

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 717 OF 2011

DISTRICT: - OSMANABAD.

Smt. Mangal Nagnath Koli (Waghmare)
Age: 46 years, Occu. Govt. service,
R/o B-48, Saragourav, Osmanabad Road,
Tuljapur, Dist. Osmanabad. .. APPLICANT.

V E R S U S

- 1] The State of Maharashtra,
[Copy to be served upon
Chief Presenting Officer,
M.A.T. Aurangabad]
- 2] The Divisional Commissioner,
Aurangabad Division,
Aurangabad.
- 3] The Collector, Osmanabad,
Dist. Osmanabad. .. RESPONDENTS.

APPEARANCE : Shri M.B. Kolpe – learned Advocate
for the applicant.

: Shri S.K. Shirase – learned
Presenting Officer for the
respondents.

**CORAM : HON’BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN (A)
AND
HON’BLE SHRI J.D. KULKARNI,
MEMBER (J)**

DATE :

J U D G E M E N T

[Per : Hon'ble Shri J.D. Kulkarni, Member (J)]

The applicant viz. Smt. Mangal Nagnath Koli (Waghmare) has challenged the impugned order dated 23.6.2011 passed by respondent No. 2 i.e. Divisional Commissioner, Aurangabad Division, Aurangabad and order dated 16.11.2010 issued by respondent No. 3 i.e. the Collector, Osmanabad. In fact, the first order was passed in the departmental enquiry initiated against the applicant by Collector, Osmanabad, whereby the applicant was dismissed from the service. Against the said order of dismissal, the applicant filed appeal before the respondent No. 2, the Divisional Commissioner, Aurangabad Division, Aurangabad, and in the said appeal an order was passed on 23.6.2011, whereby the Divisional Commissioner modified the order passed by the Collector and instead of dismissing the applicant, the applicant was reverted with permanent effect from the post of Clerk to the post of Peon. Both these orders are assailed in this Original Application.

2. The operative order passed by the Collector in the departmental enquiry is as under: -

“आदेश

(१) श्रीमती कोळी एम एन यांचा अनाधिकृतपणे गैरहजेरीचा दिनांक १८/११/२००९ ते ०८/०१/२०१० हा कालावधी अनाधिकृतपणे गैरहजर म्हणून ग्राह्य धरावा आणि या कालावधीत काम नाही वेतन नाही या तत्वानुसार अकार्यकारी दिन विनावेतन म्हणून ग्राह्य धरावा.

(२) श्रीमती कोळी यांचा निलंबन दिनांक ३०/०१/२०१० ते बडतर्फी दिनांक हा कालावधी निलंबन कालावधी म्हणूनच ग्राह्य धरावा.

(२) श्रीमती कोळी एम एन यांना दिनांक २५/११/२०१० किंवा हा आदेश तामिल होईल तो दिनांक यापैकी जे उशीरा घडेल त्या दिनांकापासून शासन सेवेतून कायम स्वरूपी याद्वारे बडतर्फ करण्यात येते आहे.”

3. The operative order passed by the Divisional Commissioner, Aurangabad in appeal is as under: -

∴ आदेश ∴

१) अपिलार्थीचे दि. ९.१२.२०१० रोजीचा अपील अर्ज अंशतः मान्य करण्यात येतो.

२) जिल्हाधिकारी उस्मानाबाद यांचे अपिलाधीन आदेश क्र. २०१०/महसुल/आस्था-३ /सीआर-०६ दि. १६.११.२०१० अन्वये दिलेल्या बडतर्फीचे शिक्षेच्या आदेशात बदल करून म.ना.से. (शिस्त व अपील) १९७९ चे नियम ५ (१) (सहा) नुसार अपिलार्थी श्रीमती एम.एन.कोळी, बडतर्फ लिपीका,

तहसिल कार्यालय तुळजापुर जि. उस्मानाबाद यांना लिपीक संवर्गातून शिपाई संवर्गात कायम स्वरुपी पदावत करण्याची शिक्षा देण्यात येते. यापुढे त्यांना लिपीक संवर्गात पदोन्नतीसाठी कायमस्वरुपी अपात्र ठरविण्यात येते.

३) सदर आदेशाची तात्काळ अंमलबजावणी करण्यात येवुन तशी नोंद अपिलार्थी श्रीमती कोळी एम.एन. यांचे सेवापुस्तिकेत/ सेवाभिलेखात घेण्यात यावी.”

4. According to the applicant, both these orders are illegal, arbitrary and needs to be quashed and set aside. It is stated that the applicant was on medical leave from 18.11.2009 to 29.12.2009 and she joined the service on 11.1.2010 but till that date she was not kept under suspension and was not given charge of her post. It is stated that the enquiry officer has not conducted enquiry as per the procedure and no witnesses, in fact, were examined. The evidence not appreciated properly and the conclusions drawn by the Enquiry Officer are based on presumptions and assumptions only. The findings given by the Enquiry Officer are perverse and contrary to the record. The Appellate Authority did not apply mind to the grievance made by the applicant in her appeal memo and the entire proceedings are against the principle of natural justice. In the alternative, it is stated that the reversion of

the applicant from the post of Clerk to the post of Peon permanently is disproportionate and harsh.

5. The respondent Nos. 2 & 3 have filed separate affidavit in replies and justified the order. It is stated by the respondents that the applicant did not pass MS-CIT examination and she was having no knowledge about the computer. She admitted most of the charges and, therefore, conclusions drawn by the Enquiry Officer are perfectly legal and proper. Lenient view has been taken by the Appellate Authority.

6. The rejoinder affidavit is filed by the applicant. She denied that she has admitted the charges. She submitted that she has completed the Computer Handling Training from 7.3.2011 to 11.3.2011 at Marathwada Revenue Probodhini at Aurangabad. She has passed MS-CIT examination on 1.11.2009 with 66% marks. She also placed on record the copy of the certificate. It is stated that she was on leave because she was ill. She has also produced fitness certificate at the time of joining.

7. We have heard Learned Advocate Shri M.B. Kolpe, for the applicant and Learned Presenting Officer Shri S.K. Shirase for the respondents. We have also perused the affidavit, affidavit in replies filed by the respondents and the various documents placed on record by the respective parties.

8. The material points to be considered in this Original Application are: -

(i) Whether the departmental enquiry initiated against the applicant was arbitrary and no principle of natural justice was followed?; and

(ii) Whether the punishment inflicted upon the applicant in departmental enquiry is harsh and disproportionate?

9. Though it is stated by the learned Advocate for the applicant that the principles of natural justice were not followed by the respondents, it seems that due opportunity was given to the applicant to defend the departmental enquiry. From the charges framed against

the applicant, it seems that in all 4 charges were framed against the applicant and the said charges are as under: -

“१. बाब क्र. एक:- उक्त श्रीमती एम.एन.कोळी (सद्या निलंबित) हया दिनांक २३/०६/२००८ पासून आज पर्यंत या कालावधीत लिपिका म्हणून तहसिल कार्यालय, तुळजापूर येथे नेमणूकीस असतांना त्या दिनांक १८/११/२००९ पासून दिनांक ०८/०१/२०१० या कालावधीत अनाधिकृतपणे गैरहजर राहिल्या आहेत.

२. बाब क्र. दोन :- पुर्वोक्त कालावधी मध्ये पुर्वोक्त कार्यालया मध्ये काम करत असतांना श्रीमती एम एन कोळी, लिपिका हया नोकरीचे गावी म्हणजे तुळजापूर मुख्यालयास वास्तव्यास राहिल्या नाहीत.

३. बाब क्र. तीन :- महसूल अधिनियम १९६६ चे खंड ३ किंवा निम्नस्वाक्षरीत यांचा आदेश क्र. २००९/२ व का/ सीआर ५१, दिनांक ०७/११/२००९ किंवा जिल्हाधिकारी कार्यालयाची कार्यपध्दती **Collector office Procedure Manual** या प्रमाणे कामकाज केलेले नाही व त्याप्रमाणे अभिलेख ठेवलेले नाहीत.

४. बाब क्रमांक चार :- संगणक हाताळणीची (एमएससीआयटी) परिक्षा पास नाहीत.”

10. Out of above 4 charges, it seems that the applicant has produced the certificate to show that she has knowledge of handling computer and she has also placed on record the certificate of passing of MS-CIT examination and Computer Handling Training. One of the charge is that the applicant was not residing at headquarter at

Tuljapur. It is material to note that nowadays it has become a common practice not to reside at headquarter and most of the employees are doing up and down from their place of residence. The applicant has stated in her appeal memo that she is belonging to backward class and only with an intention to harass her false complaints are filed against her. She has also stated that number of employees were doing up and down and were not residing at headquarter. She was to maintain her family and husband has died. In such circumstances, it was necessary for her to attend the office from her home by doing daily up and down. We feel that though it is a fact that she should have obtained permission for up and down, this charge cannot be said to be that of much serious to invoke the punishment of dismissal from service as has been done by the Collector, Osmanabad.

11. The grave charge against the applicant seems to be allegation that she was absent unauthorizedly from 18.11.2009 to 08.01.2010. The applicant has stated in her defence statement that she was harassed by Tahsildar,

Tuljapur and she was even asked not to work and to go on leave and get her transfer. She has filed application for leave on 18.11.2009, but it was rejected and she was asked to go home. She, therefore, sent an application by Registered Post on 11.12.2009 and requested that leave be granted to her from 18.11.2009 to 17.12.2009 and 18.12.2009 to 17.1.2010. However, the Collector, Osmanabad issued a show cause notice mentioning that she was unauthorizedly absent from 18.11.2009 and that action of dismissal shall be taken against her. She has also stated that she requested the Tahsildar that her leave be cancelled and she be allowed to join, but she was not allowed to do so. Even, accepting the fact that the applicant was absent, dismissal cannot be a punishment to be inflicted on her, considering her social status and the fact that she was a widow and was to maintain her children in absence of her husband and also considering a very short period of leave she claimed. At the most such absence could have been treated as extraordinary leave, earned leave or any kind of admissible leave or leave without pay if no leave was available to her credit.

12. The department has examined one Shri Devendra Katake, Tahsildar, Tuljapur, Shri Santosh Namdas, Awwal Karkoon and Smt. N.R. Suryawanshi, Awwal Karkoon, Establishment, as witnesses in the departmental enquiry. It seems that these witnesses were merely shown their statements and they stated that the contents of their respective statements were correct. They have not specifically disclosed anything incriminating against the applicant in a specific word as regards misconduct.

13. As already stated the only material charge seems to be unauthorized absence of the applicant, but it seems that the applicant has applied for leave and she has also mentioned about the reasons why she was forced to go on leave. This aspect however, was not considered properly.

14. Considering the aforesaid aspect we are of the opinion that the order of punishment of dismissal passed by the Collector was really harsh.

15. The applicant has filed an appeal against the order of dismissal before the Divisional Commissioner and her

appeal memo seems to be at page Nos. 40 to 42 (both inclusive), which is at Exhibit 'A-3'. She has reiterated her defence in the said appeal memo. It seems that the applicant was so fed up with the alleged harassment and she requested that she be allowed to retire compulsorily.

16. We have perused the order passed by the Appellate Authority i.e. respondent No. 2. It is material to note that the Appellate Authority observed that the applicant's mental capacity was not up-to the mark and she was in the habit of avoiding work. It is not known as to what material were before the Appellate Authority to come to such conclusion. The relevant observations read as under: -

“प्रकरणातील गंभीर दोषारोप, उपलब्ध अभिलेखे आणि शिस्तभंग विषयक प्राधिकारी तथा नियुक्ती अधिकारी यांनी स्वतः दफ्तर तपासणी मध्ये पाहिलेले त्यांचे काम आणि कार्यासनाचे अभिलेखे आणि अपीलार्थी यांची बौद्धिक पात्रता व काम न करण्याची त्यांची वृत्ती या सर्व बाबींचा सर्वसाकल्याने विचारांती, मनात कोणत्याही प्रकारचा पुर्वग्रहदोषित न ठेवता शिक्षा दिलेली आहे. एकदाचे कमी बौद्धिक पात्रतेमुळे कामातील कमीपणा समजून घेऊन पदावनत करता येऊ शकते. पण या प्रकरणांत कमी बौद्धिक क्षमतेशिवाय अप्रामाणिकपणा आणि कामचुकारपणा दिसून येतो जे की क्षम्य नाही. नियुक्ती प्राधिका-याचा या कर्मचा-यावरील विश्वास पूर्णपणे गमावला असून त्यामुळे देखील बडतर्फीची शास्ती अगदी समतुल्य आहे. ही बाब तपासणी

फॉर्म नजरेखालून घातल्यास सहज लक्षात येते. त्यामुळे अपीलार्थी यांचे म्हणणे मध्ये काही ही अर्थ नाही व ते साफ खोटे आहे.”

The aforesaid observations seem to be extraneous and there is no material to support such observations that too by the Appellate Authority.

17. From perusal of the enquiry report and the order passed by the Collector and Divisional Commissioner, however, it seems that it can be said that the applicant remained absent without getting leave sanctioned. She should have proceeded on leave after getting it duly sanctioned. However, at the same time probability of defence cannot be ruled out. The allegations against the applicant that she did not pass the MS-CIT examination at the time of framing of charge seem to be correct, but subsequently she has passed that examination. She seems to be negligent in performing day to day work such as, as mentioned below: -

“(६) श्रीमती कोळी यांचे सतत अनधिकृपणे गैरहजर राहणे, एमएससीआयटी संगणीक हातळणेचे ज्ञान आत्मसात न करणे, सर्वात महत्वाचे म्हणजे लिपिकांची प्रामुख्याने खालील नमुद मुलभूत कर्तव्य सुध्दा केलेली नाहीत.

१. कार्यासनाचे कार्यविवरण नोंदवही अद्ययावतत ठेवलेली नाही.
२. कार्यासनाचे दफ्तर **Collector office procedure manual** अथवा महसूल अधिनियम १९६६ चे खंड तीन या पैकी कोणत्याही आदेशाप्रमाणे दफ्तर ठेवलेले नाही.
३. स्थाई आदेश संचिकांना अनुक्रमनिका केलेल्या नाहीत तसेच त्या अद्ययावत ठेवल्या नाहीत त्या मध्ये सर्वसाधारण पत्रव्यवहाराची कागदपत्रे संलग्न केली आहेत.
४. कार्यासनास प्रकरण नोंदवही **Compilation Register** ठेवले नाही.
५. फाईलची रचना व बांधणी कार्यालयीन कार्यपध्दती सोडून केल्या आहेत. संचिकांना मुखपृष्ठ लावले नाहीत. कांही ना लावले तर त्यावर आवश्यक ती माहिती भरलेली नाही.
६. कार्यासनाचे नियतकालीके बाबत पीआरए आणि पीआरबी नोंदवह्या आणि त्या बाबतची नियंत्रण नोंदवही ठेवलेली नाही.
७. कार्यासनाचे अभिलेखे विहित सहा संच **Six bundle** मध्ये ठेवलेले नाही.”

18. However, on such negligence it will be harsh to deny promotion to the applicant permanently and, therefore, the order passed to this effect by the Appellate Authority seems to be disproportionate and harsh. It seems that the applicant has been reverted to the post of Peon from the post of Clerk by the Appellate Authority vide order dated 23.6.2011 and till today she is serving as a Peon because

of her reversion. We are of the opinion that this much punishment will be sufficient to the applicant considering the circumstances and, therefore, the order passed by the Appellate Authority needs to be modified to that effect. Hence, we pass the following order: -

ORDER

(i) The present Original Application is partly allowed.

(ii) The order of punishment passed by the Appellate Authority i.e. Divisional Commissioner, Aurangabad, whereby the applicant has been reverted to the post of Peon from the post of Clerk on permanent basis is modified as under: -

“The order of reversion of the applicant from the post of Clerk to the post of Peon passed by the Divisional Commissioner, Aurangabad, on 23.6.2011 is maintained. However, direction that she shall be reverted with permanent effect is quashed.”

(iii) It is hereby declared that the applicant shall now be entitled to be considered for her promotion in case she is otherwise fit as per the norms for the promotion to the post of Clerk.

(iv) The respondents shall put the case of the applicant before the Departmental Promotion Committee for being considered for promotion.

(v) The present Original Application accordingly stands disposed of with no order as to costs.

MEMBER (J) VICE CHAIRMAN (A)

O.A.NO.717-2011(hdd)-DB-2016