

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH : NAGPUR**  
**ORIGINAL APPLICATION No. 221 of 2010 (D.B.)**

Shri Sitaram S/o Mahadeo Kinake,  
Aged about 67 years, R/o Vikas Colony,  
Ram Nagar, Yavatmal.  
Retired BDO (Gazetted Officer, Class-I).

**Applicant.**

**Versus**

- 1) State of Maharashtra through its Secretary  
Rural Development and Water Resources Department,  
Mantralaya, Mumbai-32.
- 2) Zilla Parishad, Yeotmal.

**Respondents.**

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Shri Bharat Kulkarni, Advocate for the applicant.

Shri H.K. Pande, learned P.O. for respondent no.1.

Shri M.I. Mourya, Advocate for respondent no.2.

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J) and  
Hon'ble Shri Shree Bhagwan, Member(A).**

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**JUDGMENT**

**PER : M (A).**

**(Delivered on this 19<sup>th</sup> day of December,2018)**

Heard Shri Bharat Kulkarni, learned counsel for the  
applicant, Shri H.K. Pande, learned P.O. for respondent no.1 and  
Shri M.I. Mourya, learned counsel for respondent no.2.

2. The applicant is a retired BDO (Gazetted Officer Class-I). When he was working as BDO, Panchayat Samiti, Maregaon, District Yavatmal during the period from 09/12/1991 to 06/07/1994, the Departmental Inquiry was initiated against him on the charges of irregularities made by him vide memorandum issued by respondent no.1 on 31/07/1996 which is at Annex-A-4, P.B. page nos. 92 to 123 (both inclusive) and the applicant has been given opportunity to submit his defence statement in writing and/or personally within 10 days. The following charges were framed against the applicant which is at page no.96 (t kMi = & , d).

^t kMi = & , d

Jh, I -, e-fdukdj ekth xV fodkl vf/kdkjh (m-Js) i pk; r I ferh ekjxk@uj] ftYgk ; orekG ¼ /; k fuyicr½; kps#n foHkxh; pkl'kh dj.; kl kBh nkskkjki i = &

Jh, I -, e-fdukds gsfnukd 09@12@1991 rs06@07@1994 ; k dkyko/khr xV fodkl vf/kdkjh (m-Js) i pk; r I ferh ekjxk]ftYgk ; orekG ; k i nkoj dk; jr vl rkuk R; kauh 'kkI dh; dkekr [kkyhyi ek.ksvfu; ferrk dsh vks &

vjki dz1 & Jh, I -, e-fdukds gsmDr i nkoj o dkyko/khr dke djhr vl rkuk R; kauh I u 1992&93 e/; s Jh , -, I - xk; /kuj dfu"B yq[kk vf/kdkjh] i pk; r I ferh] ekjxk g; kps kh I xuerkus 250 es Vu fl eWph vko'; drk ul rkuk tlnk [kjnh d#u 'kkI dh; fu/kh vdkj.k xroq Baw egkjk"Vukxjh I ok (orZkd½ fu; e 3 ¼1½¼, d½anku½¼rhu½psmYyaku dshs

vjki dz2 & Jh, I -, e-fdukds gsmDr i nkoj o dkyo/khr dke djhr vl rkuk R; kauh [ky; k cktkjru fl eW [kjnhph ofj"Blph i jokuxh u ?krk rl p fofgr dk; i/nrhp voye u djrk rl p

fufonk/kkj d k 0; frfjDr Qezyk jdeps'kks'ku dsys l njdR; Jh- xk; /kus; kps kh l xuer d#u dsys vl u R; kauh yskkl fgrk fu; e 138 o eglyk"V<sup>a</sup> ukxjh l ok (orzklp<sup>1</sup>/<sub>2</sub> fu; e 3 1/4 1/2 1/4 nku 1/2 rhu 1/2 psmYaku dsys

vljli dz3 & Jh- , l -, e-fdukdsqsmDr i nkoj o dkyko/khr dke djhr vl rkauk R; kauh Jh-xk; /kus ; kps kh l xuer d#u 5000 fl eW Fksh i R; {kkr i ktr >kY; kP; k fnM efguk vxksj p rtkB i at hr ukn ?kouu jdeps 'kks'ku d#u #i ; s4]55]000@& ps 'kks'ku l ij {kk B o u ?krk dsys vkf.k eglyk"V<sup>a</sup> ftYgk i fj"kn o i pk; r l ferh yskkl fgrk 1968 psfu; e 144 pk Hkx r l p eglyk"V<sup>a</sup> ukxjh l ok (orzklp<sup>1</sup>/<sub>2</sub> fu; e 1979 psfu; e 3 1/4 1/2 1/4, d<sup>1</sup>/<sub>2</sub> nku 1/2 rhu 1/2 psmYaku dsys

vljli dz4 & Jh- , l -, e-fdukdsqsmDr dkyko/khr mDr i nkoj dke djhr vl rkauk R; kauh Jh-xk; /kus ; kps kh l xuer d#u i pyhr njli {kk #-11@& us tkLr njkps fl eW [kjsnh d#u #-55]000@& pk tlnk HkqM 'kkl ukoj yknyk vkf.k vkfkl d fu; e o eglyk"V<sup>a</sup> ukxjh l ok (orzklp<sup>1</sup>/<sub>2</sub> fu; e 1979 psfu; e 3 1/4 1/2 1/4, d<sup>1</sup>/<sub>2</sub> nku 1/2 rhu 1/2 psmYaku dsys

vljli dz5 & Jh- , l -, e-fdukdsqsmDr i nkoj o dkyko/khr dke djhr vl rkauk R; kauh Jh-xk; /kus ; kps kh l xuer d#u #i ; s4]55]000@& gh fl eW [kjsnh ofj"Blph i jokuxh u ?krk d#u eglyk"V<sup>a</sup> ukxjh l ok (orzklp<sup>1</sup>/<sub>2</sub> fu; e 3 1/4 1/2 1/4, d<sup>1</sup>/<sub>2</sub> nku 1/2 rhu 1/2 psmYaku dsys

vljli dz6 & Jh- , l -, e-fdukdsqsmDr i nkoj o dkyko/khr dke djhr vl rkauk R; kauh Jh-xk; /kus ; kps kh l xuer d#u fl eWP; k ntkph [kk=h u djrk #i ; s4]55]000@& ijoBknkkl okVi d#u vkdfLed [kpzfu; ekoyh 1965 psi fjf'k"V&6 fu; e 3 psmYaku dsys

vljli dz7 & Jh- , l -, e-fdukdsqsmDr i nkoj o dkyko/khr dke djhr vl rkauk R; kauh Jh-xk; /kus ; kps kh l xuer d#u idYi l pkyd] ; orekG ; kauh #i ; s4]46]000@& ph rjrnp 20 VDds dkekl kbhfnyh vl rkauk rh fl eW [kjsnoj [kpzd#u tokgj jkstxkj eW; qy e/khy rjrnp dz:25-1 pso vkdfLed [kpzfu; ekoyh 1965 e/khy fu; e 171 psmYaku dsys

vljki dz8 Jh- , l -, e-fdukdsgsmDr i nkoj o dkyko/khr dke djhr vl rkauk R; kauh Jh- , u-tt-  
 cYdh] l dkfuorR xte foLrkj vf/kdkjh] i pk; r l ferh ; kpdMs#- 65]594@& ph ol yh i yfcr  
 vl rkauk l fnk uk&ol yh i ek.ki =kr rh jDde ueq dsh ukgh- i ; k; kusl nj jDde ol y djrk  
 vkyh ukgh o r0<; k jdeP; k [kR; koj cktk i Myk- v'; ki dks R; kauh drD; kr dl yj d#u  
 cst clcnkj i .ksukol yh i ek.ki = fuxter dshvks l cc R; kauh egjk"V<sup>a</sup>ukxjh l ok (orZkd½ fu; e  
 1979 psfu; e 3 ¼1½ ¼, d½anku½¼rhu½psmYyaku dshs

vljki dz9 Jh- , l -, e-fdukdsgsmDr i nkoj o dkyko/khr dke djhr vl rkauk R; kauh Jh- , u-ds  
 eljkokj] dfu"b vfhk; ark i pk; r l ferh eljxk0 ; kauk clakdkekl kbh dkeks ixrhpovoykdu u  
 djrk o i phps vxte i yfcr vl rkauk oGkoGh vxte eatj d#u vkfkd fu; ferrk dsh o  
 egjk"V<sup>a</sup>ftYgk i fj"kn o i pkr l fer; k ys[kl fgrk 1968 e/khy fu; e 210 ¼c½ pk Hkx vkf.k  
 egjk"V<sup>a</sup>ukxjh l ok (orZkd½ fu; e 1979 psfu; e 3 ¼1½ ¼, d½anku½¼rhu½psmYyaku dshs

vljki dz10 Jh- , l -, e-fdukdsgsmDr i nkoj o dkyko/khr dke djhr vl rkauk i pk; r l ferh]  
 eljxk0 ; fku LFkkukaj.k >kY; koj rfhky fuokl LFkkukpsfo?kq ns d #- 3]322@& Hkjysys ukgh-  
 l cc R; kauh egjk"V<sup>a</sup>ukxjh l ok (orZkd½ fu; e 3 ¼1½ ¼, d½anku½¼rhu½psmYyaku dshs

vljki dz11 Jh- , l -, e-fdukdsgsmDr i nkoj o dkyko/khr dke djhr vl rkauk i pk; r l ferh]  
 eljxk0 ; fky fuokl LFku HkM; kph fnukd 09@12@1991 rs 30@01@1992 i ; rP; k Qj dph  
 jDde oGoj u Hkjrk mf'kjk Hk#u egjk"V<sup>a</sup>ukxjh l ok (orZkd½ fu; e 3 ¼1½ ¼, d½anku½¼rhu½ps  
 mYyaku dshs

vljki dz12 Jh- , l -, e-fdukdsgsnukd 26@10@1994 rs 18@02@1996 ; k dkyko/khr xV  
 fodkl vf/kdkjh ¼m-Js½ i pk; r l fertj] uj ; k i nkoj dk; jr vl rkauk R; kauh l njhy [kpkpsQkMzua  
 29 oj 'kk[kk vfhk; ark o dfu"b vfhk; ark i pk; r l fertj] uj ftYgk ; orekG ; kpsukokoj jDde #-

3]38]872@& pspDI dk<u [kphVkdys I cc R; kuh egkjk"V"yqkk I agrk ----- ukxjh  
I dk (orzkp½fu; e 1979 psfu; e 3 ¼1½¼, d½anku½¼rhu½psmYyaku dsys\*\*

3. The applicant has submitted defence statement by requesting not to propose the departmental inquiry, but it was rejected by respondent no.1 and the Inquiry Officer was appointed to enquire into the matter vide order dated 02/12/1996 issued by respondent no.1. The report of inquiry was submitted by the Inquiry Officer on 30/06/2000 (at P.B. page nos. 60 to 91) and the same was received by respondent no.2 on 04/10/2000 and the copy was received by the applicant vide letter No. efti@lki fo@LFk&5@2450@ 2000] dated 10/10/2000 from CEO, Zilla Parishad, Yavatmal. The applicant has submitted defence statement to respondent no.1 on 11/11/2002 (at P.B. page no.140). The respondent no.1 has rejected the request of applicant without showing any substantial reason and issued the punishment order vide Government order No. xte fodkl o tyI dkkj.k foHkkx vkns'k dz efol @7494@izdz1028@vkLFk&2, dated 04/02/2004. In the said impugned order as per last para following punishments have been continued –

(i) Rs.55,000/- is to be recovered from the amount of gratuity payable to the applicant.

(ii) From the date of order 5% amount will be recovered from due monthly pension after retirement.

4. The applicant is aggrieved by this order, therefore preferred an appeal before the Hon'ble Governor of Maharashtra on 15/05/2004 (at Annex-A-3, P.B. page no.24). The appeal is finally decided by the Hon'ble Governor vide Government of Maharashtra order No. xte fodkl o tyl fkkj.k foHkkx vkns'k dz efol 7404@i z dz 176@vkLFkk&2, dated 08/12/2009 and communicated to the applicant through CEO, Zilla Parishad, Yavatmal, which is received by the applicant on 23/02/2010. The applicant is aggrieved by this order as the Hon'ble Governor has confirmed the punishment order of respondent no.1 issued on 04/02/2004 and therefore the applicant has approached before the Tribunal and prayed the following reliefs :-

*“(i) Quash and set aside the impugned order dated 08/12/2009 and punishment order dated 04/02/2004 of the respondent no.1 in the departmental inquiry.*

*“(ii) Direct the respondents not to recover the amount Rs.55,000/- from gratuity and 5% recovery from pension, till the final disposal of the present case.”*

5. The respondent no.1 by filing reply-affidavit resisted the claim made by the applicant. It is submitted that the applicant was compulsorily retired from the post of BDO, Maharashtra Development

Service, Class-I, in pursuance of the notice issued by respondent no.1 on 24/11/1999. The applicant was serving as BDO in Panchayat Samiti, Maregaon in Yavatmal District during the period from 9/12/1991 to 6/7/1994. It is submitted that the applicant has made allegations without any substance that the respondent authorities have rejected the defence of the applicant and issued the order of punishment on 4/2/2004. It is submitted that the Government has issued the charge sheet against the applicant vide memorandum dated 31/07/1996 as there are serious charges against the applicant which has caused huge loss to the Government. The respondents after giving sufficient chance to the applicant for making representation, came to the conclusion to initiate the department inquiry against the applicant and therefore appointed an Inquiry Officer vide order dated 2/12/1996 and the departmental inquiry initiated against him on 10/01/1997. The applicant has tendered his representation on 1/2/1997. It is stated that after completion of inquiry report, the Inquiry Officer has submitted the report on 31/07/2000 and the said report was submitted to the respondent authorities vide letter dated 29/08/2000 and after taking into consideration the representation made by the applicant on the basis of inquiry report dated 20/11/2000 and other relevant documents, the disciplinary authority came to the conclusion to punish the applicant

and accordingly a proposal was submitted to the General Administration Department, Mantralaya, for obtaining necessary approval in this regard. It is submitted that after receipt of the proposal in the inquiry report, second show cause notice was issued to the applicant on 7/10/2002 calling his explanation to the proposed penalty. Accordingly, the applicant submitted his explanation on 11/11/2002. Taking into consideration all the aspects in the matter, the government has come to the conclusion to impose penalty on the applicant after seeking approval from the Minister-in-Charge and concurrence of the Maharashtra Public Service Commission vide letter dated 28/1/2003 which was received vide letter dated 7/1/2004. Thereafter, final punishment was imposed on the applicant on 4/2/2004.

6. It is also submitted that the applicant has preferred an appeal before the Hon'ble Governor against the punishment orders dated 4/2/2004 and 15/5/2004. The office of the Hon'ble Governor requested the government vide letter dated 28/6/2005 to make comments in respect of appeal preferred by the applicant. The Government made the comments in this regard. It was suggested from the office of the Hon'ble Governor to designate the concern Minister in order to dispose of the appeal and the Hon'ble Governor has delegated the powers in order to meet the principles of natural



justice. Thereafter, the Hon'ble Minister-in-Charge for Employment Gurantee Scheme was nominated and designated by the Government. The matter was kept for hearing on 28/6/2005 and the applicant was also present for hearing in Mantralaya. The appeal was finally decided and the appeal came to be rejected and accordingly after consultation with the Maharashtra Public Service Commission, the final order was issued on 8/12/2009. The applicant has been given ample opportunities, the principles of natural justice has been followed at all stages.

7. We have perused the various documents placed on record, we have also gone through the arguments putforth by the learned counsel for the applicant and the learned P.O.

8. The learned counsel for the applicant has placed reliance on the Judgment in case of **Rajendra Yadav Vs. State of M.P. & Ors., 2013(3) SLR I (SC)**, wherein it is held that the doctrine of equality applies to all who are equally placed, even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquent has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing involvement of co-delinquents who

are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offence and stringent punishment for lesser offences. After perusing the said Judgment it seems that the same fact is not applicable to this matter.

9. As per the departmental enquiry report at page Nos. 60 to 91, in which abstract has been given at page No.91. As per this, charge No.1, charge No.7, charge No.9, charge No.10 and charge No.11 i.e. five charges are not proved, as written by the Inquiry Officer. Charge No. 2, charge No.4, charge No.6, charge No.8 and charge No. 12 are fully proved and charge No.5 is partially proved.

10. Accordingly decision given in appeal also, five charges have not been proved (charge No.1, charge No.7, charge No.9, charge No.10 and charge No.11). However, five charges (Charge No. 2, charge No.4, charge No.6, charge No.8 and charge No. 12 ) have been proved fully against the applicant and one charge i.e. Charge no.5 is partially proved. So the applicant is liable for punishment.

11. The decision regarding other punishments, since the applicant has been given full opportunity to defend himself before

all stages of departmental inquiry including appeal before the Hon'ble Governor and his punishment has been confirmed. So we do not find any ground to interfere in other reliefs claimed by the applicant.

12. It is material to note that the Project Director of District Rural Development Agency, Yavatmal has written letter No. ;ftxtfo;@l i t l o k@566@2006] fnukd 19@06@2006, dated 29/03/2006 to the Chief Executive Officer, Zilla Parishad, Yavatmal which is at P.B. page no.148 in which on the last para it is mentioned that the excess amount of Rs.1,55,800/- which was paid to the Cement Private Company has been recovered from the bill of 1994 and in the said amount, the amount Rs. 55,000/- regarding purchasing of cement by Shri S.M. Kinake, Panchayat Samiti, Maregaon is also included. From this document it seems that the amount of Rs.55,000/- which is payable by the applicant has already been recovered by the department therefore there is no loss to the Government and so there is no reason to recover again the said amount from the applicant. This fact seems to have been ignored by the Disciplinary as well as Appellate Authority. We, therefore pass the following order :-

**ORDER**

- (i) The O.A. is partly allowed, with no order as to costs.

- (ii) The respondents are directed not to recover the amount of Rs.55,000/- from the applicant and if recovered, the same be refunded to the applicant within three months from the date of this order.

**(Shree Bhagwan)  
Member(A).**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

**Dated :- 19/12/2018.**

dnk.