

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.810 OF 2017
(Subject:- Dismissal from Service)**

DISTRICT:-JALGAON

Shaligram Manikrao Sonawane)
Age :58 years, Occ: Service (now dismissed),)
C/o Suklal Pundlik Badhe,)
Koshiti Galli, At Post Tq. Amalner,)
Dist. Jalgaon.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: Secretary,)
Revenue Department,)
Mantralaya, Mumbai-32.)
2. **The Collector, Jalgaon**)
3. **The Sub Divisional Officer,**)
Amalner, Dist. Jalgaon.) **RESPONDENTS**

APPEARANCE : Shri S.D. Dhongde, learned Advocate
for the applicant.
: Shri M.P. Gude, learned Presenting
Officer for the respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
And
Shri Bijay Kumar, Member (A)

Reserved on : **27.04.2023.**

Pronounced on : **22.06.2023.**

ORDER**[Per :Hon'bleShri V.D. Dongre, Member (J)]**

By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the order of dismissal of the applicant dated 1.9.2014 (Page 34 of paper book) issued by the respondent No. 3 i.e. S.D.O. Amalner, District Jalgaon and also seeking monetary benefits including pension and pensionary benefits.

2. Perused affidavit in reply (Page Nos. 23 to 28 of paper book) filed on behalf of the respondent No. 3 i.e. S.D.O., Amalner, District Jalgaon initially without supplying documents; subsequent affidavit in reply (Page Nos. 29 to 54 of paper book) along with certain documents and additional affidavit in reply (page Nos. 54A to 58 of paper book).

3. Undisputedly the applicant was appointed as Talathi on 12.2.1999. He worked at various places as such. The respondent No. 3 removed him from service from 1.8.2011. On the medical certificate issued by the applicant thereafter, he was reinstated in service and he joined the service as per joining report dated 1.10.2012 (Part of Annexure 'A-1 colly.').

However, he was not paid his salary. The applicant and his wife made repeated application with medical certificate (Part of Annexure 'A-1 colly.')

for releasing salary. However, in vain. Nothing was communicated to the applicant in that regard.

4. Later on, the applicant came to know that the respondent No. 3 published news item in Daily Punyanagari dated 31.1.2014 giving final opportunity to the applicant. But he did not come across that news item. Further, on 4.1.2015 the applicant came across news published in Daily Newspaper Lokmat (Jalgaon) dated 1.9.2014 (Annexure 'A-2') that the applicant and two other Talathis were dismissed from service on the ground of their continuous absenteeism. The said order of dismissal is not served upon the applicant.

5. It is the contention of the applicant that due to health problems, the applicant was not attending duties. Without following due procedure in accordance with law, the applicant has been dismissed from service. The said action is totally arbitrary and illegal.

6. The applicant made representation dated 19.12.2015 to the Tahasildar, Amalner(A-6) and dated 21.12.2015 to

respondent No. 2 i.e. District Collector, Jalgaon (A-5) for cancellation of dismissal order and reinstatement in service. In the circumstances, respondent No. 2, Collector sent letter dated 19.1.2016 (A-6) and reminder dated 26.5.2016 (A-4) to the respondent No. 2 S.D.O. to make detailed enquiry in that regard and submit report. But in vain.

7. In view of above, the impugned order of dismissal of the applicant dated 1.9.2014 is not sustainable in the eyes of law by violation of principles of natural justice and being illegal as it is issued without holding regular departmental enquiry. Hence, this O.A.

8. By filing two affidavits in reply and one additional affidavit in reply as disclosed earlier, the respondent has resisted the O.A. by contending at the outset that the O.A. is not maintainable being filed without availing legitimate remedy of filing departmental appeal as provided under Rule 18 of the M.C.S. (Discipline and Appeal) Rules, 1979.

9. It is contended that while working as Talathi, Dahiwad, Tq. Amalner, District Jalgaon, the applicant remained absent from duty since 1.8.2011 without permission of competent authority. Various notices were issued to the applicant, he

however, did not reply the same. Hence, the Tahsildar, Amalner submitted report to respondent No. 3 suggesting stoppage of salary to the applicant. Meanwhile, the applicant himself appeared along with leave application and medical certificate. He was allowed to join duty from 1.10.2012. The applicant, however, was directed to submit medical fitness certificate from Medical Board. However, the applicant never submitted the same. Hence, his salary was continued to be withheld. The applicant also remained absent from duty. In view of that the respondent No. 3 has issued public notice in daily newspaper on 31.1.2014 directing him to appear and to join duty. The applicant never caused his appearance and failed to submit any documents.

10. In view of that by exercising power under Rule 5 of M.C.S. (D & A) Rules, 1979, the respondent No. 3 directed the applicant for same by impugned order dated 1.9.2014. The said order of dismissal was sent to Tahsildar, Amalner to serve upon the applicant and it was also displayed on the notice board in the office.

11. It is admitted that after passing of said dismissal order, the applicant made representation for withdrawal of dismissal

order. However, considering grave misconduct committed by the applicant, the order of his dismissal is justifiable, legal and proper. There is no merit in the O.A. and it is liable to be dismissed. Relevant documents are produced as R-1 at page -33A to 54.

12. Additional affidavit in reply is filed to explain service of order of dismissal upon the applicant. In that regard, it is submitted that the order of dismissal dated 1.9.2014 was forwarded by respondent No. 3 to the office of Tahsildar, Amalner for service on the applicant. It was also directed to Tahsildar to display it on the office notice board and compliance report was called for.

13. It is submitted that in the representation dated 19.12.2015 and 21.12.2015 made by the applicant to respondent NO. 3 and Tahsildar grievance was made that order of dismissal was not served upon the applicant and he came to know only the said order from news items in Lokmat. Newspaper dated 4.1.2015 and thereafter on 8.1.2015 when he visited the office of Talathi, Amalner it was served upon him.

14. Upon perusal of the rival pleadings, documents and submissions on record, it is evident that the respondents

have raised preliminary objection of maintainability of the Original Application contending that the Original Application is filed without exhausting the remedy of departmental appeal against the impugned order of dismissal of the applicant as provided under Rule 8 of M.C.S. (Discipline and Appeal) Rules, 1979.

15. In this regard, learned Advocate for the applicant has placed reliance on the decision of the Hon'ble Bombay High Court, Bench at Aurangabad in **Writ Petition No. 3925/2013** in the matter of **Rajaram Bajirao Virulkar Vs. The State of Maharashtra & Ors.** In the said case, the Maharashtra Administrative Tribunal had dismissed the Original Application filed under Section 19 on the ground that no remedy of departmental appeal was availed before filing it. The following observations are made in paragraph No.3 and 4:-

“3. It is a settled position of law, objections with regard to tenability or maintainability of matter shall be entertained at the threshold and having taken the matter for final hearing, on such consideration matter should not be disposed of, for, such considerations need to be adverted to at the stage of admission in order to obviate expense and spending time on the same delaying the decision making which does not further cause of justice and while the matter is being admitted it is implicit that such considerations are over ruled having regard to the matter. It would be useful to refer

to such an order passed by a Division Bench of this court in a group of writ petitions (writ petition no. 5198 of 2009 and connected petitions) decided on 1st November, 2012 at Nagpur on which reliance is placed by petitioners.

4. Having regard to aforesaid, we deem it appropriate to set aside the order passed by the Tribunal on 3-4-2013 and remit the matter to the Tribunal.”

16. In the case in hand, it is true that objection of maintainability of the Original Application was raised in the affidavit in reply as a preliminary objection. However, thereafter, this Original Application was admitted without giving any finding on the preliminary objection and fixed for hearing. In such circumstances, ratio laid down in the abovesaid case of **Rajaram Bajirao Virulkar** (supra) would be applicable. It will be too late to entertain the said maintainability objection about filing of Original Application without exhausting available remedy of departmental appeal. Hence, we proceed to decide this Original Application on merits.

17. The applicant has been dismissed from service by impugned order dated 01.09.2014 (part of Annexure ‘A-2’ collectively). It is the contention of the applicant that he came to know about the said dismissal order dated 01.09.2014

when he came across news dated 04.01.2015 (page no. 17 of P.B.) published in Daily Newspaper Lokmat (Jalgaon). After coming to know about the said order of dismissal dated 01.09.2014, the applicant made representations dated 19.12.2015 (Annexure 'A-2') and dated 21.12.2015 (Annexure 'A-5'). Perusal of those documents would show that the applicant has admitted that he received the copy of order of dismissal dated 01.09.2014, when he visited the office for enquiry on 08.01.2015. The respondents relied upon the said representations of the applicant for showing service of order of dismissal.

18. It is the grievance of the applicant that the order of dismissal is not sustainable in the eyes of law as he has been dismissed from service without conducting departmental enquiry as contemplated under Rule 8 of M.C.S. (Discipline and Appeal) Rules, 1979. Rule 5 of M.C.S. (Discipline and Appeal) Rules, 1979 would show that the order of dismissal is a major penalty. Procedure for imposing major penalties is provided under Rule 8 of the M.C.S. (Discipline and Appeal) Rules, 1979 which contemplates holding departmental enquiry against the delinquent.

19. During the course of arguments, the respondents have produced on record the bunch of papers (page no. 33 A to 54). Further the respondents have placed on record another set of bunch of papers. Perusal of both the bunch of papers would show that show cause notices regarding absenteeism were issued after his joining report dated 01.10.2012 (part of Annexure 'A-1' collectively) after he was being reinstated by withdrawing earlier order of punishment. Those notices seem to be being notice dated 20.04.2013 (page No. 38 of P.B.) and press note dated 31.01.2014 published in Daily Newspapers *Punya Nagari* (page Nos. 39 & 40 of P.B.).

20. Record further shows that before the applicant was allowed to join on 01.10.2012, enquiry for absenteeism was initiated against the applicant by issuing shows cause notice and order dated 27.01.2012 (page No. 41 and 42 of P.B.) withholding annual increment permanently of the applicant was issued. In this regard departmental enquiry said to have been conducted. However, as regards the dismissal of the applicant by impugned order dated 01.09.2014 for absenteeism, no charge sheet in accordance with Rule 10 of M.C.S. (Discipline and Appeal) Rules, 1979 was issued

against the applicant. He has been dismissed from service only by issuing impugned show cause notice.

21. In this regard, the learned Advocate for the applicant has placed reliance on the decision of the Hon'ble Bombay High Court in **Writ Petition No. 4072/2005** in the matter of **Union of India through General Manager, Central Railway, Mumbai CST Vs. Mr. Manoj Kumar V. Kumare** dated 30.01.2018. In the said case, the respondents therein was dismissed and penalty of removal from service by an order dated 22.06.2001 was passed by the Disciplinary Authority. The order of removal was upheld by the Appellate Authority vide order dated 01.11.2001. The Revisional Authority dismissed the revision by an order dated 14.02.2002. The Tribunal set aside the order of removal only on the ground that the authority which issued the impugned order imposing penalty on the respondent was not competent to impose penalty. The Original Application was therefore partly allowed and the respondent was directed to reinstate with liberty to petitioner to proceed in the matter by referring it to the competent authority for appropriate orders including treatment of period from the date of removal from service to

reinstatement. In paragraph Nos. 7 to 12 it is observed as follows:-

“7. We have heard learned Counsel. Article 311 (1) of the Constitution of India provides that no person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he has been appointed. The question for consideration is whether, as alleged by the respondent, he was removed from service by an authority subordinate to that which had appointed him. We have already noticed that the appointment/promotion order was signed by the Senior DPO. It is therefore clear that in so far as the respondent is concerned, it is the Senior DPO who had appointed him and thus was the appointing authority. The order of removal is issued by the DCM. It is not disputed that the DCM is below the rank of Senior DPO.

8. Learned Counsel Shri Pandian argued that even the DCM has power to appoint officers of the rank of the respondent, therefore, he would have power to remove the respondent. We cannot accept this contention. Whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment. It is at that point of time that the constitutional guarantee under Article 311(1) becomes available to the persons holding the post that he shall not be removed or dismissed by an authority subordinate to that which appointed him. On the date of the appointment, the appointing authority of the petitioner was Senior DPO. The DCM therefore cannot remove him.

9. To come to this conclusion we have relied upon the decision of the Hon'ble Supreme Court in the case of Krishna Kumar Vs. Divisional Assistant Electrical Engineer and others reported in (1979) 4 SCC 289 : [1979 ALLMR ONLINE 363 (S.C.)]. Their Lordships have held that " even the delegation of the power to make a particular appointment does not enhance or improve

the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another."

10. Since the respondent was appointed by the Senior DPO and has been removed from the service by the order passed by the DCM, it must be held that the DCM had no power to remove the respondent from the service.

11. For these reasons, we find no infirmity with the order passed by the Tribunal. The present Writ Petition is accordingly dismissed.

12. Rule is discharged with no order as to costs."

22. Learned Advocate for the applicant also placed reliance on the decision of Hon'ble Supreme Court of India in **Civil Appeal No. 8662 of 2015** in the matter of **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and Ors.** dated 15.10.2015. In paragraph No. 28 of the said order it is observed as follows:-

"28. In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry

is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. Thus, by no stretch of imagination it can be accepted that it is termination simpliciter. The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench.

23. In the background of the abovesaid citations, if the facts of the preset case are considered, in this case there is no grievance that the impugned order of dismissal is issued by the authority, which is not competent to dismiss the applicant. But record of this case would show that the impugned order of dismissal dated 01.09.2014 is passed only by issuing show cause notices. No departmental enquiry as contemplated under Rule 8 of M.C.S. (Discipline and Appeal) Rules, 1979 was conducted. In view of the same, this is a clear cut case of violation of Article 311 (2) of Constitution of India which is as follows:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under Union or a State.-

(1)

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct

which has led to his conviction on a criminal charge; or

- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

25. In such circumstances, the impugned order of dismissal of the applicant is not sustainable in the eyes of law and is liable to be quashed and set aside. Hence, we proceed to pass the following order:-

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order of dismissal of the applicant dated 01.09.2014 is hereby quashed and set aside.
- (C) The respondents are directed to reinstate the applicant in service with all consequential benefits w.e.f. 1.9.2014 to 30.08.2016 including continuity of service and back wages and grant pension and pensionary benefits as per Rules from his date of superannuation on 30.08.2016 within the period

of three months from the date of receipt of certified copy of this order.

(D) No order as to costs.

MEMBER (A)

MEMBER (J)

Place:-Aurangabad

Date : 22.06.2023

SAS O.A. 810/2017