

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 798 / 2021 (S.B.)**

Pradeep S/o Pundlikrao Dhole,
Aged about 60 years, Occupation:-Retired,
R/o B-4/05, Forest Housing Society,
Near Center Point School,
Katol Road, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 400 032.
- 2) The Chief Conservator of Forest (Regional)
Having its office, 2nd Floor,
BSNL Building, Opposite Kasturchand Park,
Nagpur.

Respondents

Shri S.P.Palshikar, the Id. Advocate for the applicant.

Shri H.K.Pande, the Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 07th March, 2022.

Judgment is pronounced on 11th March, 2022.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and Shri H.K.Pande, Id. P.O. for the Respondents.

2. In this application the applicant has prayed:-

"i) That this Hon'ble Tribunal be pleased to issue necessary directions to respondent no. 2 to release the increment in favour of the applicant w.e.f. 2009 to 213 forthwith.

ii) *Direct the respondent no. 2 to pay interest @ 18% p.a. from 2009 till its actual realization."*

3. Facts leading to this application are as follows. The applicant joined the respondent department as a Forester in the year 1989. Chargesheet was served on him in departmental enquiry instituted under Rule 10 of the Maharashtra Civil Services (Discipline and Appeal), Rule 1979. The following charges were levelled against him:-

"(1) Leaving head quarters without prior approval and neglecting the work of protection;

(2) Travelling abroad without prior approval of the competent authority and making attempts to mislead superiors;

(3) Misleading the superiors by submitting false diary; and

(4) Misleading the superiors by showing that he was working while remaining absent without sanctioned leave."

By order dated 21.03.2003, Deputy Conservator of Forest, Gondia imposed punishment as under:-

"(1) Jh ih-ih- <ky> ouiky ; kb; k nku oru ok-hj i qhy oru ok-hoj i fj.kke gkby ; ki ek.ls jk[k.; kr ; s vkg

(2) Jh ih-ih- <ky> ouiky ; kpk fnukd 17-09-2000 rs 28-09-2000 ; k dkyko/khrhy xsgktjh dkyko/th ^vI k/kj.k j tk Eg.ku eatj dj.; kr ; s vkg*

4. Respondent no. 2, on receipt of order dated 21.03.2003, concluded that charges against the applicant were serious and the same warranted initiation of enquiry under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. He, therefore, exercised powers of revision under Rule 25 of said Rules and passed the following order (Annexure-A-1):-

"dfjrk i zdj .kr fuEu Lok(kjhdrk egkjk"v"ukxjh l ok %f' kLr o vihy½ fu; e 1979 e/khy fu; e 25 vUo; si nku dj.; kr vky; k 'kDrhpk okij d: u [kkyhy i ek.ksvknk tkjh dj.; kr ; s vkg

vknsk

mi oul j {kd} xln; k ; kps dækd d{k&1@f'kyh&1@th@4972 fnukd 21-03-2003 ps vknsk g; k)kjsjna dj.; kr ; s vl u] Jh ih-ih-<kyj ouiky ; kpsfo: /n idj.kkr egkjk"V"ukxjh l ok %f'kLr o vihy½ fu; e 1979 psfu; e 8 vxr l folrj pkd'kh u0; kusvknf'kr dj.; kr ; s vkgs"

5. Annexure-A-2, dated 15.12.2013 shows that Additional Chief Conservator of Forest, Nagpur passed the order dated 28.07.2008 as follows in the enquiry under Rule 8 (page no. 27):-

"1- Jh ih-ih-<kyj ouiky ; kauk ns gskkjh iqhy oruok<hoj i kp o"kkZjhrk R; k& k Hkfo"; krhy oruok<hoj dk; eLo: ih ifj.kke gkby v'kk fjrhusjk{k.; kr ; s vkgs

2- Jh ih-ih-<kyj ouiky ; kpk fn- 17-09-2000 rs28-09-2000 ; k dkyko/khrhy xjgtjh dkyko/kh vl k/kj.k j tk fukoru o HkRrsEg.ku xghr /kj.; kr ; s vkgsvl k vknsk i kjhr dj.; kr vkyk."

6. Matter was then placed before the Disciplinary Authority i.e. Principal Chief Conservator of Forest. The Disciplinary Authority, again by exercising powers of revision under Rule 25, passed the following order on 20.03.2013 (A-3):-

"Jh ih-ih-<kyj ouiky ; k& k fo: /nP; k foHkxh; pkd'kh idj.kh pkd'kh vf/kdk& kpk pkd'kh vgoky] o Jh <kyj ; kauk dcy dsyys vkjki vR; s xhkhj vl u R; k& k l pks/hcnay ikef.kdrchnay] foLokl kgtrchnay tckcnkjhp; k tk.khocray izu fuekZk gkrou R; kauk l nj idj.kh fnysyh f'k{k i gskh ul Y; kus; k l ozckchpk l kjkl kj fopkj djrk rl p l nHkZdækd 8 ps'kkl u i = fnukd 31-01-2012 vLo; sfny; k fun&kkud kj o idj.kkr fuEu Lok{kjhdrtk egkjk"V"ukxjh l ok %f'kLr o vihy½ fu; e 1979 %fnukd 31 tyS2008 lk; r l qkkr½ psfu; e 25 vLo; s inku dj.; kr vky; k 'kDrhpk oki j d: u [kryhy iek.ksvknsk fuxfer dj.; kr ; s vkgs

vknsk

1- e[; oul j {kd} %i knf'kd½ ukxi j rFkk f'kLrHkæ fo"k; d i kf/kdkjh ; kps vknsk dækd d{k&1@vLFkk@v@fopk&3060 fnukd 28-07-2008 ; k)kjsjna dj.; kr ; s vkgs

2- Jh ih-ih-<kyj ouiky ; kauk l Drhusl okfuor dj.; kr ; s vkgs

3- Jh ih-ih-<kyj ouiky ; kpk fnukd 17-09-2000 rs28-09-2000 ; k dkyko/khrhy xjgtjh dkyko/kh vl k/kj.k j tk foukoru o HkRrsEg.ku xghr /kj.; kr ; s vkgs"

7. Being aggrieved by the order dated 20.03.2013, the applicant filed O.A. No. 639/2013 in this Tribunal. This Tribunal held that order dated 21.03.2003 was revised by exercising powers under Rule 25, by revising the order of enquiry under Rule 10, enquiry under Rule 8 was directed, in the enquiry held under Rule 8 punishment of withholding 5 annual increments with permanent effect was imposed, the Disciplinary Authority, while passing the order dated 20.03.2013 again purportedly exercised powers under Rule 25, such powers of revision could have been exercised only once and for these reasons order dated 20.03.2013 was liable to be quashed and set aside. In para no. 11 of the Judgment this Tribunal observed:-

"11. A plain reading of the above provisions of Rule 25 will show that an appellate authority is empowered to review an order imposing a penalty specified in Rule 5 and can confirm, reduce or set aside the order or confirm, reduce, enhance or set aside the penalty imposed by the order. There is however no provision that once an order modifying the order of punishment or the punishment itself, has been issued under Rule 25, the same can again be reviewed by any authority acting under Rule 25."

In para no. 15, it was observed:-

"15. From the above it is clearly seen that in his review under R/25 R/2 has substituted the order of a minor penalty of withholding of increments with a major penalty of compulsory retirement. Even if we assume that a second review is permissible, in terms of the above proviso he could have done so only after giving an opportunity to the applicant for making representation before imposing the penalty and he was also required to get an enquiry conducted as provided under Rule 8. As R/2 has passed the impugned order without following the procedure under Rule 8 and without granting an opportunity to the applicant to make a representation, we find that the order is wholly unsustainable under law and hence it deserves to be quashed and set aside."

Operative part of the order passed in O.A. No. 639/2013 reads thus:-

"(a) The O.A. stands allowed.

(b) *The impugned order of punishment 20.03.2013 is quashed and set aside.*

(C) *The respondents are directed to reinstate the applicant with all consequential benefits including back wages. This will be done within 6 weeks of receipt of this order.*

(d) *No order as to costs."*

8. The applicant was reinstated as per order passed by this Tribunal. He retired on superannuation on 31.08.2019. Respondent no. 2 did not release 5 annual increments due to the applicant for the years 2009 to 2013 inspite of specific and clear order passed by this Tribunal in O.A. No. 639/2013. On 09.08.2021, the applicant issued a notice (A-5) to respondent no. 2. It was received by respondent no. 2 on 20.08.2021 as shown by track report (A-6). Yet the applicant received no reply nor was his grievance redressed. Hence, this application.

9. Reply of respondent no. 2 is at page nos. 50 to 57. Apart from contending that the application was barred by limitation, respondent no. 2 also contended as follows:-

"The applicant has suppressed the fact from this Hon'ble Tribunal that the applicant had moved request letter to Addl. P.C.C.F., Nagpur. The A.P.C.C.F. has issued a notice to the applicant wherein certain terms and conditions were imposed upon the applicant the said terms and conditions were accepted by the applicant."

10. Respondent no. 2 has attached to his reply order dated 04.12.2014 (Annexure-R-2) passed by Additional Chief Conservator of Forest. Relevant portion of this order is as follows:-

"1- 'kkl dh; depl&; kyk cMrQZdj.; ;kr] I orsu dk<u Vkd.; ;kr] fdok I Drhusl okfuorR dj.; ;kr vkysul rj] vFkok ; FkkLFkrh] v'kh cMrQhph] I orsu dk<u VkdY; kph fdok I DrhP; k I okfuorRrph dkjokbz dj.; ;kiwhz R; kyk fuyicr dj.; ;kr vkysul rsrj] t<s oru o HkRrs feG.; ;kl rksGdDnkj >kyk vl rk] R; ;ki dh I {ke i kf/kdkjh fuf' pr d: 'kdsy , o<hp ¼I á wkZu0g½ jDde] fu; e 70 P; k i k/fu; e ¼7½ e/khy rjrmh y{kr ?kou] R; k depl&; kyk ns; ;kr ; bly] vl suem vl Y; kuj] Jh ih- ih<kyj] ;kuk rsl Drhusl okfuorR >kysul rsrj] R; ;kuk tsoru o HkRrsns >kysvl rsR; kP; k 75 VDdsjDde vnk dj.; ;kr ; bly- rI p ; k dkyko/khr vnk dj.; ;kr

vkysh fuokg HkR; kph jDde R; knu l ek; ktr dj.; kr ; by- rjh lnpj vV ekU; vl Y; kckrpsgehi = l knj djkos

2- Jh i-h-i-h-<kyj ouiky ; lpk fnukad 1-4-2014 rsfnukad 25-06-2014 gk dkyko/kh fu; fer dj.; kr ; r vl Y; kus l njgw dkyko/khr R; kauh dkskrhgh ukdjh d: u dkgh jDde feGfoyh fdok dl s; kckrpsgehi = l knj djkos

3- Jh i-h-i-h-<kyj ouiky ; kulk l nj ukshl i klr gkrkp R; kauh R; kpsvfHkonu@gehi = l kb fnol kp; k vkr ; k dk; ky; kl l knj djkos

4- egkjk"V^a izkl dh; U; k; kf/kdj.k] ukxiy [kMi hB] ukxiy ; kauh fnukad 29-04-2014 jkstP; k fu.kz k)kjs ; k dk; ky; kus cktkfoysy vknsk dækad d{k&10%v½1@vklFkk@fopk@i zdz 62%10&11%889] fnukad 20@03@2013 ps vknsk jnm dsysy vkg R; keGsed; oul j {kd %i kn%] ukxiy ; kpsf'k{kpsvknsk dækad d{k&1@vklFkk@v@fopk@3060] fnukad 28-07-2008 i Hkkoh jkfgy-"

11. Respondent no. 2 has also attached to his reply order dated 11.03.2015 passed by Additional Chief Conservator of Forest. In this order, in the reference, at Sr. No. 10 there is mention of request letter dated 31.01.2015 given by the applicant. The order dated 11.03.2015 states:-

"5- Jh i-h-i-h-<kyj {ks= l gk; ÷ d ; kauh fnukad 15-07-2014 %l mHk&5½ vUo; svTzd: u fnukad 01-04-2013 rs25-06-2014 gk dkyko/kh l ozi; kst ukfzdrD; dkyko/kh Eg.kau ?kshkr dj.; kl kbh fourth dsh- R; k vuqkækus; k dk; ky; kp; k vVh o 'krtzuem d: u Jh- i-h-i-h-<kyj {ks= l gk; ÷ d ; kulk fnukad 04-12-2014 %l mHk&9½ vUo; sukshl ns; kr vkyh-

6- mi jkDr ukshl he/hy vVh o 'krtzekU; vl Y; kckr Jh-i-h-i-h-<kyj ; lpk fnukad 31-01-2015 pk fourth vtZ %l mHk&10½ ; k dk; ky; kl i klr >kyyk vl u] R; kb; k fourth vtZkp; k vuqkækus[kkyhy iæ.ksvknsk i kfjr dj.; kr ; r vkg

vknsk

1- Jh i-h-i-h-<kyj ouiky ; lpk fnukad 01-04-2013 rsfnukad 25-06-2014 gk %1 o"K2 efgus25 fnol ½ l Drhusl okfuorhpk dkyko/kh gk egkjk"V^aukxjh l ok %i nxg.k vo/kh] Loh; Rrj l ok] vlf.k fuyæu cMrQhzo l osnu dk<u Vid.k; kb; k dkGkrhy inku% fu; e 1981 e/hy] fu; e 71 uq kj l okckg; dkyko/kh Eg.kau fu; fer dj.kpsrl p l nj dkyko/khrhy 75 VDdsoru o HkRrsJh- <kyys; kulk i nku dj.; kpsvknsk ; k) kjsns; kr ; r vkgr-

2- ed; oul j {kd %i kn%] ukxiy ; kpsf'k{kpsvknsk dækad d{k&1@vklFkk@v@fopk@3060 fnukad 28@07@2008 gsi Hkkoh jkghy-"

12. Thus, orders dated 04.12.2014 and 11.03.2015 sought to revive the order dated 28.07.2008 whereunder 5 increments of the applicant were permanently withheld.

13. It was argued by Adv. Shri S.P.Palshikar that order dated 28.07.2008 had merged in the order dated 19/20.03.2013 which, in turn, had merged in order dated 29.04.2014 passed by this Tribunal in O.A. No. 639/2013. Record of the case fully supports this legal position. It is not in dispute that order dated 29.04.2014 has attained finality for want of challenge before Higher Forum. Once this order had attained finality it became executable. Respondent no. 2 could not have nullified this executable order by obtaining a request letter from the applicant for revival of order dated 28.07.2008. It may be reiterated that by order dated 29.04.2014 order dated 28.07.2008 and order dated 20.03.2013 were quashed and set aside. Had the Tribunal intended to revive the order dated 28.07.2008 while setting aside the order dated 20.03.2013, it would have been specifically ordered. On the contrary, by order dated 29.04.2014 the applicant was held entitled to reinstatement with all consequential benefits including backwages. This direction clearly shows that there was no question of revival of order dated 28.07.2008. As mentioned above, order dated 29.04.2014 became executable when it attained finality. It could not have been effaced by respondent no. 2 by passing orders dated 04.12.2014 and 11.03.2015. The cause of action to claim relief of release of 5 annual increments subsisted so long as order dated 29.04.2014 continued to be executable. Thus, there was no question of defeating it on the ground of limitation. Orders dated 04.12.2014 and 11.03.2015 could not have estopped the applicant from claiming relief of release of 5 annual increments for the year 2009 to 2013 which was founded on legally executable order. For all these reasons the application deserves to be allowed. Hence the order:-

ORDER

1. Application is allowed.
2. Respondent no. 2 is directed to release the annual increments payable to the applicant for the years 2009 to 2013 with interest @ 6% p.a. from the date when the same became due till the date of actual payment.

3. No order as to costs.

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

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 Member (J).

Judgment signed on : 11/03/2022.
and pronounced on

Uploaded on : 14/03/2022.