

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.85 OF 2018

DISTRICT : SINDHUDURG

Shri Bharat Babaji Koli.)
Forest Guard in the Office of Range Forest)
Officer, Sawantwadi, District : Sindhudurg)
and residing at Sainik Takli Road,)
Taluka Shirod, District : Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)
2. Chief Conservator of Forest (T),)
Kolhapur, Vanvardhan, In front of)
Main Post Office, Tarabai Park,)
Kolhapur – 416 003.)
3. Dy. Conservator of Forest.)
Sawantwadi Forest Division,)
Van Bhavan, Salaiwada,)
Sawantwadi, District : Sindhudurg.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 21.08.2019

JUDGMENT

1. The Applicant has challenged the punishment imposed in Departmental Enquiry (D.E.) whereby the recovery of Rs.58,299/- was sought due to loss to the Government and order of withholding of one increment for two years without cumulative effect holding him guilty in the enquiry initiated under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity).

2. Shortly stated facts giving rise to this application are as under:-

The Applicant was serving as Forest Guard at Mangaon, Tal.: Kudal, District Sindhudurg. He was served with the charge-sheet dated 30.12.2009 on the allegation that during his tenure from 04.01.2007 to 22.09.2009, he neglected to discharge the duties and thereby failed to prevent illegal cutting of trees and thereby caused loss to the Government. On receipt of charge-sheet, the Applicant made applications on 06.12.2013 and 17.12.2013 to the Disciplinary Authority under Rule 8(ii) Clause III of 'Rules of 1979' for supply of documents for preparation of his defence but the same was not supplied to him. As he did not get the documents, he had filed written statement of defence denying the charges with specific mention that the documents are not supplied to him. Accordingly, the Enquiry Officer was appointed and enquiry was conducted. The Applicant participated in the enquiry. On conclusion of enquiry, the Enquiry Officer submitted report holding the Applicant guilty for the charge levelled against him and submitted report dated 27.06.2016. The disciplinary authority sought explanation from the Applicant. The Applicant accordingly submitted his explanation denying the charges stating that the finding of Enquiry Officer is incorrect. However, the Disciplinary Authority by order dated 10.03.2017 accepted the report of Enquiry Officer holding the Applicant guilty and

he was directed to deposit Rs.58,299/- for the loss caused to the Government due to illegal cutting of trees and punishment of withholding one increment with cumulative effect was imposed. Being aggrieved by it, the Applicant had preferred an appeal which was decided by order dated 25.10.2017 whereby the Appellate Authority confirmed the finding holding the Applicant guilty and maintained the order of recovery of Rs.58,299/- for the loss of Government but modified the sentence of withholding of one increment for one year with cumulative effect into sentence of withholding one increment for two years without cumulative effect. Being aggrieved by it, the Applicant has filed the present O.A.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.143 to 150 of Paper Book) *inter-alia* denying that the impugned order suffers from any legal infirmity. The Respondents sought to contend that the finding of guilt recorded by the Disciplinary Authority and confirmed by the Appellate Authority is correct and needs no interference. According to Respondents, a fair opportunity was given to the Applicant in the D.E. and there is no violation of principles of natural justice.

4. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned order on the ground that the manner in which the enquiry is conducted as well as the approach of the Disciplinary Authority as well as Appellate Authority is indicative of the ignorance of basic tenet of law. He has pointed out material infirmities in the procedure adopted in the enquiry and urged that in the present circumstances, the impugned order is unsustainable in law.

5. Per contra, the learned P.O. sought to justify the impugned order, but in alternative submissions urged that if the Tribunal is of the opinion that the enquiry is not conducted in accordance to law, then the matter be remitted back for fresh enquiry.

6. Having gone through the record, in my considered opinion, the basic tenet of law and fundamental principles of enquiry are not followed with and I find substance in the submissions advanced by the learned Advocate for the Applicant in this behalf.

7. In so far as the ground for not supplying the documents as urged by the learned Advocate for the Applicant is concerned, admittedly, the Applicant had made an application to the Disciplinary Authority on 17.12.2013 under Rule 8(11)(III) of 'Rules of 1979' but the same was not supplied to him that time. However, those documents were supplied to the Applicant later during the course of enquiry on 16.03.2016. True, those documents were not part of the charge-sheet but the Applicant is entitled to ask for the documents for preparation of his defence, as provided in Rule 8(11) (III) of 'Rules of 1979' and the concerned authority was required to give inspection of the documents to the Applicant, as provided in Order VIII (13) of 'Rules of 1979'. True, the enquiring authority or concerned authority can refuse the request of the delinquent for production of such documents for which notice has been given under Order 8(11)(III) of 'Rules of 1979' if in its opinion, those documents are not relevant to the case. However, no such order was passed on the notice given by the Applicant. Material to note that while submitting statement of defence on 07.01.2014, the Applicant has specifically raised the grievance that despite his notice for production of documents under Rule 8(11)(III) of 'Rules of 1979', those documents were not supplied to him for preparation of defence statement, and therefore, he had submitted short statement of defence thereby denying the charge levelled against him.

8. The Departmental Enquiry was initiated on the allegation that he was negligent in discharging his duties as Forest Guard during the period from 04.01.2007 to 22.09.2009 as he failed to prevent illegal cutting of trees and thereby caused loss to the Government. Thus,

the charge was of negligence in discharging public duty. The Applicant was Forest Guard at Mangaon, Taluka Kudal, District Sindhudurg. The charge was pertaining to negligence preventing illegal cutting of trees in Forest Survey Nos.675, 509, 163 of Mangaon, Survey No.590 of Talegaon, Survey No.408 of Bengaon, Survey Nos.149, 590, 675, 408 of Naleli and Survey No.163 of Dholkar Gaon. The charge-sheet was issued on 30.12.2009.

9. Whereas, significant to note that as pointed out by the learned Advocate for the Applicant that by order dated 18.08.2008 (Page No.26 of P.B.), the Survey No.163 of Dholkar Gaon, Survey No.408 of Bengaon, Survey No.185 of Salgaon and Survey No.149 of Naleli were withdrawn from the territorial assignment of the Applicant and the same was entrusted for the maintenance and all related work to another Forester viz. Shri Tukaram Warak. As such, onward 18.08.2008, these 4 Survey Numbers stated above were not within the territorial jurisdiction of the Applicant. Whereas, strangely, in charge-sheet dated 23.12.2009, all these 4 Survey Numbers were also included. True, the charge relates to period from 04.01.2007 to 22.09.2009. However, it was necessary to find out within whose period, the loss has been caused. No doubt, in addition to these 4 Survey Numbers, there is mention of other Survey Numbers in the charge-sheet for the alleged loss. However, there is no denying that in so far as these 4 Survey Numbers are concerned, the Enquiry Officer was required to record the specific finding as to from which Survey Number, there was illegal cutting of trees, which is not forthcoming in the Enquiry Report. All that, the Enquiry Officer in his report stated that there was illegal cutting of trees without specifying its Survey Numbers or locations.

10. Apart, the Disciplinary Authority has also failed to consider the same. According to findings of Disciplinary Authority, 307 trees were cut illegally and it caused loss of Rs.2,41,385/- to the Government

and out of it, the wood of Rs.94,575/- was seized. As such, the loss was restricted to (Rs.2,41,385 – 94,575) = Rs.1,46,810/-. It seems that the enquiry was also initiated against another Forester Shri Ravindra Wadke and recovery of Rs.88,511/- was ordered against him. The Disciplinary Authority, therefore, deducted Rs.88,511/- from Rs.1,46,810 and fastened the liability of Rs.58,299/- upon the Applicant. As such, it was done without ascertaining as in which Survey Numbers, these trees were located and it was necessary to do so in the background that 4 Survey Numbers were already withdrawn from the territory jurisdiction of the Applicant by order dated 18.02.2008.

11. Apart, as rightly pointed out by the learned Advocate for the Applicant that, in the enquiry, very strange procedure was adopted which is contrary to the settled procedure of law. Strangely, oral evidence of the witnesses was reduced into writing by Presenting Officer in his Cabin in absence of Enquiry Officer and then it was presented before the Enquiry Officer for cross examination of the witness by the Applicant. The Applicant has raised this issue specifically before the Disciplinary Authority pointing out this material, legal infirmity and the procedure adopted. The height is that the Disciplinary Authority in his report also admits that the enquiry is not conducted in fair manner still he hold the Applicant guilty and imposed the punishment. Here, it would be useful to reproduce relevant portion from the impugned order passed by Disciplinary Authority on 10.03.2017, which is as follows :-

“चौकशी टप्यावर कंत्राटी चौकशी अधिकारी यांनी प्रकरणातील उपलब्ध कागदपत्रानुसार दोषारोपीत बाबी मधील वस्तुस्थिती नेमकी काय आहे. हे शोधण्याचा प्रयास केला नाही. निव्वळ कागदपत्रातील तांत्रिक पुराव्याचे कायदयाप्रमाणे तपासणी केलेचे दिसून येते. अवैध वृक्ष तोडीची बाब संपुर्ण चौकशीमध्ये अपचारी यांनी ठामपणे नाकारलेली नाही. प्रशासकीय कार्यवाही मध्ये दोषारोपीत वस्तुस्थिती खरी आहे अगर कसे यांची तपासणी निर्विकारपणे करणेसाठी संबंधिताचे साक्षी जबाब नोंदविले जातात व अशा साक्षीवरून निःपक्षपातीपणे निष्कर्ष नमूद करणे ही चौकशी अधिकारी यांची जबाबदारी आहे. मात्र उपरोक्त सर्वच बाबी, चौकशी अधिकारी आणि अपचारी यांनी सोईस्करपणे दुर्लक्षित केलेल्या आहेत.

यास्तव प्रकरणी उपलब्ध असलेला वस्तुनिष्ठ पुरावा सखोलपणे तपासला असता अपचारी यांनी कर्तव्यास अनुसरून काही गुन्हे नोंद केले असते, तरी इतर अधिकारी यांनी अपचारी यांचे कार्यक्षेत्रात शोधून काढलेली अवैध

वृक्षतोड व त्याबाबत नोंदविलेले गुन्हे, जप्त केलेला मुददेमाल इ. बाबी निश्चितच अपचारीस शासकीय कामातील हलगर्जीपणा आणि बेजबाबदारपणा स्पष्ट करण्यास पुरेशा आहेत. त्याचप्रमाणे श्री. भा.बा. कोळी, तत्का. वनरक्षक माणगाव यांनी वर नमुद कार्यकाळात वेळवेळी जंगल फिरती करून जंगलाची तपासणी केली असती तर ३०७ वृक्षांची इतक्या मोठ्या प्रमाणात अवैध तोड होवून शासनाचे जंगल नुकसानी रुपये २,४१,३८५/- झाले नसते. तथापि, या प्रकरणी अन्य अपचारी श्री. र.स.वडके यांचेकडून रुपये ८८,५११/- वसूल करण्याचे आदेश पारीत झालेले असल्याने श्री. भा.बा. कोळी हे रक्कम रुपये ५८,२९९/- इतक्या शासन नुकसानीस वेयवित्तक जबाबदार आहेत.’’

12. As such, though the material legal infirmities were noticed by the Disciplinary Authority, still it ignored the same. The learned P.O. fairly concede that the statement (examination in chief) of witnesses were recorded not by Enquiry Officer though bound to do so, but the same was recorded by Presenting Officer in his Cabin and then it was presented before the Enquiry Officer for cross examination by the Applicant. Suffice to say, very strange procedure was adopted. Needless to mention that the statement of witnesses are required to be recorded by the Enquiry Officer in the presence of delinquent and not by the Presenting Officer in his Cabin as happened in the present matter.

13. As such, strangely, though the Disciplinary Authority acknowledged material infirmities in the procedure adopted by the Enquiry Officer as well as Presenting Officer while conducting enquiry, he hold the Applicant guilty stating that the Applicant has not denied the charges specifically. Indeed, in statement of defence dated 07.01.2014, the Applicant has specifically denied the charge levelled against him. This being the position in view of the approach adopted by the Disciplinary Authority, the impugned order of holding the Applicant guilty cannot be said outcome of fair enquiry.

14. Apart, when the matter was taken in appeal, the situation was more compounded, as the Appellate Authority placed the burden of innocence on the Applicant contrary to the settled legal position. In order dated 25.10.2017, he commented that the Applicant has not been able to prove his innocence. Needless to mention that there cannot be burden of proof to prove innocence on the delinquent, as it

is always for the Department to prove the charge by adducing evidence and the placing of burden to prove innocence upon the delinquent is unknown to law. Indeed, it shows ignorance of the settled legal provisions or the procedure to be adopted in conducting the D.E. The observation/comment of the Appellate Authority is as follows :-

“अपचारी प्राधिकारी तथा मुख्य वनसंरक्षक (प्रा) कोल्हापूर यांचे अपिल अर्जावरील निष्कर्ष व अंतिम निर्णय:-

अपचारी श्री. भा.बा. कोळी, तत्का. वनरक्षक माणगाव यांनी त्यांच्या दिनांक २/९/२०१७ रोजीच्या अपिल अर्जामध्ये ते त्यांचेवर बजावलेल्या दोषारोपात निर्दोष असलेबाबतचा कोणताही कागदोपत्री पुरावा सादर करून ते त्यांचे निर्दोषत्व सिद्ध करू शकलेले नाही, किंबहुना ठेवलेले दोषारोप निर्विवादपणे ते खोडून काढू शकलेले नाहीत किंवा तसा त्यांनी प्रयत्न केलेला अपील अर्जातील विवेचनावरून आढळून येत नाही. शिस्तभंग विषयक प्राधिकारी उपवनसंरक्षक, सावंतवाडी यांनी अपील अर्जावर सादर केलेले निष्कर्ष मान्य करणेत येत आहेत.”

15. Thus, what transpires that the basic principles of law and procedure required to be followed in D.E. is not followed by the Enquiry Officer and there is no specific finding as to from which Survey Number, there was illegal cutting of trees in view of withdrawal of some of the area from the jurisdiction of the Applicant, but included in the charge-sheet. The irregularities and legal infirmities in the enquiry was noted by the Disciplinary Authority, still he hold the Applicant guilty. When the matter went in appeal, the Appellate Authority sought to place burden on the Applicant to prove his innocence. As such, all the concern seems totally unaware of the fundamental principles of law and the procedure to be followed in D.E. and serious prejudice is thereby caused to the Applicant.

16. In this view of the matter, the finding holding the Applicant guilty is not sustainable in law and it would be appropriate to remit the matter back to the Disciplinary Authority to appoint Enquiry Officer afresh and to conduct the enquiry afresh and to pass further appropriate order on its merit keeping in mind the principles of law and procedure to be followed while conducting the D.E.

17. The totality of aforesaid discussion leads me to conclude that the O.A. deserves to be allowed partly and matter needs to be remitted back to the Disciplinary Authority. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned orders dated 10.03.2017 and 25.10.2017 are hereby set aside.
- (C) The matter is remitted to the Disciplinary Authority (Respondent No.3) with direction to appoint Enquiry Officer afresh and to start enquiry from the stage of recording of evidence afresh by following appropriate procedure as laid down in Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and to ensure the completion of enquiry within three months from today.
- (D) On receipt of Enquiry Report, the Disciplinary Authority shall pass final order within a month from the date of receipt of Enquiry Report in accordance to Rules.
- (E) The final order in D.E. be communicated to the Applicant within two weeks from the date of passing final order.
- (F) The Applicant will be at liberty to take recourse of law, if felt aggrieved by the final decision of the Disciplinary Authority.
- (G) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 21.08.2019
Dictation taken by :
S.K. Wamanse.