

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 685 of 2010 (D.B.)**

Wasudeo Abaji Harshe,
Aged about 59 years,
R/o near Chourgade Medical Square Ring Road,
Gondia Distt. Gondia.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
Dairy Development Department,
Mantralaya, Mumbai-32.
- 2) The Commissioner,
Dairy Development Department,
Maharashtra State,
Worli Sea Face, Mumbai.
- 3) Regional Dairy Development Officer,
Telanghedi Road, Civil Lines,
Nagpur.

Respondents.

Shri Sachin Khandekar, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondents.

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

JUDGMENT**PER : V.C. (J).****(Delivered on this 8th day of October,2018)**

Heard Shri Sachin Khandekar, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant in this O.A. is claiming for quashing and setting aside the order dated 10/01/2007 (Annex-A-2) issued by respondent no.3 and also the order dated 17/06/2010 (Annex-A-5) issued by respondent no.2 in the appeal.

3. Vide order dated 10/01/2007 (Annex-A-2) issued by respondent no.3, i.e., the Regional Dairy Development Officer, Nagpur the applicant was terminated from service as per the provisions of Rule 5 (1) (8) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Against the said order the applicant has preferred revision application before the respondent no.2, i.e., the Commissioner, Dairy Development Department, Maharashtra State, Mumbai and vide order dated 17/06/2010 (Annex-A-5) the order passed by the respondent no.3 was confirmed. The applicant is therefore no more in service and therefore has filed this O.A.

4. The learned counsel for the applicant submits that the order of termination of the applicant passed by respondent no.3 as well as it's confirmation by the respondent no.2 is absolutely arbitrary, illegal and is nothing but colourable exercise of powers. It is stated that the order passed by respondent no.2 is non-speaking order and in fact it is more cryptic and as against the Judgment delivered by the Hon'ble High Court Bench at Aurangabad in the case of **Narayan Choudhary Vs. State of Maharashtra [2005 (3) Mh.L.J.,693]**. The Appellate Authority also did not apply mind and has mechanically maintained the order. The Appellate Authority ought to have taken lenient view and should not have terminated the applicant. No opportunity was given to the applicant and in fact it is a case of no evidence.

5. The respondents tried to justify the order. We have perused the order passed by the respondent no.3, i.e., at Annex-A-2 P.B. page nos. 23 & 24 (both inclusive). We have also perused the inquiry report in the matter which is placed on record at Annex-A-1 from P.B. page nos. 13 to 22 (both inclusive). It seems that following two charges were framed against the applicant.

*^clic delad &1 % okl qno vkckth g"klj okgupkyd ;k inkoj fnukad
01@07@1989 ikl u dk; jr vkgr- rsokjokj fouki jokuxhusxfgtj jkgrkr-
R; kaur R; kpsxfgtjh ckr ukvhl @egk0; oLFkki d] 'kkl dh; nqk ; kst uk] ukxi ij*

; kauh Kki u] dkj.ksnk[kok ukVhl] l eUl nough R; kpk x\$gtj jkg.; kpsl o; hl
 l qkkj.kk >kysyh ukgh- rl p x\$gtj vl rkuk o\$kdh; n"V; k #tw gks; kl
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brdp u0gsrj x\$gtjhrhy i dZl puk fnysyh ukgh- vFkok ijd sl eFkz
 fnysys ukgh- R; kb; k cstckcnkj orLkeGex\$gtjheGs 'kkl ukp; k n\$ufnuh
 dkedktr vMp.k fuekzk gkrs ojhy ckcho#u Jh- g"kb; kauh 'kkl dh; l oph
 xjt@vko'; drk ul Y; kpsLi "V gkrs

clc delad &2% mDr Jh- okl qno g"kb okgu pkyd gsfnukad 05@11@2002 rs
 13@09@2003 i; r x\$gtj gkrs ; k x\$gtjh ckr i pZl puk fnukad
 07@11@2003 jkstP; k i =kko; sdGfoY; kpso R; k i "BFkZR; kauh i kL Vkph i korth
 l knj dsysyh vkg. l nj i korthoj Jh- g"kb; kpk i Rrk ewiks ukxjh dVaxh] rk-
 ftYgk xkfn; k vl sueq vl u R; kauh HkMkj k i kL Vkpsfnukad 30 uk\$gaj] 2002
 pk LVW i vkg. l nj i = dk; ky; kr i klr >kysys ukgh- ; ko#u R; kauh cukov
 nLr, ot r; kj d#u 'kkl ukph fn' kktHny djhr vl Y; kpsLi "V gkrs**

6. Perusal of the first charge as referred above shows that it was a general charge that the applicant was in habit of remaining absent without intimation and in spite of notices there was no change in his behaviour and attitude. It is stated that while joining the post after medical leave, the applicant did not produce a fitness certificate. Frequent absence of the applicant without initiation was causing hindrance in the office administration.

7. The second charge against the applicant is that he was absent from duty without intimation from 05/11/2002 to 13/01/2003 and it was applicant's case that he intimated the office on 07/11/2003

by sending a letter and also filed some postal receipt. But the said postal receipt was not received by the office and it was fabricated. We have perused entire evidence as discussed by the Inquiry Officer and we are satisfied that there is no absolute evidence to prove charge no.2 that the applicant has produced fabricated and false receipt. The Inquiry Officer made following observations on the charges :-

11- pl6l 'lh vf/kdkjh ; kpsel; eki u o fu" d'12

i dj .kkryh nks'kkjksi] nLrk, ot] I k{khnkj c; kus I knjdrkz vf/kdkjh ; kps Vkp] vi pkjh ; kpsfuonu i kgrk [kkyhyiek.ks

**** vkji delad 1 & fcuki jokuxhusxfgtj & I knjdrkz vf/kdkjh ; kauh Vkp.kkr uem dsysdh] I k{khnkj Jh- I qkkdj i ksrnkj] Jh- jked".k 'kGd] Jh djals ; kps c; kukuq kj vi pkjh okjokj xfgtj jkgr gkrk- vi pkjh ; kauh xfgtj jkg.kkj ukgh v'kh geh nough i kGyh ukgh- vi pkjh ; kauh fuonu uem dsysdh] o9kdh; dlj.kkLro jtoj jkg.ks Hkkx gkr's o9kdh; eMGkus o9kdh; n"V; k ik= EgVY; kurj #tw>kysysvkg's**

nks'kkjksi .kke/; p uem dY; ki ek.ks04@07@1997 rs09@09@2003 i ; I rpk dkyko/lh fu; fer dsysy fnl rk] R; keG's vkjksi kph ckc f'kYyd ukgh- QDr xfgtj jkg.; kph I o; vk<Guu ; s's I /; k #tw>kysyk vkgs'gs I k{khnkjkaukgh ekU; dsysvkg's fu; fer dsysy dkyko/lh gk i tlgk vkjksi kph ckc f'kYyd jkgr ukgh-

vkjksi i qlr-%fl /n gkr ukgh-

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I knjdrkz vf/kdkjh ; kauh Vkp.kkr uem dsysdh] i ksyhl vf/k{kd] xkln; k ; kps i = fnukad 07@06@2004 vluo; svi pkjh gk i Ruhl g ekSt k dVaxh] ft Ygk

*xkfin; k ; fks jkgrsgsLi "V gkrs vi pljh ; kah fuosukr ueq dsydhj vpkud
fcekj i MY; keGsi pZ puk ns; kpk izu mnHkor ukgh-*

*vi pljh gsvpkud fcekj i Mysvl sy o oGoj vtZfnyk ul sy rjhi .k
urj j tpk vtZ i kBo.ks o I /; kpk jtk dkyko/kpk jkg.; kpk i Rrk dGfo.ks
vko'; d gkrs gk vkjksi fl /n gkrs*

vkjksi dēkad 1 %i ukZ-%fl /n gkr ukgh-

vkjksi dēkad 2 %fl /n gkrs

8. The perusal of the aforesaid observations clearly shows that though the applicant was remaining absent frequently, his absence period from 04/07/1997 to 09/09/2003 was regularised. It is also admitted in the report that the applicant has joined services after 09/09/2003 and therefore nothing remains in charge no.1. As regards the second charge is concerned, it is stated that the applicant ought to have informed his address at Katangi, District Gondia. It is not known as to how the Inquiry Officer came to the conclusion that the charge no.2 was proved. As already stated the charge no.2 was as regards producing fabricated postal receipt and there is no evidence at all to show that the postal receipt was fabricated by the applicant.

9. Thus on perusal of the report of the Inquiry Officer, it seems that the Inquiry Officer came to the conclusion that the charge no.1 was partially proved, whereas, charge no.2 was proved, but

these findings are absolutely against the evidence on record and can be said to be perverse. At the most it can be presumed from the record that the applicant was habit of remaining absence without intimation. Admittedly, his absence period has already been regularised by the competent authority.

10. We have perused the impugned order of termination issued by respondent no.3 (Annex-A-2). In the said order it is stated in para nos. 2 to 4 as under :-

^¼2½ vjki dækad 1 ul kj pkðl'kh vgokykr ueñ dY; kuñ kj fnukad 04@07@1997 rs02@09@2003 i ; r vki .k okjokj xfgtj gkrk- rl p fnukad 09@09@2003 ikl u vkrtrkx; r vki .k fcukijokuxhus xfgtj vlgkr- vki Y; k cstckcnkj orb.kðheGs@ xforb.kðheGs'kk ukpsnñinu dkedktr vMp.kh fuelzk gkr vkgs ; ko#u vki .kkd 'kk dh; I ðph xjt@ vko'; drk ul Y; kpsLi "V gkr s

¼3½ vjki dækad 2 ul kj vki .k fnukad 05@11@2002 rs13@01@2003 i ; r xfgtj gkrk o ; k xfgtjhckcr i ðl ðuk fnyh ukgh- rl p vipkjh gs vpkud fcej i Mysvl sy o oGoj vtZfnyk ul sy rjhi .k urj jtpk vtZ i kBfo.kso I njP; k jtk dkyko/khrhy i Rrk dGfo.ksvko'; d gkr s ; kckcr R; kauh dl j dsk vl Y; kusfoHkxh; pkðl'khr gk vjki fl /n >kysyk vl u gsdk; kzy; I nj fu"d"kkZ kh i qkZ .ksl ger vkgs

¼4½ I nj foHkxh; pkðl'khp nLrk, ðt] R; k ukmfoyY; k I k{kh o dlxni =kph rl p pkðl'kh vgokykpsLora=i .ks voykdu d#u vl snl uu vkys vkgs dhj pkðl'kh vf/kdk&; kpk fu"d"kkZgk vjki krhy i jkoso dlxni =køj vk/kjhr vkgs rl p vki .kk fo#/n fnukad 04@07@1997 rs 02@09@2003 i ; rP; k

*x\$gtjip; k dkyko/khl kBh foHkxh; pks'h'kh l # vl rkukgh vki .k i tlgk fnukad
09@09@2003 ikl u vktrkxk; r vulf/kdri .ksx\$gtj vkgr-***

11. From the said order, it seems that the respondents are also alleging that the applicant was absent unauthorisedly from 09/09/2003 till passing of that order i.e. on 10/01/2007. However, that does not seem to be a correct statement because as per findings given by the Inquiry Officer, the applicant was absent from 04/07/1997 to 09/09/2003, but said period was regularised and therefore this charge no more remains against the applicant. So far as the applicant's absence from 02/09/2003 till passing of the impugned order of 10/01/2007 is concerned, no departmental inquiry was initiated against the applicant for absence for this period and therefore no order of termination can be issued on the basis of charge that the applicant remained absent without intimation from 09/09/2003 till 10/01/2007 without due inquiry in this regard. This clearly shows that the respondent no.3, i.e., the Regional Dairy Development Officer, Nagpur did not apply his mind in the report given by the Inquiry Officer and has issued the impugned order holding the applicant guilty for remaining absent unauthorisedly for the period from 09/09/2003 till passing of the order dated 10/01/2007 without inquiry.

12. We have also perused the order passed by the respondent no.2, i.e., the Appellate Authority on 17/06/2010 (Annex-A-5). The said order is absolutely vague and it is stated that during personal hearing the applicant stated that he was unable to see properly or in short his eye sight was weak. The Appellate Authority did not consider the findings recorded by the Inquiry Officer and that by the Disciplinary Authority and mechanically maintained the order.

13. Since the learned counsel for the applicant submits that impugned order was passed without application of mind and there was absolutely no evidence on record against the applicant, we have perused all the documents and the evidence discussed by the Inquiry Officer. We are satisfied that at the most it can be said that the applicant was in habit of remaining absent without intimation. However instead of taking action against the applicant, the competent authority seems to have condoned his attitude from time to time and regularised his absence period. Even accepting that the applicant was in habit of remaining absent without intimation that itself will not mean that his conduct was sufficient for termination.

14. The termination order has been issued on 10/01/2007 and the Appellate order has been passed on 17/06/2010. The O.A. has been filed in 2010 and at that time the applicant's age was 59

years. Considering the fact that the applicant is a Driver and i.e. a Class-III employee and he was facing medical problems as it has been stated by the Appellate Authority that the applicant was facing problems due to weak eyesight, a lenient view should have been taken against the applicant and instead of terminating him, he should have been given pensionary benefits.

15. From the record, we have noticed that against the order of termination dated 10/01/2007 the applicant has preferred revision application before Appellate Authority i.e. respondent no.2, but the said revision application was not decided within proper time. The applicant was therefore forced to file O.A.No.188/2010.

16. This Tribunal vide order dated 20/04/2010 at Annex-A-4 was pleased to direct the respondent no.2 to take decision in the revision application within a period of two months and it seems that only because of such direction the Appellate Authority passed the order at Annex-A-5. We have also perused the revision application filed before the Appellate Authority at Annex-A-3 at P.B. page nos.25 to 29 (both inclusive). In the said appeal memo the applicant has requested that he was unable to perform job of Driver mainly because of medical reasons and hence possibility should have been explored of giving some other job in the office to the applicant. It was

also mentioned that the applicant has undergone on eye operation and that instead of terminating the applicant, he should have been considered for the punishment which may entail him atleast pensionary benefits. The Appellate Authority has not considered all these points.

17. Since it was not cleared as to on what date the applicant has joined after his services were regularised, the learned P.O. was directed to take instructions. On perusing the record before this Tribunal the learned P.O. submits that the applicant joined duty on 03/09/2003 on availing medical leave and has worked till 08/09/2003, but thereafter he did not appear which in other word means that last working day of the applicant was 08/09/2003 and he was absent unauthorisedly from 09/09/2003 to 10/01/2007 i.e. till the date of termination. Admittedly, the applicant has crossed the age limit of 60 years immediately after filing of the O.A. in 2010 and no inquiry was initiated against him for the absence period from 09/09/2003 till the date of his termination on 10/01/2007 or till the date of his retirement on superannuation. Considering these facts, it will not be just and proper to remand the matter for taking fresh view on the point of quantum of punishment given to the applicant.

18. Considering the aforesaid discussed circumstances, we are of the opinion that it will be in the interest of justice and equity to take some lenient view in applicant's favour. We have also considered the facts that the applicant is a Class-III employee and was working on the post of Driver. In last period of service he was suffering from medical problems and has undergone eye operation also and was facing difficulty in driving the vehicle which was his duty. He has also requested that he should be given some other work, but same was not considered and therefore in such circumstances it is a fit case where lenient view is required to be taken. Hence, we pass the following order :-

ORDER

(i) The O.A. is partly allowed in terms of prayer clause no.10.1 and 10.2. The order is at Annex-A-5, dated 17/06/2010 issued by the respondent no.2 confirming the termination of the applicant and the order of termination dated 10/01/2007 at Annex-A-2 issued by respondent no.3 shall stand quashed and set aside.

(ii) The respondents are directed to treat the applicant as retired compulsorily w.e.f. 10/01/2007. The applicant will not be entitled to any back wages for the period from 09/09/2003 till the date of compulsory retirement i.e. 10/01/2007. However, it is made clear

that if as per the rules the applicant is found fit for pension and pensionary benefits, the same shall be granted to him presuming that he has been made to retire compulsorily w.e.f. 10/01/2007 and necessary steps shall be taken in this regards within three months from the date of passing of this order and shall be communicated to the applicant in writing. No order as to costs.

(Shree Bhagwan)
Member(A).

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

Dated :- 08/10/2018.

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