

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.974 OF 2019**

**DISTRICT : KOLHAPUR**

Shri Vijay Dinkar Salokhe )  
Aged 62 years, Retired as Assistant )  
Director, Social Forestry, Jalgaon )  
Forest Department, )  
Residing at 1124 'C'/A Ward, )  
Near Sardar Talim, Shivaji Peth, )  
Kolhapur 416 012 )

**...Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Chief Secretary, )  
Revenue and Forest Department, )  
Madam Kama Road, Hutatma )  
Rajguru Chouk, Nariman Point, )  
Mantralaya, Mumbai 400 032. )
- 2) Principle Chief Conservator of )  
Forest, Vanbhavan, Ramgiri Road, )  
Civil Lines, Nagpur 440 001 )
- 3) Chief Conservator of Forest )  
(Regional), Vanbhavan, Bhamburda )  
Vanvihar, Gokhale Nagar, )  
Pune 411 016 )
- 4) Dy. Conservator of Forest, )  
Solapur Forest Division, Solapur, )  
"Van Bhavan" Vijapur Road, )  
Nehru Nagar, Solapur 413 004. )
- 5) Dy Director, )  
Social Forestry Division, )  
16 Ganesh Nagar, Ring Road, )  
Jalgaon 425 001. )

**...Respondents**

**Smt. Punam Mahajan, learned Advocate for Applicant.**  
**Shri A.J. Chougale, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 08.09.2020**

### **JUDGMENT**

1. The Applicant has challenged the order dated 22.04.2019 issued by the Deputy Conservator of Forest, Solapur for directions to recover Rs.29,043/- from the Applicant which was allegedly spend by him without sanction and for direction to the Respondents to release the balance amount of gratuity Rs.71,854/- withheld for nonpayment of sum of Rs.29,043/- invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The applicant retired from services in February, 2015. In the period from 2008 to 2012 he was working as Range Forest Officer, Sangola, District Solapur. The Deputy Conservator of Forest, Solapur is the Administrative head and Drawing and Disbursing Officer. It was for Deputy Conservator of Forest to allot funds to Range Forest Officer for spending the sum on different projects, works, schemes etc. Accordingly, Range Forest Officer was required to spend the amount on that work only from the grant allotted for that specific work. The sum of Rs.43,000/- as advance was granted to Sangola Forest Range headed by the applicant for the purpose of Boundary Demarcation works, Fixation and repairs of Boundary Pillars. As such the applicant was required to spend the advance for the purpose it was granted. However, the applicant allegedly spend excess amount of Rs.42,811/- on the work for which no specific grant was allotted. Therefore, bill submitted by the Applicant for approval was turned down by the Deputy Conservator of Forest, Solapur.

Thereafter, there was exchange of various communications between the applicant and Department *interse*. Applicant by his various representations brought to the notice of Deputy Conservator of Forest, Solapur that for Conservator of Forest, particularly, to preserve forest from fire it was necessary to complete work of fireline (जळरेषा). Therefore, he got it done under expectation of grant, supposed to be issued by the end of March. However, the Deputy Conservator of Forest did not accept his explanation and issued direction for recovery of Rs.71,857/- from his monthly salary. After issuance of directions for recovery from monthly salary also no action was initiated for recovery of the amount. In the meantime, the applicant stands retired at the end of February, 2015. After retirement gratuity of Rs.71,854/- was withheld for recovery of the excess expenditure made by the applicant. Later sum of the alleged excess expenditure made by the applicant was adjusted by the Department reducing the amount of excess expenditure to the sum of Rs.29,043/-. It was noticed that sum of Rs.29,043/- could not be adjusted and therefore order of recovery from the gratuity was issued. The applicant has therefore approached this Tribunal to quash the communication dated 22.04.2019 issued by the Deputy Conservator of Forest, Solapur for recovery of sum of Rs.29,043/- and for directions to release withheld amount of gratuity Rs.71,854/-, *inter alia*, contending that the gratuity cannot be withheld for alleged excess expenditure without holding Departmental Enquiry and finding to that effect.

3. Respondents No.1 to 5 resisted the O.A. by filing affidavit-in-reply *inter alia*, denying entitlement of the applicant to the relief claimed. Respondents contend that the applicant had made excess expenditure on the work which was without prior sanction. Thereafter, post facto sanction was granted for the expenditure of Rs.42,811/- reducing the excess expenditure to the tune of Rs.29,043/- and therefore gratuity is rightly withheld for the recovery of sum of Rs.29,043/-.

4. Smt. Punam Mahajan, learned Advocate for the Applicant vehemently urged that the impugned action of recovery Rs.29,043/- and

withholding of gratuity Rs.71,854/- without holding proper Departmental Enquiry is totally erroneous and unsustainable in law. In this behalf she placed reliance on the decision of Hon'ble Supreme Court **(2017) 1 SCC 49 State of Uttar Pradesh and Others Versus Dhirendra Pal Singh**.

5. Par contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents tried to canvas that in view of various correspondence and letters exchanged between the applicant and the Department the mistake committed by the applicant is amply established and therefore there is no necessity of holding regular Departmental Enquiry. He further tried to canvas that the correspondence exchanged between the applicant and the Department has to be construed as the procedure adopted in imposing minor penalty contemplated under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred as 'Rules 1979' for brevity) and on this line of submission he further submits that this is case of recovery of pecuniary loss caused by the applicant to the Government by his negligence or breach of orders and therefore it can be construed as minor penalty as contemplated under Rule 5(iii) of 'Rules 1979'. Stretching further he submits that such action of withholding gratuity is also authorized and permissible by virtue of Rule 27 Maharashtra Civil Service (Pension) Rules, 1982 (hereinafter referred as 'Rules 1982' for brevity).

6. In view of the submissions advanced at bar and material placed on record the question posed for consideration is whether the impugned action is sustainable in law and in my considered opinion the answer is in negative.

7. At the very outset, it needs to be stated that it is no where the case of the Respondents that the applicant has misappropriated the Government funds. Admitted the position is that though there was no grant for expenditure to complete the work of fireline in forest, the applicant has spent the amount and got that work completed. He contends that for preservation of forest from fire completion of work of

fireline was very essential and therefore under the expectation of grant, he did it. This being so it is not the matter of misappropriation of Government money or embezzlement of Government money. This aspect also needs to be borne in mind while deciding the matter. True, the applicant was required to limit the expenditure under grant approved for the particular work. However, it cannot be equated with pecuniary loss to Government or negligence in discharging the duties. At the most it would be irregularity if proved by adopting proper enquiry and finding to that effect by the competent authority. In present case, admittedly no such regular departmental enquiry by issuance of charge-sheet was initiated.

8. The submission advanced by learned P.O. that the applicant admitted his alleged misconduct and therefore holding of enquiry was not required is misconceived. Similarly, his submission that representation and explanation by the applicant shall be construed as enquiry for minor penalty is also unacceptable.

9. It would be useful to refer the communication between the applicant and Department. In this behalf, it starts by letter dated 31.03.2011 (page 16 of P.B.) by Deputy Conservator of Forest to the Applicant informing him that he has rejected the bills thereby rejecting the excess expenditure of Rs.42,811/- and directing the applicant to deposit the said amount with the Government failing which disciplinary action would be initiated against him. The applicant submitted his reply by letter dated 08.04.2011 (page 21 of P.B.) stating that bills are again resubmitted by putting sanction order. He further submits that the said work was done as per the approval of the then Deputy Conservator of Forest. Simultaneously, by letter dated 15.04.2011 (page 22 of P.B.) he explains as to how the expenditure was necessitated for preservation of forest from fire. By letter dated 15.04.2011 he therefore requested Deputy Conservator of Forest to consider the same and approve the bills. However, the Deputy Conservator of Forest by letter dated 19.05.2011 (page 25 of P.B.) rejected his explanation and issued the direction for recovery of the excess expenditure from monthly salary of the applicant.

The applicant then again made representation on 27.05.2011 (page 29 of P.B.) objecting recovery from pay and allowances contending that the orders of recovery are illegal. The Deputy Conservator of Forest, Solapur again by letter dated 28.06.2011 (page 33 of P.B.) confirmed his stand and issued direction for recovery from pay and allowances of the applicant. Then again the Deputy Conservator of Forest, Solapur issued letter dated 04.02.2012 intimating that if the amount is not deposited disciplinary action will be initiated against the applicant. The applicant replied it by letter dated 13.02.2012 (page 36 of P.B.) making it again clear that there is no misappropriation or loss of Government money and the Deputy Conservator of Forest was not the competent authority to pass any such orders of recovery of the said amount from pay and allowances. Thereafter, again the Deputy Conservator of Forest issued letter dated 11.09.2013 (page 39 of P.B.) for recovery of amount from pay and allowances to which again the applicant responded by explanation dated 23.09.2013 (page 40 and 41 of P.B.). Thereafter, the Chief Conservator of Forest, Pune directed for recovery of excess expenditure in installment to which the applicant again objected by his detail representation dated 25.04.2014 (page 41 and 43 respt. of P.B.) The Applicant again protested it by letter dated 28.01.2015 (page 50 of P.B.) stating that no appropriate decision was taken by the Chief Conservator of Forest, Pune in the matter and requested for approval of bills.

10. Material to note that despite the orders of recovery of alleged excess expenditure from the pay and allowances, admittedly, till retirement no such recovery was made from the Salary of the applicant. When the applicant stands retired at the end of February, 2015 and papers were send to the Accountant General that time the Department again raised issue of alleged excess expenditure of Rs.29,043/- and in view of which gratuity amount to the tune of Rs.71,854/- was withheld and the applicant was intimated by order dated 22.04.2019 which is under challenge in present O.A. Thus, it is only after retirement part of the gratuity has been withheld for alleged excess expenditure terming it as unauthorized expenditure.

11. As stated above, it is not the case of misappropriation or embezzlement of Government money. If the applicant had really made any excess expenditure and it was amounting to misconduct inviting punishment of recovery of the amount then disciplinary authority was required to initiate proper enquiry and to record finding to that effect. However, no such enquiry was initiated save and except exchange of letters and communication. The Applicant at no point admitted that he has committed misconduct. This being the position enquiry ought to have been conducted by giving proper opportunity to the applicant and finding of misconduct to that effect which is completely missing.

12. True, for imposing minor penalty of recovery of the amount for pecuniary loss caused to the Government, there was no necessity of regular departmental enquiry but procedure for imposing minor penalty as contemplated under Rule 10 of 'Rules 1979' was required to be adopted which, *inter alia*, provides holding of enquiry by giving reasonable opportunity to the applicant / to the concerned employee and recording of finding by concerned authority that the Government servant is guilty of misconduct. In first place, there has to be imputation of misconduct and finding to that effect even if minor penalty is imposed. Whereas in present case, there is no such finding of misconduct except stating that the applicant has committed irregularity in expenditure of excess amount. In view of this stand of the applicant that the amount spent by him was essential for the preservation of forest and it is not misconduct, it was obligatory on the part of concerned authority to adopt mode of enquiry and to record finding to that effect. However, no such course of action is adopted. In so far as applicability of Rule 27 of Maharashtra Civil Service (Pension) Rules, 1982 (hereinafter referred as 'Rules 1982' for brevity) the concerned it speaks about the recovery of amount from pension which include gratuity in pursuance of finding recorded by the competent authority in departmental proceedings which is not the case here.

13. In view of the above, impugned action of recovery of Rs.29,043/- from the gratuity of the applicant after his retirement is unsustainable in law. In similar situation, Hon'ble Supreme Court in **(2017) 1 SCC 49** (cited supra) upheld the order of release of pension and gratuity which was withheld for alleged discrepancies in stock of store without holding departmental enquiry. In that case, no proceedings were undertaken as provided in Article 351-A of the U.P. Civil Services Regulations and after retirement gratuity and pension was withheld. In paragraph No.6 Hon'ble Supreme Court held as under :-

“6. Admittedly, no departmental enquiry was initiated in the present case against the respondent for the misconduct, if any, nor any proceedings drawn as provided in Article 351-A of the U.P. Civil Services Regulations. The learned Single Judge of the High Court has observed that the document which is the basis of enquiry and relied upon the State authorities, copy of which was Annexure CA-1 to counter-affidavit filed in the writ petition, itself reflected that the document showing discrepancy in the stock was dated 26-12-2009 i.e. after about more than five months of retirement of the respondent. In the circumstances, keeping in view Article 351-A of the U.P. Civil Service Regulations, we agree with the High Court that the orders dated 23-7-2015 and 6-8-2018 were liable to be quashed and, to that extent, we decline to interfere with the impugned order.”

14. Thus what ultimately transpires is that respondents assumed that applicant is guilty and coerce him to deposit the amount by issuing letters but did not initiate proper enquiry to find out whether he is really guilty. No such punishment of withholding the gratuity is permissible without due process of law.

15. The totality of aforesaid discussion leads me to conclude that impugned action for recovery of Rs.29,043/- and withholding gratuity are unsustainable in law. O.A. therefore, deserves to be allowed.

### **ORDER**

(A) The impugned order dated 22.04.2019 for recovery of Rs.29,043/- is quashed and set aside.



- (B) Respondents are directed to remit the balance gratuity withheld by them within one month from today failing which Respondent will be liable to pay interest at the rate of 7% from the date of order till payment.
- (C) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER-J**

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