

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.982 OF 2016**

N.M. Pathan ... Applicant  
Vs.  
The State of Maharashtra & Ors ... Respondents

Ms. Punam Mahajan, learned Advocate for the Applicant.

Ms. Archana B.K., learned Presenting Officer for the Respondents

Date : 31.07.2023.

CORAM : JUSTICE MRIDULA BHATKAR, CHAIRPERSON  
MS. MEDHA GADGIL, MEMBER (A)

**SPEAKING TO THE MINUTES**

1. Learned Advocate for the Applicant Ms. Mahajan has submitted that in the judgment dated 17.07.2023, Prayer Clause (C) instead of,

“Applicant’s service is to be considered as continuous service for the purpose of pecuniary benefits except back wages from the date of this judgment.”

it should be read as,

“Applicant’s service is to be considered as continuous service for all purposes including pecuniary benefits except back wages.”

3. Ordered accordingly.

Sd/-  
**(Medha Gadgil)**  
**Member (A)**

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**

prk

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.982 OF 2016**

Mr. Nabilal Mahamad Pathan, )  
Previously working as Talathi, )  
Residing at 131, Bramhadeo Nagar, )  
Hotgi Road, Solapur 413 224 ) **....Applicant**

**Versus**

1. The State of Maharashtra )  
Through Chief Secretary, )  
Mantralaya, Mumbai 400 032 )
2. The Additional Chief Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai 400 032 )
3. The Collector, )  
Collector Office Compound, )  
Main Building, Siddheshwar Peth, )  
Solapur 413 003 )
4. The Sub-Divisional Officer, )  
Solapur No.1, Collector Office )  
Compound, Main Building, )  
Siddheshwar Peth, Solapur 413 003 ) **....Respondents**

Ms. Punam Mahajan, learned Advocate for the Applicant.

Ms. Archana B.K., learned Presenting Officer for the Respondents.

**DATE : 17.07.2023**

**CORAM : JUSTICE MRIDULA BHATKAR, CHAIRPERSON  
MS. MEDHA GADGIL, MEMBER(A)**

**J U D G M E N T**

1. Applicant, Talathi challenges his order of removal from service dated 26.06.2015 and thereafter the order passed by the Appellate Authority on 16.04.2016 and also prays that he is to be reinstated as Talathi.

2. Applicant has joined service on 03.09.1997 to the post of Talathi on compassionate ground. Applicant was served with the show cause notice on 23.09.2014 and thereafter on 09.10.2014 he received memorandum on 24.12.2014 for the complaint from the beneficiaries of Sanjay Gandhi Niradhar Yojana. On 02.01.2015 he received notice for taking leave without sanction. On 17.01.2015, the notice was issued on him for initiation of Departmental Enquiry against him for misconduct. Then on 16.04.2015 the memorandum/charge-sheet of Departmental Enquiry was issued.

3. Learned Advocate for the Applicant Ms. Mahajan has submitted that the charges leveled against the Applicant are of minor nature. However, the Departmental Enquiry was not conducted as per the procedure. The reasons given in the enquiry for holding the Delinquent Officer i.e. Applicant guilty are incorrect and consequently the punishment is disproportionate to the chargesheet leveled against the Applicant. Learned Advocate has read over the charges mentioned in the

chargesheet. She has submitted that the Applicant has refused the charges on 05.05.2015, thereafter enquiry was commenced. Applicant submitted his reply, however, Applicant was pressurized by the Disciplinary Authority and therefore under lot of pressure, through letter dated 27.05.2015 Applicant accepted all the charges in writing. Thereafter the Disciplinary Authority by letter dated 06.06.2015 issued notice to the Applicant that he has been held guilty and therefore why he should not be dismissed from the service. The Applicant thereafter within time by communication dated 23.06.2015 declined the charges and again gave explanation that he has not committed any misconduct and he was on leave on account of his health issues. Learned Advocate further submitted that despite this denial of the charges the Disciplinary Authority by letter dated 26.06.2015, held the applicant guilty and granted him punishment of dismissal. Learned Advocate has pointed out that in the order the reason mentioned for holding the Applicant is acceptance of charges by the Applicant. She has submitted that the Applicant has accepted the charges under pressure only once i.e. by letter dated 05.05.2015. However, he has subsequently denied the charges in his letter dated 23.06.2015. She further submitted that procedure followed for giving major punishment is not as per Rule 5 and Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979. Learned Advocate has submitted that applicant be given 100% back wages. Learned Advocate relies on the judgment of Hon'ble Supreme Court in the case of **Bhagat Ram Versus State of Himachal and Ors. reported in (1983) 2SCC 442.**

4. Per contra, learned P.O. has submitted that the Sub Divisional Officer, Solapur is the Disciplinary Authority and therefore he has power to conduct enquiry. He himself conducted the enquiry and he has followed all the steps as contemplated under Maharashtra Civil Services (Pension and Appeal) Rules. She has further submitted that the Applicant has admitted all the charges on 05.05.2015 and therefore on the basis of this admission he was punished. She has submitted that there is no deviation on the part of the Disciplinary Authority from the Maharashtra Civil Services Rules. She has further submitted that the punishment given is appropriate. She has submitted that alternatively if the Tribunal considers that the punishment is disproportionate the matter be remanded to the S.D.O.

5. Learned P.O. has relied on the following judgments on the point of 'No work, no pay' :

**(a) Union Territory, Chandigarh Versus Brijmohan Kaur reported in (2007) 11 SCC 488.**

**(b) Rahul Abhimanyu Ranpise Versus The State of Maharashtra & Ors. Writ Petition No.1930/2007 dated 24.01.2012.**

6. We deal first with the objections of following the proper procedure. The Disciplinary Authority as per Rule 8(2) of the part 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 procedure and imposing penalties empowers the Disciplinary Enquiry to enquire into the truth itself. The S.D.O. according to the Respondent-State is the Disciplinary Authority and there is no flaw if the enquiry is conducted by the S.D.O. himself. The chargesheet was served on the Applicant disclosing seven charges. The Applicant was given opportunity to reply

and he gave first reply on 05.05.2015 and he has stated in the second line of the first paragraph that he refuted all the charges. He gave explanation to all the charges and requested to close the Departmental Enquiry. Thereafter on 07.05.2015 the Disciplinary Authority again issued letter of initiating the Departmental Enquiry. However, with six charges instead of seven charges, which were earlier shown in the Appendix-I of the letter dated 16.04.2015 and he was asked to give reply and to that particular letter and the chargesheet. He answered by letter dated 27.05.2015 which is very important but disputed by the Applicant. He addressed that letter to the S.D.O. Solapur, wherein he has stated that whatever charges were mentioned in the chargesheet were admitted. In that letter he mentioned that whatever alleged omission and commission has taken place is on account of inadvertence and he would not commit misconduct in future and therefore he should be treated with leniency. Thereafter, the Enquiry Officer served him the final show cause notice of the explanation informing that the applicant was held guilty and therefore why he should not to be removed from the service. The explanation was sought. The Applicant on 23.06.2015 has submitted the explanation thereafter the Disciplinary Authority by letter dated 26.06.2015 has passed the order of Applicant's removal from the service. It is noted that the Disciplinary Authority in the impugned letter has referred the 2<sup>nd</sup> notice dated 07.05.2015, but did not referred his own earlier notice dated 16.04.2015 and to which the applicant has given reply and explanation on 05.05.2015 wherein he has denied all the allegations and the said reply was received by barnishi clerk of the office on 05.05.2015.

7. We fail to understand why the second notice of initiation of Departmental Enquiry was given on 07.05.2015. It is true that to that particular notice he gave reply on 27.05.2015 and he admitted the charges. It is true that if the charges are admitted by the Delinquent Officer then the Disciplinary Authority by following proper procedure after recording of plea can conclude the proceeding. However, in this matter it appears that on 27.05.2015 he has submitted one letter as explanation given to the notice dated 07.05.2015 and admitted all the charges. However, he has prayed leniency and apologized. If it was so it was obligatory on the part of the Disciplinary Authority to take into account the fact of his earlier denial of the charges in the letter dated 05.05.2015 and it was necessary for the officer to point out earlier denial and to put question to the Delinquent Officer about his denial of the charges dated 05.05.2015 and get himself assured that the acceptance of charge was free, voluntary and a conscious decision by the Delinquent Officer. When a Government servant accepts the charges in the Departmental Enquiry then it is the duty of the Disciplinary Authority to get himself assured that such Government servant pleaded guilty without any pressure, coercion and fraud and it is his voluntary decision. Below this plea the Officer is required to sign and so also the Delinquent Officer.

8. Though the S.D.O. has signed the letter dated 27.05.2015, the proper procedure of recording the plea is not found. Moreover, after receiving the final show cause notice dated 06.06.2015 the Applicant has submitted explanation to the said show cause notice on 23.06.2015 and has again denied all the charges and gave point to point explanation in

detail. Thus, when the final order was passed by the S.D.O. on 26.06.2015 the said Disciplinary Authority was having three communication letters of the Delinquent Officer, in two letters dated 05.05.2015 and 23.06.2015 he has denied all the charges and only in one letter dated 27.05.2015 he confessed only one of his charges. In the reference, the Disciplinary Authority has mentioned about the suspension order dated 07.05.2015 but surprisingly has neither mentioned of the Enquiry and chargesheet dated 16.04.2015 nor the explanation given by the Applicant on 05.05.2015. Thus, suppression of the two letters by the Disciplinary Authority cannot be explained by the learned P.O. and we are of the view that this is gross illegality on the part of the Disciplinary Authority of not taking into account its own orders of initiation of enquiry and the reply given to the said notice-cum-chargesheet. The Disciplinary Authority in the order has not referred any explanation given by the Delinquent Officer in his reply of 23.06.2015 and as well as the earlier explanation given in the letter dated 05.05.2015. In the body of the order there is no discussion in respect of the explanation given by the Applicant by his letter dated 23.06.2015 or 05.05.2015, which ought to have been referred and considered. In the last paragraph of the said order it is found that the Disciplinary Authority has mentioned that the Delinquent Officer has accepted the charges and therefore the Departmental Enquiry is closed. It appears this reasoning of closure of enquiry and holding him guilty for these charges on the basis of acceptance is also complete deviation from procedure and law. As there is absence of reference of the earlier chargesheet and explanation and so also there is no discussion in the order about the chargewise explanation given by the Applicant by the



letter dated 23.06.2015 we have reasonable ground to accept the submissions made by learned Advocate Ms. Mahajan that the letter of acceptance of the charges was under pressure with assurance of leniency and it was not voluntary. Thus, we do not find that the enquiry conducted is adhering to proper procedure and legality.

9. The second leg of the arguments advanced by the learned Advocate on the ground that the punishment of removal is disproportionate considering the charges labelled against him are also correct. We have considered the charges levelled against the applicant. They are regarding unsanctioned leave for 1 day and thereafter for 4 days. Thus, it is of total five days unsanctioned leave. The explanation given by the Applicant for his absenteeism is not considered and it is found that the order of removal was passed. In the reasoning the Appellate Authority has gone beyond the charges of the order by holding that the Applicant remained absent without sanctioned leave for three months. It can be said that the Applicant was negligent in handling the matters before him of the beneficiaries of Sanjay Gandhi Niradhar Yojana. This is not misconduct for which the major penalty could have been imposed. We do agree that the punishment is disproportionate and also we hold that the procedure followed in the enquiry is arbitrary, biased and without following principles of natural justice.

10. In the judgment of **Bhagat Ram (supra)** it held that the Appellant be given 50 per cent of the arrears of salary from the date of termination till the date of reinstatement. Further the period between the date of

termination of service and reinstatement shall be treated for other purposes as on duty.

11. In the judgment relied by learned C.P.O. in the case of **Brijmohan Kaur (supra)**, the Hon'ble Supreme Court has held that,

“9. The direction of the Tribunal which is affirmed by the High Court, in our view, is against the old canons of law directed by this Court. It is settled law that when an incumbent does not discharge any duty, the principle of “no work no pay” would be applicable. This consistent view has been taken by this Court keeping in view the public interest that any government servant who does not discharge his duty should not be allowed to draw pay and allowances at the cost of public exchequer.”

Similarly, the Hon'ble Bombay High Court in the judgment of **Rahul Abhimanyu Ranpise (supra)** has held that the Petitioner was reinstated and was given all consequential benefits, but excluding arrears of salary relying on the principle of 'No work no pay'.

12. We rely on the ratio of these two judgments of **Brijmohan Kaur (supra)** and **Rahul Abhimanyu Ranpise (supra)** which reiterate the principle of 'No work no pay'. However, the judgment relied by learned Advocate Ms. Mahajan was decided in the year 1983 whereas the subsequent judgments are decided in the year 2007 and 2012 respectively where the principle of 'No work no pay' is reiterated.

13. In view of the above, we passed the following order :

**O R D E R**

- (A) Applicant is to be reinstated on the duty within a period of four weeks from today.
- (B) Order of removal from service dated 26.06.2015 and also the order dated 16.04.2016 passed by the Appellate Authority is hereby quashed and set aside.
- (C) Applicant's service is to be considered as continuous service for the purpose of pecuniary benefits except back wages from the date of this judgment.
- (D) No work no pay principle is to be applied from the date the Applicant is removed from service, till the date of this order.

**Sd/-****(Medha Gadgil)  
Member (A)**

prk

**Sd/-****(Mridula Bhatkar, J.)  
Chairperson**