

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****MUMBAI BENCH AT NAGPUR****ORIGINAL APPLICATION NO. 541/2008****DIST.: BULDHANA**

Shri Patan Shimon Paul,  
 Aged- Adult, Occu- Retired Govt. Service  
 As District Fisheries Development Officer,  
 Akola, Dist. Akola.  
 R/o : Shankar Nagar, Khamgaon,  
 Dist. Buldhana-444303

**-- APPLICANT****VERSUS**

1. The State of Maharashtra,  
 Through the Principal Secretary,  
 Agriculture, Animal Husbandry,  
 Dairy Development and Fisheries Department,  
 Mantralaya, Mumbai-400 032.
2. The Commissioner of Fisheries,  
 Maharashtra State,  
 Netaji Subhash Marg, Charni Road,  
 Mumbai-400 002.

**-- RESPONDENTS**

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**APPEARANCE** : Shri S.N. Gaikwad, learned Advocate for  
 the Applicant.

: Shri A.M. Ghogre, learned Presenting  
 Officer for Respondents.

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**CORAM** : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)  
 AND  
 HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

**PER** : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)  
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**J U D G M E N T**

13th Feb  
 (Delivered on this <sup>13th Feb</sup> day of January, 2017.)

1. The applicant Shri Patan Shimon Paul, was working as District Fisheries Development Officer (DFDO) Class-II and vide order dated 22.04.2003, the Respondent No. 1 was pleased to take departmental action against the Applicant and following order has been passed in the said Departmental Enquiry:-

**“आदेश**

आदेश श्री पी.एस. पॉल, जिल्हा मत्स्यव्यवसाय विकास अधिकारी, बुलढाणा सेवा निवृत्त झाले असल्यामुळे त्यांचे बाबत म.ना.से. (निवृत्ती वेतन) नियम १९८२ च्या नियम २७(१) मधील तरतूदीनुसार त्यांच्या निवृत्ती वेतनातून रुपये २००/- (रुपये दोनशे फक्त) कायम स्वरूपी काढून घेण्यात येत आहेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,”

2. Being aggrieved by the order dated 22.04.2003, the Applicant preferred an appeal before the competent authority. However, the competent authority was pleased to reject the applicant's appeal and passed following operative order on 21.02.2008:-

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## “आदेश

श्री पी.एस. पॉल, सेवानिवृत्त जिल्हा मत्स्यव्यवसाय विकास अधिकारी, बुलढाणा यांनी मा. राज्यपाल यांच्याकडे केलेले अपील फेटाळण्यात येत आहेत. श्री. पी.एस. पॉल सेवानिवृत्त झाले असल्याने म.ना.से. (निवृत्ती वेतन) नियम १९८२ च्या नियम २७(१) मधील तरतूदीनुसार त्यांच्या निवृत्ती वेतनातून रूपये २००/- (रूपये दोनशे फक्त) कायम स्वरूपी काढून घेण्याची शासन निर्णय दि. २२ एप्रिल, २००३ अन्वये दिलेली शिक्षा कायम करण्यात येत आहे.”


3. Being aggrieved by both these orders, the Applicant has preferred this Original Application. The applicant has claimed that the impugned orders dated 22.4.2003 and 21.02.2008 passed by the respondent no. 1 be quashed and set aside and hence, this Original Application.

4. From the admitted facts on record, it seems that the applicant was appointed as Assistant Superintendent of Fisheries-Class III on 1.8.1986 and in the year 1991, he was promoted as District Fisheries Development Officer (DFDO) Class-II. On 13.12.1994, the Departmental Enquiry was initiated against the applicant for his alleged misconduct during the period from 25.10.1991 to 31.12.1993. The Applicant replied to the charges and Enquiry Officer

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submitted his report on 30.03.1999 holding that the charge nos. 2, 3 & 4 were not proved and charge nos. 1, 5 & 6 were partly proved. On the basis of said report, the Commissioner of Fisheries i.e. respondent no. 2 issued show cause notices to the Applicant on 27.09.1999 and 03.06.2000 and called upon the Applicant to submit his say. The applicant replied to the said first show cause notice on 4.11.1999 and on 19.04.2002 to the second show cause notice. Without considering the reply, the impugned order dated 22.04.2003 was passed. The appellate authority also did not consider the Applicant's submission and passed the impugned order dated 21.02.2008.

5. According to the Applicant, the respondents failed to appreciate facts and circumstances and provisions of law applicable in the present case. The Applicant got retired from the Government service on 28.02.2002 and thereafter, the punishment has been inflicted upon him by invoking Rule 27 (1) of the Maharashtra Civil Service (Pension) Rules, 1982 and the said powers beyond the jurisdiction of the respondents and the retired Government employee can be

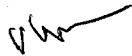


punished only on grave charges and therefore, no action should have been taken against the Applicant.

6. According to the Applicant, the Enquiry Officer found some charges totally disproved but the competent authority has held that all the charges were proved and no reasonable opportunity was given to the Applicant. The Enquiry Officer ought to have considered that the action against the Applicant was with mala-fide intention and no charges have been proved against the Applicant. The enquiry suffers from bias.

7. The Respondents tried to justify the order passed by the competent authorities. It is stated that the punishment of withdrawal of Rs. 200/- per month from the pension was imposed upon the Applicant under Rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982. Full opportunity was given to the Applicant.

8. We have heard Shri S.N. Gaikwad, learned Advocate for the Applicant and Shri A.M. Ghogre, learned



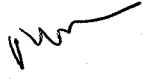
Presenting Officer for the Respondents. We have also perused the affidavit, affidavit in reply, citations and various documents placed by the respective parties.

9. The only material point to be considered in this case is whether the impugned order of punishment passed by the respondent no. 1 dated 22.04.2003 and which was confirmed by the appellate authority on 21.02.2008 is legal and proper?

10. The learned Advocate for the Applicant invited our attention to the enquiry report submitted by the Enquiry Officer. The said report is at paper book page nos. 46 to 57. From the said report, it seems that the Enquiry Officer found that the charge nos. 1, 5 & 6 were partially proved; whereas the charge nos. 2, 3 & 4 were not proved. The enquiry report is dated 30.03.1999. The charges against the Applicant are as under:-

“ प्रजननक्षम मासळीची मरतूक बाबत

बाब क्रमांक १ :-



उक्त श्री. पी.एस. पॉल, हे जिल्हा मत्स्यव्यवसाय विकास अधिकारी, बुलढाणा या पदावर दि. २५.१०.९१ पासून कार्यरत असतांना मत्स्यबीज केंद्र, कोराडी प्रजनन हंगामात ५८१ किलो परिपक्व प्रजननक्षम मासे संप्रेरकामुळे व ५९० किलो मासे केंद्रापर्यंत केलेल्या वाहतुकीमध्ये असा एकूण ११७१ किलो प्रजननक्षम माशांची मरतूक झाली आहे. सदरहू मरतूक श्री. पी.एस. पॉल यांचे निष्काळजीपणामुळे झाली आहे म्हणून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३(१)(दोन) व ३(१) (तीन) चा भंग केला आहे.

#### मत्स्यखादय खरेदीबाबत

##### बाब क्रमांक २ :-

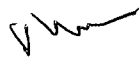
उक्त श्री. पी.एस. पॉल यांनी कोराडी मत्स्यबीज निर्मिती केंद्राकरिता मत्स्यखादय केंद्राचे जवळील मेहकर बाजार पेठेतून खरेदी न करता त्यांनी दूरच्या खामगांव बाजारपेठेतून खरेदी केले आहे. त्यामुळे वाहतूक खर्च जास्तीचा झाला आहे. सदर खरेदीकरिता

- १) निविदा मागणीपत्र काढले नाही.
- २) निविदाचा तुलनात्मक तक्ता बनविला नाही.
- ३) मत्स्यखादय मागणीपत्र पुरवठादारास दिले नाही. म्हणून त्यांनी मत्स्यखादय खरेदी कार्यवाहीत निष्काळजीपणा करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३(१)(दोन) व ३(१) (तीन) चा भंग केला आहे.

#### कार्यालयीन वाहन दुरुस्तीबाबत

##### बाब क्रमांक ३ :-

उक्त श्री. पी.एस. पॉल, हे जिल्हा मत्स्यव्यवसाय विकास अधिकारी, बुलढाणा कार्यालयातील वाहन क्रमांक एमझेडएस-२२४ वरील वाहनांचा दुरुस्ती खर्च वार्षिक मर्यादितपेक्षा अनावश्यक जास्त खर्च केला आहे. जास्तीच्या खर्चाकरिता वरिष्ठ कार्यालयाची मंजूरी घेतलेली नाही. त्यांनी गाडीस दुरुस्तीसाठी लागणारे सुटे भाग खरेदी व दुरुस्ती नियमबाह्यरित्या करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३(१)(एक) व ३(१) (दोन) चा भंग केला आहे.



मत्स्यबीज केंद्राकरिता साहित्य खरेदीबाबतबाब क्रमांक ४ :-

उक्त श्री. पी.एस. पॉल, यांनी मत्स्यबीज केंद्रासाठी लागणा-या साहित्याची खरेदी शासनमान्य पुरवठादाराकडून केली नाही. त्यांनी हापे व जाळे खरेदी प्राथमिक मत्स्यव्यवसाय सहकारी संस्थेकडून केलेली आहे. त्यामुळे त्यांनी नियमबाह्यरित्या खरेदी करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३(१)(एक) व ३(१) (दोन) चा भंग केला आहे.

सार्वजनिक संस्था यांच्या नावाशी साहचर्याबाबतबाब क्रमांक ५ :-

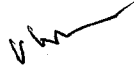
उक्त श्री. पी.एस. पॉल, जिल्हा मत्स्यव्यवसाय विकास अधिकारी, बुलढाणा हे शासनाच्या सेवेत असताना ते खाजगी संस्थेचे सभासद आहेत. त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम २५(अ) व २५(ब) चा भंग केला आहे.

होडी व जाळी खरेदीवर संस्थांना दिलेले अनुदानाबाबत.बाब क्रमांक ६ :-

उक्त श्री. पी.एस. पॉल, जिल्हा मत्स्यव्यवसाय विकास अधिकारी, बुलढाणा यांनी शासनाच्या सेवेत असतांना मत्स्यव्यवसाय सहकारी संस्थांना होड्या व जाळे नियमबाह्यरित्या खरेदी करून त्यावर अनुदान दिले आहे. त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) १९७९ च्या नियम ३(१)(एक) व ३(१) (दोन) चा भंग केला आहे. ”

Thus, out of these six charges, the Enquiry Officer found that the three charges were not proved; whereas three charges partially proved.

11. According to the learned Advocate for the Applicant, the competent authority came to the conclusion that all the charges were proved and no convincing reasons





have been given for not accepting/deferring with findings of the Enquiry Officer.

12. In the impugned order dated 22.04.2003, it has been stated as under:-

“बाब क्रमांक १ :- मत्स्यबीज केंद्र कोराडी केंद्रापर्यंत केलेल्या वाहतूकीमध्ये प्रजननक्षम माशांची मरतूक श्री. पॉल हयांचे निष्काळजीपणामुळे झाली.

बाब क्रमांक २ :- श्री. पॉल यांनी मत्स्य खाद्य खरेदी कार्यवाहीत निष्काळजीपणा करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३(१)(दोन) व ३(१) (तीन) चा भंग केला आहे.

बाब क्रमांक ३ :- श्री. पॉल हयांना कार्यालयातील वाहन दुरुस्ती खर्च वार्षिक मर्यादितपेक्षा अनावश्यक जास्त खर्च केला आहे. जास्तीच्या खर्चास वरिष्ठ कार्यालयाची मंजूरी घेतलेली नाही. गाडीच्या दुरुस्तीसाठी लागणारे सुटे भाग खरेदी व दुरुस्ती नियमबाह्यरित्या खरेदी करून नियमभंग केला.

बाब क्रमांक ४ :- श्री पॉल हयांनी मत्स्यबीज केंद्रासाठी लागणा-या साहित्याची खरेदी शासन मान्य पुरवठाराकडून केली नाही. त्यांनी झापे व जाळे खरेदी प्राथमिक मत्स्यव्यवसाय सहकारी संस्थेकडून केलेली आहे. त्यामुळे त्यांनी नियमबाह्य खरेदी करून नियमभंग केला आहे.”

Thus, in the impugned order dated 22.03.2003, no specific reasons have been given as to why the competent authority was not in agreement with the findings of the Enquiry Officer.

13. The learned Advocate for the Applicant also invited our attention to the order passed by the appellate authority.

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The applicant before the appellate authority did not appear and it is stated that on the basis of available documents appeal has been decided, but the appellate authority also did not give any reason as to why he was not in agreement with the findings given by the Enquiry Officer. The order passed by the appellate authority as well as competent authority therefore, seem to be without application of mind.

14. The learned Presenting Officer submits that the show cause notices were issued to the Applicant before taking action. One of such show cause notice dated 27.09.1999 issued by the respondent no. 2. From the said show cause notice it seems that only copy of the order passed by the Enquiry Officer was forwarded to the Applicant and the Applicant was asked to give explanation as to why the action shall not be taken against the Applicant. Second show cause notice was issued to the Applicant on 3.6.2000. It is material to note that in none of these notices, it has been mentioned, as to why the competent authorities did not agree with the findings given by the Enquiry Officer.




15. From the record, it seems that finally one show cause notice dated 29.03.2002 was issued to the Applicant. Though, in this notice the respondent competent authority tried to disagree with some of the findings given by the Enquiry Office, it has not been stated in clear words as to why the findings given by the Enquiry Officer were not proper and why the same were not agreed upon. The reasons for not agreeing with the findings of the Enquiry Officer are also vague. No evidence has been appreciated, and it seems that the competent authority simply stated that it does not agree with the Enquiry Officer on some findings. The said findings of the competent authority are therefore, arbitrary and without any legal base. It is also material to note that in the show cause notice itself it has been stated that the competent authority has decided to deduct Rs. 200/- per month from pension of the Applicant. Had it been a fact that the decision has already been taken to impose penalty, the show cause notice remain just a formality. In fact, as per procedure, the competent authority ought to have recorded its clear findings for disagreeing with the reports of the Enquiry Officer. Copy of the said findings by the competent



authority should have been forwarded to the Applicant and the Applicant should have been asked to explain as to why the said findings shall not be accepted and if accepted why action shall not be taken against the Applicant. The Applicant should have been given opportunity to explain on the show cause notice and should have been heard in person on such show cause notice and thereafter, ongoing through the merits of the case and submission of the Applicant the second and final show cause notice should have been issued and thereafter, action should have been taken. The Respondents acted highhandedly and straightway expressed opinion to impose the punishment to the Applicant. Said action is absolutely illegal and arbitrary.

16. Admittedly, the Applicant has already retired and therefore, after retirement he should have been punished only in case of grave allegations proved against the Applicant. The allegations against the Applicant seem to be administrative in nature and at the most, it can be said that the Applicant might have committed some administrative breaches and not the grave offence and therefore, the order of



punishment is illegal on this count also. The scope of rule 27 is also explained by the Division Bench in case of *State of Maharashtra -Vs- K.B. Nimbalkar, 2006(2) Bom C R 777-DB*. After considering the provisions of rule 27, it is observed in para 10 that the power to order withholding or withdrawal of pension or a part thereof, permanently or for a specified period is conditioned by the requirement that the pensioner is "found guilty of grave misconduct or negligence".

17. The learned Advocate for the Applicant placed reliance on **2000 (2) Bom. C.R. 658 (SUPREME COURT) in the case of Yoginath D. Bagde Vs. State of Maharashtra and another (Civil Appeal No. 15479 of 1996)** dated 16.09.1999, in the said case it has been held as under :-

***"(D).....Held, where Disciplinary Committee agrees with findings of Enquiry Officer there may not be much difficulty but if it disagrees with it, it is imperative that delinquent should be given opportunity to put up his case again even if rules are silent on it. In the instant case no opportunity has been given. Mere giving him show cause notice on predetermined***

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***punishment could not be termed such opportunity. Even on given facts the D.C. has not considered the evidence tendered from defence side, has held the charges proved even when Enquiry Officer found that charges of corruption were not proved. On one sided complaint of interested Advocate and litigant, High Court should not have passed the orders. 1998 (7) S.C.C. 84 relied upon. (paras 28, 31, 34, 35, 41, 43, 44 & 48)"***

18. We have carefully gone through the aforesaid judgment and we are satisfied that the respondents have not followed due procedure.

19. The learned Presenting Officer submits that the Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 has come in operation in the year 2010 and therefore, there was no reason to supply copy of the findings given by the competent authority to the Applicant. We do not agree with the said submission as it has been observed by the Hon'ble Apex Court that even if the Rule is silent, it is in the interest of justice and in order to give opportunity to the applicant and to follow principles of

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natural justice, such compliance is required. In view thereof,  
we pass following order:-

**ORDER**

The Original Application is allowed in terms of  
prayer clause 9(a). There shall be no order as to costs.

  
**MEMBER (J)**

Kpb/ DB O.A. No. 541/2008 JDK 2017 Nagpur

  
**VICE CHAIRMAN (A)**