

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.650 OF 2018

[Subject : Minor Punishment (Stoppage of increment)]

DISTRICT : PALGHAR

Shri Dileep Bhalchandra Ghanghaw,)
Working as Asst. Account Officer,)
District Supply Office,)
Palghar Collector Office,)
District Palghar,)
Permanent Residence :)
Sarnath Palace,)
101, Subhash Tekdi,)
Ulhasnagar 421 004)
District Thane.) **..... Applicant**

Versus

1. The Principal Secretary,)
(Accounts and Treasuries),)
Finance Department,)
5th floor, Main Building,)
Mantralaya, Mumbai 400 032.)

2. The Director,)
Accounts and Treasuries,)
Mumbai Port Trust,)
3rd floor, Thackersey House,)
Shoorji Vallabhdas Marg,)
Balliard Estate, Fort, Mumbai 400 001.) **..... Respondents**

Shri U.V. Bhosle, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned P.O. for the Respondents.

CORAM : SHRI P.N. DIXIT, VICE-CHAIRMAN.

RESERVED ON : 09.09.2019.

PRONOUNCED ON : 11.09.2019

J U D G M E N T

1. Heard Shri U.V. Bhosle, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant was working as Assistant Account Officer and was posted in the office of Kulgaon Badlapur Nagar Parishad from 09.04.2012. On completion of his tenure, transfer order was issued on 30.05.2015 and his reliever joined Kulgaon Badlapur Nagar Parishad on 23.07.2015. The Applicant claims that though his reliever joined on 23.07.2015, he was relieved on 01.10.2015. As the Applicant did not leave the job of Nagar Parishad even after his reliever had joined; on 05.11.2015, Respondent No.2 issued charge-sheet on him for summary action. Following the Departmental Enquiry, Minor Punishment was imposed against him. The Applicant filed appeal against the same before Respondent No.1. After giving personal hearing to the Applicant, Respondent No.1 confirmed the earlier order on 29.07.2016 and observed that no interference is necessary (Exhibit K, page 40 dated 23.05.2018). The Applicant has prayed to quash the impugned orders dated 29.07.2016 passed by Respondent No.2 and impugned order dated 23.05.2018 passed by Respondent No.1.

3. In support of his prayer, Applicant submits that the memo calling for his explanation dated 04.11.2015 was immediately followed by charge-sheet, dated 05.11.2015 without waiting for the explanation from the Applicant. He further submits that the action is in violation of principles of natural justice. The Applicant further submits that the order transferring him does not mention that he is relieved unilaterally. Applicant submits that the action by the Respondents is discriminatory as no action has been taken against the officers who were transferred but did not join. The Applicant submits that the action by the Respondents is therefore malafide, hostile and in violation of the principles of natural justice and therefore should be quashed and set aside.

4. Learned Advocate for the Applicant has relied on the judgments given in O.A.No.160 of 2017 by M.A.T. Bench Aurangabad and in O.A.No.710 of 2017 by M.A.T., Mumbai. The relevant portion of the same reads as under :-

“7. In the result, it is evident from record that the applicant cannot be charged for failure to get relieved unilaterally. He could never have left his charge or taken additional charge without express directions of his immediate superiors in hierarchy.”

(Quoted from page 4 of judgment in O.A.160/2017)

“24. The Applicant was working under very senior Constitutional body having the task of conducting the elections in free and fair manner. She did not have liberty of superseding the authority of State Election Commission. She cannot claim that as she has been appointed by the Finance Department, she shall not abide by the orders of State Election Commission or does not require to obtain necessary approval from them regarding her relief without substitution.”

(Quoted from page 10 of judgment in O.A.710/2017)

5. Respondent No.1 and Respondent No.2 have filed their affidavits and contested claims made by the Applicant. The relevant portion of the same reads as under :-

“7. With reference of contents of Paragraph No.6.4,I say that in this regard it is submitted that the reliever of the Applicant joined the office of Kulgaon-Badlapur Nagar Parishad, Dist. Thane on 23.07.2015. Therefore it was necessary for the Applicant to get himself relieved from the said office by communicating the facts to the respective authority. Here it is pertinent to note that the Applicant did not bring this fact to the notice of the respective authority and hence he was not relieved from the office of Kulgaon-Badlapur Nagar Parishad. If the Applicant had brought this fact to the notice of the respective authority would have relieved the Applicant as keeping 2 officers on the same post is against the principles of accounting rules.

8. With reference to contents of Paragraph No.6.5, I say that in this regard it is submitted that the Applicant was required to get himself relieved on the date his reliever joined the office of Kulgaon-Badlapur Nagar Parishad i.e. w.e.f. 23.07.2015. But he was relieved on 01.10.2015. The Applicant along with the reliever were working on the establishment of Kulgaon-Badlapur Nagar Parishad though there was only one sanctioned post of Assistant Accounts Officer. Therefore, the act of the Applicant to remain on the establishment of Kulgaon-Badlapur Nagar Parishad after his transfer and resumption of duties by his successor is against the rules and hence not acceptable.

8.1. *Here it is pertinent to note that the issue is not proceeding on Medical Leave but the issue is of not being relieved even though the reliever had joined the office of Kulgaon-Badlapur Nagar Parishad.*

12.5. *It is further mentioned in the chargesheet that the action of the Applicant of not immediately resuming his duties on the transferred post, indicate that he intentionally did not get himself relieved. And the further action of the Applicant of proceeding on medical leave without reporting on transferred post amounts to in subordination. Therefore a charge of violation provisions of Rules 3 of Maharashtra Civil Services (Conduct) Rules, 1979 was leveled against him.*

18. *With reference to contents of Paragraph No.6.17, I say that in this regard it is submitted that some of the officers have not joined due to the inconvenient posting/ personal problems / administrative delay etc. In the present case the Applicant knowingly did not bring the fact that two officers in the same cadre and post are working on a single post to the authorities of Kulgaon-Badlapur Nagar Parishad. Due to which salary for two posts were drawn against one sanctioned post of Assistant Accounts Officer. The Applicant should have made the efforts to get himself relieved and accordingly communicate the same to the respective authority. He never ever showed any willingness to get himself relieved in the terms of transfer order dated 30.05.2015. This is an act of insubordinate and violation of the provision of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979 and cannot be ignored.*

19. *With reference to contents of Paragraph Nos.6.18 and 6.19, I say that in this regard it is respectfully submitted that the issue is not of being absent in an unauthorized manner. The issue is that the Applicant deliberately remained on the post after his transfer even after his reliever reported on the establishment of Kulgaon-Badlapur Nagar Parishad. The Applicant not only remained for more than 3 months on the post of Assistant Accounts Officer in an unauthorized manner but also drawn the salary for that post. This act of the Applicant is against the rules and regulations. Therefore, Departmental Enquiry was initiated against him in which he was found guilty on the basis of the documentary evidence, hence punishment was imposed on him.*

6. Respondent No.2 also filed additional affidavit and submitted that there was no discrimination against the Applicant and list showing details of action taken against the concerned officers who were similarly situated is enclosed at Exhibit AR-1, page 68.

7. I have perused the record of the D.E. as well submissions made by the learned Advocate and the Respondents. The Applicant has been given personal hearing at the time of the D.E. as well as at the time of the Appeal made by him. The Applicant was working in Kulgaon Badlapur Nagar Parishad.

Even after his reliever had joined, his services continued to be utilized by the Kulgaon Badlapur Nagar Parishad. The Chief Officer was asked to clarify how two posts of Assistant Accounts Officer were continued. The Respondents have imposed punishment by pointing out that it was his duty to get relieved. For any reasons, if he was not relieved, it was his duty to communicate the same to Respondent No.2. However, he failed to communicate the fact that he is not being relieved, violating financial rules. Respondents have justified the action of imposing punishment against him in the form of holding back two increments without impacting future increments. The punishment has been imposed against the Applicant for violating financial rules. It is a fact that the applicant did not make any efforts to inform his seniors in Nagar Parishad to relieve him and to communicate the position of not getting relieved to Respondent No.2. He claims, he did so at the behest of orders issued by Nagar Parishad. If this was true, the Chief Officer would have mentioned so in writing or orally before the Appellate Authority. The Applicant did not produce any documents to justify his claim that he was held back by his seniors in Nagar Parishad. The facts mentioned above confirm that the Applicant has mentioned this as afterthought to evade action against him. Applicant has failed to justify his claims and his submission that the impugned order is malafide. The judgments relied upon by the learned Advocate for the Applicant have different circumstances and therefore they are not considered relevant in present case.

8. Original Application is dismissed as it is devoid of any merits. No order as to costs.

SD/-
(P.N. Dixit)
Vice-Chairman

prk

