

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.428 OF 2019

**DISTRICT: Nashik
SUBJECT : Punishment of
stoppage of increment.**

Shri Anil Shivaji Chaudhari,)
Aged 48 yrs, Working as Junior Engineer,)
Conservator of Forest, Wild Life, Nashik,)
R/o. Kulashrinest Behind Saykhekar Hospital,)
Laxmi Nagar, Nashik-9.)... **Applicant**

Versus

- 1) The Chief Conservator of Forest,)
(Education & Training), Pune, Having Office at)
Van Bhavan, Gokhale Nagar, Pune-16.)
- 2) The Principal Chief Conservator of Forest,)
(Chief of Forest Force),(M.S.), Having Office at)
Van Bhavan, Civil Lines, Nagpur-1.)
- 3) The State of Maharashtra,)
Through Principal Secretary,)
Revenue and Forest Department (Forest),)
Having office at Mantralaya, Mumbai-32.)...**Respondents**

Shri Arvind V. Bandiwadekar, the Applicant in person.

Smt. Archana B. K., learned Presenting Officer for the Respondent.

CORAM : A.P. Kurhekar, Member (J)

DATE : 15.03.2023.

ORDER

1. The Applicant has challenged the order passed by the Disciplinary Authority on 09.06.2017 whereby he was held guilty for loss caused to the Government to the tune of Rs.12,10,000/- and it was directed to be recovered in monthly installments of Rs.10,000/- from his salary and in

addition to it, next increment was withheld for three years without cumulative effect. The Appellate Authority confirmed the punishment imposed by the Disciplinary Authority on 20.11.2018. The Applicant has challenged both the orders in the present O.A.

2. While the Applicant was serving as Junior Engineer, Forest Training Institute, Shahapur, he was subjected to D.E. under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Enquiry Officer was appointed before whom the department has examined 12 witnesses. The Applicant participated in the enquiry and cross-examined the witnesses. He denied the charges levelled against him. The Enquiry Officer however, recorded the findings holding him guilty.

3. The Disciplinary Authority/Respondent No.1 by his letter dated 15.04.2017 supplied the copy of enquiry report to the Applicant directing him to submit his reply within 15 days. The Applicant however by his letter dated 24.04.2017 requested for 15 days more time to submit his reply. The Respondent No.1 by letter dated 05.05.2017 granted 7 days time from the date of receipt of the letter for submission of his reply. Accordingly, the Applicant submitted his representation/reply on 18.05.2017. However, the Respondent No.1 in impugned order of punishment stated that the Applicant has not submitted his representation within time given to him and proceeded to pass the order of punishment.

4. During the course of hearing, learned Counsel for the Applicant sought to assail the order of Disciplinary Authority as well as Appellate Authority *inter-alia* contending that the orders are totally unreasoned and, on that ground, alone the Original Application deserves to be allowed. He has further pointed out that the Applicant has submitted his representation/reply on the Enquiry Officer's report well within extended time of 7 days but it was not forwarded by the office of Conservator of Forest, Wild Life, Nashik where he was working at the relevant time since he was to submit the reply through Conservator of

Forest, Wild Life, Nashik to Chief Conservator of Forest, (Education and Training), Pune (Disciplinary Authority). He, therefore, submits that impugned order passed by the Disciplinary Authority and maintained by Appellate Authority being in violation of principle of natural justice are required to be quashed and set aside. In this behalf, he referred to the decision of **2019(2) Mh.L.J.693 (Manik Jadhav V/s Mira-Bhayandar Municipal Corporation).**

5. Per contra, Smt. Archana B. K., learned Presenting Officer sought to contend that the Applicant did not submit representation to the Enquiry Officer within extended time of 7 days and, therefore, the Disciplinary Authority had no other option except to proceed with the matter finally. However, when specific query has been raised to the learned P.O.as to when the letter dated 05.05.2007 granting extension to submit explanation by the Disciplinary Authority was served upon the Applicant, she was unable to specify the date as to on which it was actually served to the Applicant. As regard absence of recording of reasons and evidence by the Disciplinary Authority, she concedes that no such reasons are recorded by the Disciplinary Authority and requested to remand the matter considering gravity of charges levelled against the Applicant.

6. The perusal of order passed by the Disciplinary Authority dated 09.06.2017 reveals that the Disciplinary Authority simply reproduced the charges, findings of Enquiry Officer and then proceeded to imposed punishment. There is absolutely no discussion about evidence of witnesses examined by the Enquiry Officer, defence of delinquent and satisfaction of the Disciplinary Authority. In this behalf, Para Nos.4 and 5 of the order needs to be reproduced which is as under :-

"४. श्री. अनिल शिवाजी चौधरी, तत्का. कनिष्ठ अभियंता, वन प्रशिक्षण संस्था, शहापूर यांच्या चौकशी अहवालात चौकशी अधिकारी यांनी दोषारोपनिहाय निर्णयाच्या मुद्दयावर काढण्यांत आलेल्या निष्कर्षांचे आधारे, आता श्री.अनिल शिवाजी चौधरी, तत्का.कनिष्ठ अभियंता, वन प्रशिक्षण संस्था, शहापूर यांचेवरील दोषारोपावर खालीलप्रमाणे अंतीम निष्कर्ष नोंदविण्यात आलेले आहे.

१. दोषारोप क्रमांक १ - दोषारोप सिध्द होता -दोषी
२. दोषारोप क्रमांक २-दोषारोप सिध्द होतो-दोषी
३. दोषारोप क्रमांक ३-दोषारोप सिध्द होता - दोषी

५. श्री. अनिल शिवाजी चौधरी, तत्का.कनिष्ठ अभियंता, वन प्रशिक्षण संस्था, शहापूर यांना शिक्षेचे अंतीम आदेश निर्गमित करण्यापुर्वी शासन, सामान्य प्रशासन विभाग, परिपत्रक क्रमांक-सीडीआर-१०९१/सीआस-६७/९१/अकरा, दिनांक २८.०७.१९९२ मधील तरतुदीनुसार प्रकरणी चौकशी अहवालाची प्रत संदर्भिय पत्र क्रमांक ६ अन्वये प्रकरणाची पार्श्वभुमी व चौकशीत सिध्द झालेले आरोप विचारात घेता श्री.अनिल शिवाजी चौधरी, तत्का.कनिष्ठ अभियंता, वन प्रशिक्षण संस्था, शहापूर यांनी त्यांचा खुलासा १५ दिवसांचे आत सादर करणेबाबत कळविले होते. त्याअनुषंगाने श्री. अनिल शिवाजी चौधरी, तत्का.कनिष्ठ अभियंता यांनी त्यांचेकडील निवेदन दिनांक २४.४.२०१७ अन्वये सादर करून १५ दिवसांची जास्तीची मुदतवाढ मिळण्याची विनंती केली आहे. त्याअनुषंगाने या कार्यालयाचे संदर्भिय पत्र क्रमांक ६ अन्वये एक आठवड्याची मुदतवाढ मंजूर करण्यात आली आहे. श्री.अनिल शिवाजी चौधरी, तत्का.कनिष्ठ अभियंता, वन प्रशिक्षण संस्था, शहापूर यांनी दोषारोप अमान्य केलेले आहेत तसेच जादाची मुदत वाढ देवूनही त्यांचे निवेदन प्राप्त झाले नाही, अथवा चौकशी अहवालाच्या अनुषंगाने कोणतीही अतिरिक्त माहिती अथवा सबळ पुरावे सादर केलेले नाहीत. म्हणून निम्न स्वाक्षरीकर्ते हे महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ मधील नियम ६ नुसार शिस्तभंग विषयक प्राधिकारी ह्या प्राधिकारात विभागीय चौकशी अधिकारी यांनी सादर केलेल्या अंतिम चौकशी अहवालाचे अनुषंगाने नियम ५ अन्वये प्रदान केलेल्या प्राधिकारात खालीलप्रमाणे आदेश निर्गमित करित आहेत. ”

7. It is thus explicit that the Disciplinary Authority did not bother to deal with the evidence, defence of the delinquent nor even recorded his conclusion and simply accepted the report of Enquiry Officer. As such, the order passed by the Disciplinary Authority is totally unreasoned and cryptic.

8. 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 and cannot be supplemented by Affidavit.

9. Shri Bandiwadekar, learned Advocate for the Applicant rightly referred to **2019(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."

10. 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. In absence of reason, delinquent is deprived of to know on what basis Disciplinary Authority arrived at the conclusion.

11. That apart, the Disciplinary Authority failed to consider the defence/representation made by the Applicant offering his comment/remark on the report of Enquiry Officer. There is nothing to establish that the Applicant has not submitted reply to the show cause notice within extended time of 7 days. As stated above, the show cause notice was issued to him on 15.04.2017. The Applicant made request for extension of 15 days' time by his letter dated 24.04.2017. The Disciplinary Authority by letter dated 05.05.2017 granted 7 days' time with specific statement that it be submitted within 7 days from the date of receipt of letter dated 05.05.2017. The perusal of record reveals that the Applicant has submitted his explanation/representation on 18.05.2017 in the office of Conservator of Forest, Wild Life, Nashik. However, the said office kept his representation for long time and forwarded it to the Disciplinary Authority quite belatedly on 08.06.2017 as evident from letter of Disciplinary Authority dated 16.06.2017. The Disciplinary Authority, therefore, simply closed and filed the representation submitted by the Applicant. Indeed, the Conservator of Forest, Wild Life, Nashik was under obligation to forward the representation made by the Applicant immediately to the Disciplinary Authority for its consideration. However, it failed to do so. Resultantly, the Applicant's representation / defence was not considered by the Disciplinary Authority and it proceeded to impose punishment straightway. This amounts to denial of fair and reasonable opportunity.

12. In this view of the matter, the Tribunal has no other option except to quash and set aside the order passed by the Disciplinary Authority as well as Appellate Authority and to remand the matter to Disciplinary Authority/ Respondent No.1 to pass the order afresh with appropriate reasoning taking into consideration the representation/reply given by the Applicant on 18.05.2017.

13. In terms of order passed by the Disciplinary Authority dated 09.06.2017, Rs.10,000/- per month from the salary of the Applicant is being deducted towards loss to the Government by way of punishment.

In view of remand of matter to the Disciplinary Authority now there shall be no recovery from monthly installments till passing of order afresh by the Disciplinary Authority and further recovery be kept in abeyance.

14. The totally of the aforesaid discussion leads me to sum up that the Original Application deserves to be allowed partly and the matter needs to be remitted back to Respondent No.1 to pass order afresh. Hence, the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) Impugned order dated 09.06.2017 and 20.11.2018 are quashed and set aside.
- (C) The matter is remitted back to the Respondent No.1 - Chief Conservator of Forest (Education & Training), Pune for decision in D.E. afresh with appropriate reasons on consideration of reply dated 18.05.2017 submitted by the Applicant and order be passed within three months from today.
- (D) The decision as the case may be, shall be communicated to the Applicant. If the Applicant felt aggrieved by the decision, he may avail further legal remedy.
- (E) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 15.03.2023

Dictation taken by: Vaishali Santosh Mane