

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 854 of 2019 (DB)**

Madhukar S/o Rajeram Fukat,  
Aged 62 years, Occ. Retired Forester,  
R/o Ghumde Layout, Plot No. 2,  
Shivnagar, Girad Road, Umred,  
Dist. Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Department of Forest,  
Mantralaya, Mumbai-32.
- 2) Principle Chief Conservator of Forest,  
Maharashtra State, Van Bhavan,  
Ramgiri Road, Civil Lines,  
Nagpur-440001.
- 3) Chief Conservator of Forest  
(Territorial), BSNL, "Sancharlaxmi"  
Building, Opp. Kasturchand Park,  
Nagpur-440001.
- 4) Deputy Conservator of Forest,  
Nagpur Forest Division, Nagpur (Territorial),  
BSNL "Sancharlaxmi" Building,  
Opp. Kasturchand Park, Nagpur-440001.

**Respondents.**

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**Shri P.V.Thakre, Ld. counsel for the applicant.**

**Shri A.M.Khadatkar, Id. P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan, Vice-Chairman and  
Shri M.A. Lovekar, Member (J).**

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**Date of Reserving for Judgment : 10<sup>th</sup> August, 2022.**

**Date of Pronouncement of Judgment: 12<sup>th</sup> August, 2022.**

**JUDGMENT**

**Per : Member (I).**

**(Delivered on this 12<sup>th</sup> day of August, 2022)**

Heard Shri P.V.Thakre, ld. Counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the respondents.

2. Case of the applicant is as follows. In 2011/2012 the applicant was working as a Forester in South Umred, Forest Range. He retired on superannuation on 30.09.2015. Vide communication dated 31.12.2015 he was served with a chargesheet (A-2) issued by respondent no. 3. Charge of dereliction of duty was laid against him. One Shri R.N.Kadu, Assistant Conservator of Forest was appointed as Enquiry Officer by order dated 26.05.2016. Enquiry Officer, by his report dated 07.04.2018 (A-3) held the aforesaid charge to be not proved. Thereafter, the disciplinary authority, by order dated 22.05.2018 (A-3) cancelled order dated 26.05.2016 appointing Shri R.N.Kadu as the Enquiry Officer, directed de-novo enquiry and appointed one Shri D.B.Jiddewar as the Enquiry Officer. By representation dated 27.06.2018 (A-5) made to respondent no. 3 the applicant prayed for setting aside the order of de-novo enquiry and further prayed that he be exonerated as the Enquiry Officer had found the charge to be not proved. This representation was rejected by order dated 04.10.2018 (A-6). Against

the order dated 04.10.2018 the applicant preferred appeal (A-7). It was rejected by order dated 01.10.2019 (A-8). Hence, this application impugning orders dated 21.12.2015 (communicated vide letter dated 31.12.2015), 22.05.2018 and 01.10.2019 (A-2, A-4 and A-8, respectively).

3. Reply of respondent nos. 1 to 4 (at pages 67 to 73) contains following averments. As per order dated 06.05.2015 passed by the Hon'ble Bombay High Court departmental enquiry was initiated against the applicant (and others) to fix responsibility for loss of revenue, and recovery. The committee constituted for this purpose submitted report (A-R-1 at pages 74 to 107). The report indicted among others, Shri R.N.Kadu. Chargesheet dated 21.12.2015 was in conformity with Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Order dated 22.05.2018 (A-R-2) appointing Shri D.B.Jiddewar to conduct de-novo enquiry does not suffer from any infirmity.

4. It was submitted by Shri Thakre, Id. Counsel for the applicant that after the Enquiry Officer held charge against the applicant to be not proved by order dated 07.04.2018 (A-3), the Disciplinary Authority, respondent no. 3 could have proceeded only under Rule 9 (2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and hence order dated 22.05.2018 (A-4) directing de-novo enquiry was clearly

unsustainable. In reply, Shri Khadatkar, Id. P.O. for the respondents relied on the following contents of A-4 :-

“४. आणि ज्याअर्थी, ज्या प्रकरणा संदर्भात श्री.एम.आर.फुकट यांचेविरुद्ध शिस्तभंगविषयक कार्यवाही सुरु करण्यात आली होती, त्या प्रकरणासंदर्भात मुख्य वनसंरक्षक, नागपूर यांनी पत्र क्र.कक्ष-१/९/जमीन/प्रक्र६१८/९५२ दिनांक २६/०९/२०१५ अन्वये गठीत केलेल्या चौकशी समितीने दिनांक २६/०६/२०१५ रोजी सादर केलेल्या चौकशी अहवालात उक्त श्री.आर.एन.कडू हे सुध्दा त्यांचेवर असलेल्या शासकीय कर्तव्यांचे वहन करण्यास अपयशी ठरल्याचे निष्पन्न आहे.

५. आणि ज्याअर्थी, सदर चौकशी अहवालास मुख्य वनसंरक्षक, नागपूर यांनी सहमती प्रदान केली आहे.

६. आणि ज्याअर्थी, उक्त परिस्थितीत प्रस्तुत शिस्तभंगविषयक कार्यवाहीत उक्त श्री.आर.एन.कडू सेवानिवृत्त सहाय्यक वनसंरक्षक यांनी चौकशी अधिकारी म्हणून भूमिका बजाविणे प्रशासकीयदृष्ट्या उचित ठरणार नाही.

७. त्याअर्थी.....

अ) प्रस्तुत शिस्तभंगविषयक प्रकरणी चौकशी अधिकारी म्हणून नियुक्ती करण्यासंदर्भात निर्गमित करण्यात आलेले संदर्भीय आदेश याद्वारे रद्द करण्यात येत आहे.

ब) महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९८९ च्या नियम ८(२) अन्वये प्रदान करण्यात आलेल्या शक्तींचा वापर करून व शासन निर्णय क्र. एसपीओ-२८०९/प्रक्र२१/२००७/११/अ दिनांक २८/१०/२००९ नुसार शासन निर्णय क्र.एसपीओ-२८०४/प्रक्र११/२००४/११ अ दिनांक २६/०९/२००६ अंतर्गत विवरणपत्र अ मधील नमूद केलेल्या अटी व शर्तीच्या अधिन राहून प्रस्तुत शिस्तभंगविषयक प्रकरणी नव्याने चौकशी

करण्याकरीता श्री.डी.बी.जिद्देवार, सेवानिवृत्त सहायक वनसंरक्षक यांची चौकशी अधिकारी म्हणून नियुक्ती करण्यात येत आहे.”

5. To support his aforementioned submission Advocate Shri Thakre relied on Rule 9 (2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It reads as under:-

**“9. Action on the inquiry report**

*(2)The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiry authority together with its own tentative reasons for disagreement, if any, with the findings of inquiry authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the said Government servant.*

*2.A. The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).”*

6. Advocate Shri Thakre further relied on “**Nityanand Gajanan Patil Vs. The State of Maharashtra & Ors., 2018 (4) ALL MR 865**”.

In this case the opening para sets out the nature of the challenge as under:-

*“The petitioner is questioning the order dated October 5, 2015, December 18, 2015 and January 7, 2016 passed by respondent no. 3 whereby the report of the Enquiry Officer exonerating the petitioner from the charges levelled against him came to be rejected with further order of de-novo inquiry against the petitioner.”*

While deciding this issue their Lordship of the Bombay High Court held:-

*“The law on the said issue is already well settled by the Apex Court in the matters of **State Bank of India and Ors. Vs. K.R.Narayanan Kutty (2003) 2 SCC 449, Yoginath D. Bagde Vs. State of Maharashtra and another A.I.R. 1999 SC 3734 and Punjab National Limited and Ors. Vs. Kunj Behari Mishra (1998) 7 SCC 84** wherein it is observed that in case if the Disciplinary Authority is not in agreement with the findings recorded by the Enquiry Officer, the Disciplinary Authority should issue show cause notice to the delinquent like the*

*petitioner and after hearing him should pass an order. Even if such express provision cannot be noticed in the Service Rules, still the fact remains that compliance of the principles of natural justice needs to be read in the relevant Rules.”*

*In the aforesaid background, what is required to be noticed is even if the petitioner gets an opportunity of hearing while de-novo inquiry will be conducted against him, however, he has every right to submit explanation to the Disciplinary Authority on the issue of why the Disciplinary Authority should agree/ disagree with the findings recorded by the Enquiry Officer. If such opportunity is offered to the petitioner, it is always open for him to persuade the Disciplinary Authority to reach some different conclusion. The degree of prejudice is not an issue which is required to be commented upon at this stage of the proceedings, but what is required to be noticed is the principles of natural justice need to be read down in the relevant Rule while dealing with the eventuality as is sought to be canvassed in the present petition.*

7. On behalf of the applicant reliance was also placed on Judgment of the Hon’ble M.P. High Court, delivered on 14.12.2017 in W.P.

No. 4864/2016. In this case Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 were considered and it was held:-

*“If there was any flaw in the enquiry report, the Disciplinary Authority could have disagreed with the report under Rule 15(2) and after giving reasons for disagreement it could have recorded its own findings and in any case by the said order he could not have directed for de novo enquiry travelling beyond the applicable rules. Thus, the action of the Disciplinary Authority to order de novo enquiry itself was not proper.”*

8. According to the Id. P.O. the circumstances which led to order dated 22.05.2018 (A-4) which are elaborated in reply of the respondents and the order dated 22.05.2018 itself, are self explanatory and hence no interference with the order dated 22.05.2018 would be warranted. The Rulings relied upon by the applicant which we have discussed above shall suffice to uphold contention of the applicant that order dated 22.05.2018 cannot be sustained and the only recourse open to respondent no. 3 would be to proceed under rule 9 (2) of the Rules of 1979 since he had come to the conclusion that order passed by the Enquiry Officer exonerating the applicant was liable to be interfered with.

9. By order dated 22.05.2018 (R-3) directed de-novo enquiry. It was submitted by Advocate Shri Thakre for the applicant that said order



cannot be sustained also in view of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Said rule reads as under:-

***“27. Right of Government to withhold or withdraw pension***

*(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement:*

*Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:*

*Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.*

*(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed*

*to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.*

*(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-*

*(i) shall not be instituted save with the sanction of the Government,*

*(ii) shall not be in respect of any event which took place more than four years before such institution, and*

*(iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.*

3)\*\*\*\*

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5)\*\*\*\*

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It was submitted by Advocate Shri Thakre that before directing de-novo enquiry no sanction was obtained from the Government as mandated by Rule 27 (2) (b) (i) nor did the enquiry pertain to an event which had taken place within four years from the date of initiation of such de-novo enquiry as mandated by Rule 27 (2) (b) (ii). Both these submissions are supported by record.

10. Order dated 22.05.2018 was purportedly passed by respondent no. 3 by exercising powers under Rule 8 (2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Such powers were already exercised while issuing chargesheet dated 21.12.2015 vide communication dated 31.12.2015 (A-2) and once these powers were exercised the only option available to respondent no. 3 was to proceed under Rule 9 (2) because for reasons to be found in order dated 22.05.2018 he did not agree with report of Enquiry Officer that the applicant was entitled to be exonerated.

11. It may be stated that de-novo enquiry directed by order dated 22.05.2018 cannot be taken to be a mere continuation of enquiry commenced with service of chargesheet dated 21.12.2015. In the said chargesheet it was specified that the instances of alleged dereliction of duty were of the year 2011-2012. Same instances were to be the subject matter of de-novo enquiry ordered on 22.05.2018. A conjoint consideration of

these circumstances would show that initiation of de-novo enquiry was bad on two counts viz want of sanction from the Government and limitation. Once this conclusion is reached it would follow that the chargesheet dated 21.12.2015, order dated 22.05.2018 and order dated 01.10.2019 (A-2), (A-4) and (A-8), respectively, will have to be quashed and set aside. They are accordingly quashed and set aside. Consequential benefits shall be released in favour of the applicant **within three months from today. O.A. is allowed in these terms with no order as to costs.**

**(M.A.Lovekar)**  
**Member(J)**

aps

Dated – 12/08/2022

**(Shree Bhagwan)**  
**Vice Chairman**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman&Member(J).

Judgment signed on : 12/08/2022.  
and pronounced on

Uploaded on : 17/06/2022.