

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.376 OF 2021

DISTRICT : PUNE

Sub.:- Stoppage of Increment

Shri Amrut Malakari Natekar.)
Age : 48 Yrs, Working as Deputy Collector)
[Protocol], New Collector Office, Pune – 1)
and residing at Imperium Skygarden,)
Flat No.A-302, Balewadi, Pune – 45.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary)
[Revenue], Revenue Department,)
Mantralaya, Mumbai – 400 032.)

2. The Office of Governor of Maharashtra)
Raj Bhavan, Malbar Hill, Mumbai)
Through Secretary to Governor of)
Maharashtra, Mumbai.) **...Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Smt. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.02.2023

JUDGMENT

1. The challenge is to the order passed by disciplinary authority dated 07.08.2020 imposing punishment of withdrawing of next increment for one year without cumulative effect and the order of appellate authority dated 03.06.2021 thereby confirming the punishment.

2. In nutshell, the facts giving rise to this application are as under :-

While Applicant was serving as Deputy Collector, Land Acquisition, Solapur, he was suspended by Government on 21.07.2011 w.e.f. 08.12.2010 in view of his arrest and detention in custody for the offences under the provisions of Prevention of Corruption Act, 1988. Surprisingly, order of suspension was not served upon the Applicant, and therefore, he continued to work on the same post. He obtained the order of suspension under Right to Information Act and then filed O.A.No.665/2020 before this Tribunal which was allowed on 12.09.2011 and suspension order was quashed and set aside on the ground that Applicant was not in custody for 48 hours rendering suspension with retrospective effect illegal. It had attained finality, being not challenged before higher forum. After about 5 years, Government initiated DE by charge-sheet dated 08.01.2015 alleging that despite the receipt of suspension order, he continued to work as Deputy Collector, Land Acquisition, Solapur and did not brought it to the notice of Collector or Commissioner and thereby committed misconduct. Interestingly, Enquiry Officer exonerated the Applicant on the ground that there was no service of suspension order upon the Applicant. However, Government/disciplinary authority disagreed with the finding of Enquiry Officer and issued show cause notice dated 27.01.2020. The Applicant submitted his reply on 17.02.2020 denying the charges. However, Government by order dated 07.08.2020 imposed punishment of withholding of next increment for one year without cumulative effect on 07.08.2020. The appeal preferred against it came to be dismissed on 07.06.2021.

3. It is on the above background, the Applicant has filed the present O.A. challenging the impugned orders of punishment passed by disciplinary authority as well as appellate authority.

4. At the very outset, aghast to see that suspension order dated 21.07.2011 was not at all served upon the Applicant and consequently, he continued to work on the said post. Nobody including Secretary of the Department, Divisional Commissioner or Collector, Solapur bothered to see the service of suspension order. The perusal of suspension order reveals that it was sent to Applicant through Divisional Commissioner, Pune and copy was also marked to District Collector, Solapur. But these authorities utterly failed to serve the copy of suspension order upon the Applicant which shows casual functioning of the Departments, albeit mal-administration pointing out lack of accountability on the part of concerned. True, Applicant acquired copy of suspension order under RTI and challenged in the Tribunal by filing O.A.665/2011 which shows knowledge to him. However, fact remains when there was no service of suspension order upon the Applicant and it is for this reason, Enquiry Officer has recorded negative finding and exonerated the Applicant.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant challenged the legality of punishment order *inter-alia* contending that the order passed by disciplinary authority does not disclose a single reason for holding the Applicant guilty and no punishment could be imposed upon such unreasoned order. He has further pointed out that since suspension order was declared null and void by the Tribunal in O.A.No.665/2011 by order dated 12.09.2011, the effect of the order of Tribunal operates from nativity and in the eye of law, there was no such legal and valid suspension order. In other words, it was *non-est*, since being declared null and void. On this line of submission, he submits that even if Applicant continued to work, the suspension order being declared null and void, the charge of misconduct falls flat.

6. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer made feeble attempt to support the impugned punishment order *inter-alia* contending that since Applicant was aware of suspension, he ought to have restrained himself from continuing the work, and therefore,

charge of misconduct is amply proved. However, as regard unreasoned order passed by the disciplinary authority, she was not in a position to show how such order is maintainable in law.

7. Having heard the submissions, in my considered opinion, the impugned order of punishment is liable to be quashed solely on the ground of totally unreasoned order of disciplinary authority.

8. As stated above, the Enquiry Officer has exonerated the Applicant from the charges levelled against him. However, the disciplinary authority disagreed with the finding recorded by Enquiry Officer, and therefore, issued show cause notice on 27.01.2020 (Page No.74 of Paper Book). Notably, in show cause notice all that disciplinary authority stated that Government has taken decision to disagree with the findings recorded by Enquiry Officer on the ground that Applicant had knowledge of suspension order, and therefore, called upon the Applicant to submit his explanation within 15 days. In show cause notice in Para No.3 of disciplinary authority stated which is quite interesting, which is as under:-

“सदर चौकशी अहवालाच्या अनुषंगाने श्री. अमृत मलकारी नाटेकर, तत्कालीन उपजिल्हाधिकारी, भूसंपादन अधिकारी क्र. २ सोलापूर यांनी त्यांची इच्छा असल्यास चौकशी अहवाल, सदर चौकशी अहवाल फेटाळण्याची कारणे याबाबत त्याचे बचावाचे लेखी निवेदन १५ दिवसात शासनात सादर करावे. विहित कालावधीत निवेदन प्राप्त न झाल्यास त्यांना काहीही सांगावयाचे नाही अशी धारणा करून उक्त प्रकरणी नियमा नुसार पुढील कार्यवाही करण्यात येईल याची कृपया नोंद घ्यावी”

9. Indeed, Enquiry Officer has recorded negative finding, and therefore, question of asking the Applicant to submit explanation/reasons as to why report of Enquiry Officer should not be rejected did not arise. Indeed, in case of any such disagreement with the Enquiry Officer, the disciplinary authority is required to record its tentative reasons for not accepting the same and then to call upon the delinquent to submit his explanation. While doing so, the disciplinary authority is required to serve the copy of enquiry report as well as order of recording tentative reasons.

10. What is striking to note, on receipt of explanation submitted by the Applicant, the disciplinary authority has imposed the punishment of withholding of increment by order dated 07.08.2020 without giving reasons. In punishment order, all that disciplinary authority states that it has come to the conclusion that the charges are proved and hence, punishment of withholding of increment without cumulative effect is being imposed. The order is totally silent as to how charges could be said proved. In Para Nos.3 and 4 all that disciplinary authority recorded its *ipse-dixit* as under :-

“३. सदर प्रकरणांची वस्तुस्थिती व उपलब्ध कागदपत्र विचारात घेऊन श्री. अमृत नाटेकर, तत्का. उपजिल्हाधिकारी, भूसंपादन अधिकारी क्र.२, सोलापूर यांच्या प्रकरणी चौकशी अधिकारी यांनी ‘एकूण ३ पैकी ३ दोषारोप सिद्ध होत नाहीत’ हा नमूद केलेले निष्कर्ष फेटाळण्यात येऊन त्याबाबतच्या कारणमीमांसेसह चौकशी अहवाल श्री. नाटेकर यांना संदर्भाधीन दिनांक २७/०१/२०२० रोजीच्या ज्ञापनाव्चये बजावण्यात आला. सदर चौकशी अहवालाच्या अनुषंगाने श्री. नाटेकर यांनी दिनांक १७/०२/२०२० रोजी विभागीय आयुक्त, पुणे विभाग, पुणे यांच्यामार्फत बचावाचे निवेदन सादर केले आहे.

४. सदर प्रकरणी श्री. नाटेकर यांच्या विरुद्धचे दोषारोप, चौकशी अधिकारी यांचे निष्कर्ष, उपलब्ध कागदपत्र विचारात घेता सदर प्रकरणी श्री. नाटेकर यांनी दिनांक १७/०२/२०२० रोजी सादर केलेले निवेदन फेटाळण्यात येऊन श्री. अमृत नाटेकर, तत्का. उपजिल्हाधिकारी, भूसंपादन अधिकारी क्र.२ सोलापूर, सध्या उपजिल्हाधिकारी (राजशिष्टाचार), पुणे यांच्याविरुद्धच्या विभागीय चौकशी प्रकरणी श्री. नाटेकर यांच्याविरुद्धचे सर्व दोषारोप सिद्ध होत आहेत या निष्कर्षाप्रत शासन आले असून शासनाने पुढील शिक्षा बजावण्याचा निर्णय घेतला आहे.

“श्री. अमृत नाटेकर, तत्का. उपजिल्हाधिकारी भूसंपादन अधिकारी क्र.२, सोलापूर यांचे विरुद्ध शासन ज्ञापन दिनांक ०८/०१/२०१९ अन्वये सुरु करण्यात आलेल्या विभागीय चौकशी प्रकरणी श्री. नाटेकर यांची पुढील वेतन वाढ त्यापुढील वेतनवाढीवर परिणाम न करता १ वर्षाकरिता रोखण्यात येत आहे.”

11. Needless to mention, the basic rule of law and natural justice requires recording of reasons in support of order passed by disciplinary authority imposing punishment. The disciplinary authority is thus under obligation to record some reasons and order of punishment must be self-explanatory and should not keep higher Courts guessing for reasons. The legality or otherwise the order of punishment has to be judged on the face thereof and reasons therein cannot be supplemented by Affidavit.

12. In the present case, since Enquiry Officer has exonerated the Applicant from one charge, it was incumbent on the part of disciplinary authority to record its reasons for coming to the conclusion that the charges are proved, but order of punishment dated 07.08.2020 as reproduced above is totally silent on this material point. Astonishingly,

no reason even for name sake is mentioned in the impugned order of punishment. Suffice to say, the disciplinary authority has imposed the punishment without observance of basic principles of law. The Tribunal has come across such matters of inept handling of the matter by Government showing passing of orders in a very mechanical and cavalier manner and ultimately, benefit goes to the delinquent.

13. Shri Bandiwadekar, learned Advocate for the Applicant rightly referred to **2919(2) Mh.L.J. 693 [Manik A. Jadhav Vs. Mira-Bhayandar Municipal Corporation]** where Hon'ble High Court dealing with similar situation placing reliance on the Judgment in **2003(1) Mh.L.J 988 [Gajanan B. Patil Vs. State of Maharashtra & Ors.]** quashed the order of punishment on the ground of unreasoned order. In Para Nos.8 and 9 in **Manik Jadhav's** case, Hon'ble High Court held as under :-

“8. Secondly, Petition deserves to be allowed on the ground that the impugned order does not give any reasons. Perusal of the order would reveal that no reasons are given even for name sake. The issue is no more res integra. Division Bench of this Court in the case of Gajanan Babu Patil vs. State of Maharashtra and others, 2003 (1) Mh.L.J. has observed thus :-

8. The legal position that the disciplinary authority as also the appellate authority has to give reasoned order is always settled and has now been finally laid down by the Full Bench of this Court interpreting the provisions of Maharashtra Rules regarding conduct of departmental enquiry and proceedings. This Court has specifically laid down the manner in which the orders are to be passed. We introduced what has been laid down by the Full Bench suffice to say that the orders passed by the disciplinary authority as also the appellate authority required to be speaking order. As observed already the order of the disciplinary authority as also the appellate authority is not a speaking order and consequently they are not sustainable in law. Even if it is assumed in favour of the respondent that the disciplinary authority itself being enquiring authority and it has given an enquiry report holding the petitioner guilty, no additional reasons need be given in the order of punishment. In such a case, according to law, more responsibility lies on the earlier authority to give its finding on each point raised. The appellate court has totally failed to perform its duty. No reason has given why the appeal of the Petitioner was dismissed. No reason is given to defend the insufficiency of evidence or absence of evidence. We therefore find it impossible to sustain the orders of

punishment as passed by the authorities below. In the result therefore the petition succeeds and it is allowed.

9. *We are of the view that the impugned order deserves to be quashed and set aside on the short ground of violation of Rule 10 of the Maharashtra Civil Services [Discipline and Appeal] Rules, 1979.”*

14. Thus, the issue is no more res-integra that where disciplinary authority held the delinquent guilty without assigning any reasons, even for a name sake, such order is totally unsustainable in law. It is more so in a case, Enquiry Officer has exonerated the Applicant/delinquent and thereafter being disagree with Enquiry Officer held delinquent guilty. In absence of reason, delinquent is deprived of to know why the report of Enquiry Officer is rejected.

15. Furthermore, the perusal of punishment order dated 07.08.2020 reveals that on receipt of report of Enquiry Officer, the Government called the comments of Divisional Commissioner and the comments/remarks given by Divisional Commissioner, Pune by his letter dated 16.07.2019 seems to have been relied upon for imposing punishment. It was for disciplinary authority to examine the Enquiry Officer's report and come to the conclusion independently and decision should not be influenced by any such remark submitted by Divisional Commissioner which were called behind the back of the Applicant and the copy of which was not supplied to the Applicant. Thus, if some foreign material is considered behind the back of delinquent and punishment is imposed on that basis, it is in blatant violation of principles of natural justice and such order of punishment is liable to be quashed. The disciplinary authority can call for the comment where issue involved is complex or technical in nature. However, in the present case, it is not so. What Divisional Commissioner, Pune stated in his letter dated 16.07.2019 is in mystery. It is not placed on record.

16. The alleged misconduct is of 2010 for which punishment is imposed by order dated 07.08.2020. Therefore, no purpose would serve by remitting the matter back to the disciplinary authority to pass order afresh in accordance to law. Indeed, departmental enquiries are required to be completed maximum within one year in terms of various Government Resolutions/instructions issued from time to time. There is inordinate delay to take the matter to the logical conclusion. Hence, I am not inclined to remand the matter back.

17. The totality of aforesaid discussion leads me to conclude that the impugned order passed by disciplinary authority as well as appellate authority confirming the order of disciplinary authority are unsustainable in law and liable to be quashed. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order of punishment dated 07.08.2020 and appellate order dated 03.06.2021 are quashed and set aside.
- (C) The monetary benefits if withdrawn in terms of impugned orders be restored within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 06.02.2023

Dictation taken by :

S.K. Wamanse.

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