

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.40/2022

DISTRICT:- AURANGABAD

Madhav Balajirao Nilawad,
Age : 57 years, Occ : Govt. Servant as
Deputy Collector,
R/o. Galli No.4, Pundalik Nagar,
Garkheda, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Aurangabad Division, Aurangabad-431 001.
- 3) The District Collector,
Hingoli-431 513.

...RESPONDENTS

APPEARANCE :Shri S.B.Jadhav, Counsel for
Applicant.

:Smt. M.S.Patni, Presenting Officer for
the respondents.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 11-04-2023.

O R A L O R D E R :

1. Heard Shri S.B.Jadhav, learned Counsel for the
applicant and Smt. M.S.Patni, learned P.O. appearing for
the respondent authorities.

2. Applicant has approached this Tribunal against the order dated 18-01-2021 whereby his one increment has been withheld by holding him guilty of the charges levelled against him.

3. The applicant while working as Sub Divisional Officer, Kalamnuri was required to be hospitalized on 09-09-2014. The applicant submitted leave application on 11-09-2014 along with medical certificate, however, his application was rejected on the same day by respondent no.3. On 12-09-2014, respondent no.3 submitted report to the Divisional Commissioner that the applicant is absent and he is on unauthorized leave because of which the work in the office is hampered and requested for necessary action against the applicant. On 12-09-2014, the applicant came to be suspended. On 12-06-2015, the order of suspension was revoked. Chargesheet was served upon the applicant on 16-04-2018 raising 3 charges against the applicant; first that, the applicant has not obeyed the orders of the superiors, secondly, the applicant remained absent without any intimation or permission of his superiors, and thirdly, because of his absence work of election was hampered. Applicant submitted his say to the

said statement of charge on 28-08-2018. On 18-01-2021, the impugned order came to be passed, against which the applicant has preferred the present O.A.

4. It is the contention of the applicant that the respondents have not at all considered the contentions raised by the applicant in his explanation submitted on 28-08-2018. It is the contention of the applicant that had the respondents duly considered the explanation given by the applicant, perhaps, would not have arrived at the conclusion holding the applicant guilty of the charges levelled against him in the statement of charge. The applicant has, therefore, prayed for setting aside the said order.

5. The contentions in the application and prayers made therein are resisted by the respondents. Respondent no.3 has filed the affidavit in reply wherein it is contended that the charges levelled against the applicant were held to have been duly proved and in the circumstances, the impugned order has been passed. It is the further contention that that the respondents have not committed any error in passing the impugned order. Learned P.O. has, therefore, prayed for dismissing the O.A.

6. Shri Jadhav, learned Counsel appearing for the applicant submitted that the principles of natural justice are utterly violated in the case of the applicant. Learned Counsel submitted that charges levelled against the applicant, if are considered in light of the explanation submitted by the applicant on 28-08-2018, no such conclusion can be arrived at holding the applicant guilty. Learned Counsel further submitted that while passing the impugned order respondents have not at all considered the explanation submitted by the applicant. Learned Counsel further submitted that except the statement of charge, no other document was provided to the applicant. Learned Counsel further submitted that the statements submitted by respondent no.3 or by respondent no.2 were not brought to the knowledge of the applicant. Learned Counsel submitted that though enquiry was under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 ("the Rules" for short) principles of natural justice could not have been dispensed with. Learned Counsel submitted that there is reason to believe that it was pre-decided to punish the applicant and in the circumstances, the impugned order has been passed.

Learned Counsel submitted that there was no case for putting the applicant under suspension having regard to the nature of charges; inspite of that the applicant was subjected to undergo period of suspension for nine months. Learned Counsel in the circumstances has prayed for setting aside the order.

7. Learned P.O. reiterated the contentions raised in the affidavit in reply in her arguments. Additionally, it was argued that enquiry under Rule 10 is a summary enquiry and in the circumstances the procedure which is laid down under Rule 9 of the Rules need not be followed. Learned P.O. submitted that from the material available on record, respondents have reached to the conclusion and the conclusion so recorded cannot be interfered with in the present application. Learned P.O. further submitted that this Tribunal may not go into the legality or sufficiency of the evidence for the reason that the Tribunal cannot act in such matters as an appellate authority. Learned P.O. in the circumstances, prayed for dismissal of the O.A.

8. I have carefully considered the submissions advanced by the learned Counsel for the applicant and the learned P.O. appearing for the respondent authorities. The learned

Counsel has placed on record copy of explanation dated 28-08-2018, which was submitted by the applicant by way of reply to the statement of charge served upon him. On perusal of the statement of charge, reply given to it by the applicant and the impugned order, it is apparently revealed that the impugned order has been passed without following the principles of natural justice. In the impugned order, the respondents have not even whispered about the explanation given by the applicant to the charges levelled against him. Disciplinary Authority, though was not required to elaborately discuss the contentions raised by the applicant in his written reply, could not have completely ignored the same. The impugned order only bears mentioning of the fact that the applicant had submitted his explanation dated 28-08-2018 to the statement of charge served upon him. However, it is evident that the explanation has not been gone into by the concerned authority and there is absolutely no discussion about the explanation given by the applicant. It was open for the respondents to reject the explanation given by the applicant, however, it could not have been done without referring to the contents of the said explanation.

9. It appears to me that in so far as the first two charges are concerned, had the respondents considered the explanation given by the applicant without any bias, no such conclusion could have been recorded holding the applicant guilty even for the said charges. It is true that in respect of the departmental enquiry directed to be held under Rule 8 the procedure has to be mandatorily and strictly followed as prescribed under Rule 9 of the Rules of 1979, whereas if the enquiry is directed to be conducted under Rule 10 of the said Rules, summary procedure can be adopted by the disciplinary authority. It, however, does not mean that even the minimum requirements are not to be looked into. Rule 10 also prescribes that the order passed in such matters shall expressly reveal the reasons for accepting the said charge and the discussion must be made in respect of each of the charges independently. In the impugned order all these ingredients are lacking. It appears to me that the enquiry conducted in such a manner and the resultant conclusion drawn on the basis of which the applicant has been held guilty and punished to suffer withholding of one increment cannot be sustained and deserves to be set aside. It is accordingly set aside.

10. It is clarified that the respondents are not precluded from conducting enquiry in the charges levelled against the applicant, however, by following the principles of natural justice and by giving due opportunity of hearing to the applicant and by recording reasons in respect of each and every charge levelled against the applicant. O.A. stands allowed in the aforesaid terms, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 11.04.2023.