recourse open to the Collector, was to pass the order of awarding punishment. The applicant had retired on 30.6.2014. That order is not produced on record, which could have been endorsed about pending enquiry and stipulation about awarding the punishment. The matter is to be decided on available record.

8. The learned P.O. submits that even after retirement of an employee, the order regarding withholding or withdrawing pension can be passed, if the pensioner is found guilty of grave misconduct or negligence during the period of his service. At this stage, it is not necessary to go into all these details as to which remedies are available to the respondents. Anyhow fact remains that the impugned order cannot be passed, taking recourse of Rule 5 of the Pension Rules, which is restricted to impose a penalty only. The proposed punishment treating the suspension period as such, does not fall in the category of penalty, as contemplated by Rule 5 of the Pension Rules. Instead of taking such recourse, the order can be passed according to law.

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9. In the light of above reasons, the impugned order cannot be said to be legal and valid and needs to be quashed. However, the Collector, Bhandara can be at liberty to pass the appropriate order on the basis of the Enquiry Report, according to law.

10. As such on quashing the order, the Collector Bhandara can proceed from the stage of receipt of Enquiry Report, to pass the order, according to law giving opportunity to the applicant. Consequently, the O.A. is disposed of in the following terms:

(i) The O.A. is allowed.

(ii) The impugned order dated 27.2.2015 (Annexure A-I, P.16) is quashed.

(iii) The respondents are at liberty to proceed with the matter from the stage of receipt of Enquiry Report and pass the order, giving opportunity to the applicant, according to law.

(iv) Since the matter is pending since long and enquiry is also completed, the order should be passed, in the light of ht above observations **within four months** from the date of receipt of this order.

(v) There shall be no order as to costs.


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(S.S.Hingne)
Member (J)