

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO 452 OF 2005**

**DISTRICT : AMRAVATI**

Shri Shivaji Laxman Waghmare        )  
R/o: Dabaka, Tal-Dharni,                )  
Dist-Amravati.                            )**...Applicant**

**Versus**

1.    The Commissioner,                )  
      Department of Tribal             )  
      Development, Trimbak Road,    )  
      Nasik.                             )  
2.    The Addl. Commissioner,        )  
      Tribal Development, Amravati. )  
3.    The Project Officer,             )  
      Integrated Tribal Development )  
      Project, Dharni,                 )  
      Dist-Amravati.                 )  
4.    The Secretary,                 )  
      Tribal Development Department)  
      Mantralaya, Mumbai – 32.     )**...Respondents**

Shri Y.P.Kaslikar, learned advocate for the Applicant.  
Smt. S.V.Kolhe, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)**  
**Shri J.D Kulkarni (Vice-Chairman) (J)**

**DATE : 07.07.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

### **ORDER**

1. Heard Shri Y.P.Kaslikar, the learned Advocate for the Applicant and Smt. S.V.Kolhe, the learned P.O. for the Respondents.

2. This O.A. has been filed by the Applicant challenging the order of dismissal from service passed by the Respondent no. 2 on 21.09.2002 and the order in appeal by passed by the Respondent no. 1 on 13.12.2004. The Applicant has also challenged the order in the Revision Petition filed in this matter, though the date of the order is not mentioned.

3. Learned counsel for the Applicant argued that the Applicant was not allowed to cross – examine the witnesses during the Departmental Enquiry. After the

enquiry was completed, the report of the Enquiry Officer was not made available to the Applicant. As such, the procedure prescribed for holding a Departmental Enquiry under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules was not followed and the Departmental Enquiry is vitiated due to this.

4. Learned Presenting officer (P.O.) argued on behalf of the Respondents that this Tribunal by order dated 11.12.2015 has directed the Respondents to file an affidavit clarifying these issues. Accordingly, the Respondent no. 3 has filed an additional affidavit on 01.03.2016. A copy of Enquiry Report submitted by the Enquiry Officer is annexed as Annexure R-3-1. Learned Presenting Officer argued that in the Enquiry Report dated 28.02.2002, it is noted by the Enquiry Officer in part (d) that statements of three witnesses, viz. Shri A.B.Sakhare, Smt. G.B.Kate and Smt. N.D.Wadwale were recorded and copies of the same were made available to the Applicant. The Applicant did not want to cross-examine the witnesses.

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l anHkkz mRrj rikl .kh djko; kpsvkgsvl sfopkjysvl rk vi pkjh Jh , l -  
, y- ok?kekjs ; kauh ys[kh c; kukP; k l anHkkz mRrj rikl .kh ?; ko; kph ukgh  
vl sl kfixrys\*\*

The contention of the Applicant that he was not given opportunity to cross-examine the witnesses is not true.

5. Learned P.O. further argued that the claim of the Applicant that he was not given copy of the Enquiry Report is false. In fact, a show cause notice was given to him on 30.05.2002 along with the copy of the Enquiry Report. The Applicant has explanation on 17.06.2002 and after considering his reply, the impugned order dated 21.09.2002 was passed. Learned P.O. stated that the Applicant was given full opportunity to defend himself and there was no procedural irregularities in conducting Departmental Enquiry against him. Considering the nature of charges proved against him, the punishment of removal from service was just and proper.

6. We find that the Applicant was placed under suspension by order dated 07.02.2000. A Departmental Enquiry was started against him by Memorandum dated 17.01.2001. The Enquiry Officer viz. Project Officer, Integrated Tribal Development project, Akola submitted his report on 28.02.2002. Copy of the Enquiry Report is placed on record. In part A (d) it is mentioned that nine witnesses were called by the Enquiry Officer. However, only three were present and their written statements were recorded. It is mentioned in the Enquiry Report that copies of the statements of the three witnesses were given

to the Applicant, who did not want to cross examine them. In para 6.4 of the O.A., the Applicant has admitted that statement of 3 witnesses including that of Smt. Wadwale were recorded. The Applicant has stated that :-

“The Applicant further submit that approach of Enquiry Officer, can be seen that, out of 9 witnesses who were to be called in the Departmental Enquiry, the Enquiry Officer, recorded the statements of only 3 witnesses which include statement of Smt. Wadwale, at whose instance all this sort or Enquiry Officer, did not call upon the other witnesses and even did not recorded any statement intentionally.”

7. The applicant is making a grievance that other witnesses were not examined. However, there is no whisper as to how the statements of the witnesses not called, would have corroborated his case. The Applicant always had the option to call them as defense witnesses. However, there was no such attempt by the Applicant nor does he make any such claim in the O.A. The Applicant has enclosed copies of statements of three students (Annexure H, I & J) to the effect that they were forced to sign the complaint against the Applicant. However, the Applicant could have produced them before the Enquiry Officer as defense witnesses. Such statement not recorded before the Enquiry Officer have no relevance in the present proceedings. The Applicant has not claimed that he was denied opportunity to cross-examine the Government witnesses.

8. The Applicant in para no. 6.5 of O.A. has claimed that he was not supplied the copy of the Enquiry Report. However, he admits that he was given a show cause notice dated 30.5.2002 asking him to show cause as to why he should not be removed from service.

"That, the Applicant further submit that, even he was not supplied with any copy of Enquiry Report submitted by the Enquiry Officer, to the Disciplinary Authority in the matter of Departmental Enquiry, submits that, this action of the Respondents also seems to be intentional and only in the show-cause notice dated 30.05.2002, the Applicant was informed that, in the Enquiry Report charges were proved against the applicant and reply is sought from the Applicant as to why he should not be removed from the services."

It is seen that the Respondent no. 3 in his affidavit dated 01.03.2016 has stated that:-

"10. It is submitted that on receipt of Enquiry Report, the answering Respondent has issued notice to the Applicant along with Enquiry Report which is duly served upon the Applicant on 30.05.2002."

From the reply of the Applicant dated 17.06.2002, it is clear that the Applicant was fully aware of the contents of the Enquiry Report. He was aware that all the nine witnesses call were not called. He was given of the copies of statements of three witnesses, recorded by the Enquiry Officer. The Enquiry Report does not mention any documentary evidence. The Report is based exclusively

on evidence of three witnesses recorded by the Enquiry Officer, copies of which were made available to the Applicant. The Report discusses charges in the light of the evidence of the witnesses and conclusion that all charge were proved. Show cause notice dated 30.05.2002 also contains all these details. The Respondent no. 3 affirms that a copy of Enquiry Report was given to the Applicant along with show cause notice dated 30.05.2002. The Applicant denies the fact of receipt of the Enquiry Report. However on perusal of his reply dated 17.06.2002, it does appear that the Applicant was aware of the contents of the Enquiry Report and has submitted his defense accordingly. It cannot be said that the procedure for holding D.E was vitiated.

9. On perusal of the Enquiry Report, it is clear that the Enquiry Officer has relied on the evidence of three witness viz. Shri A.B. Sakhare, Head Master, Middle School, Smt. N.D. Wadawale, Assistant Teacher and Smt. J.B. Bhate, Woman Superintendent. All three had deposed to the effect that the Applicant was guilty of all the four charges contained in the charge-sheet. As the applicant did not want to cross-examine them, the Enquiry Officer has concluded his Report that all the four charges were proved against the Applicant based on the evidence of these witnesses. We find that is not a case of perverse finding as there was evidence against the Applicant. We have concluded that the Departmental

Enquiry against the Applicant not conducted in substantial violation of any procedural aspect. Considering the nature of charges, the punishment of removal from service was cannot be termed excessive or disproportionate.

10. The Applicant preferred an appeal before the Respondent no. 2 on 24.10.2013 and after hearing both the sides, the appeal was dismissed by order dated 23.12.2004. The Revision Application before the Respondent no. 2 was also rejected.

11. We do not find it to be a fit case requiring our interference. Accordingly, this O.A. is dismissed with no order as to costs.

**(J.D Kulkarni)**  
**Vice-Chairman (J)**

**(Rajiv Agarwal)**  
**Vice-Chairman (A)**

**Place : Nagpur**  
**Date : 07.07.2017**  
**Dictation taken by : A.P Srivastav.**