

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO. 1045 OF 2016**

DISTRICT :Pune

Dnyaneshwar Muralidhar Shinde)
Age:46 years, Occ: Service as)
Office Superintendent,)
Landrecords-1,)
Office of the Settlement Commissioner,)
R/o, Victoria Garden Flat No.203,)
Kalyaninagar, Pune.)...**Applicant**

VERSUS

1. State of Maharashtra,)
Through: Secretary,)
Revenue Department,)
Mantralaya, Mumbai 32.)

2. The Settlement Commissioner and)
Director of Land Records)
Pune.)...**Respondents**

Shri S.D. Dhongde, the learned Advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 16.03.2017

ORDER

1. Heard Shri S.D. Dhongde, the learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging the order dated 3.2.2016 passed by the Respondent No.2 imposing the penalty of stoppage of two increments without cumulative effect and also the order that the Applicant would not be eligible to be given an executive post for next five years.
3. Learned Counsel for the Applicant argued that the Respondent No.2 has exceeded his authority while imposing penalty on the Applicant by the impugned order dated 3.2.2016. The Respondent No.2 has issued a show cause notice upon the Applicant on 3.10.2015 regarding his absence from duty. Thereafter on 30.12.2015, a charge-sheet was issued to the Applicant under Rule 10 of the Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. In the charge-sheet, the sole charge was that the Applicant was remaining absent from duty without obtaining prior permission from his superiors. There is no other charge against the Applicant. The Applicant had remained absent from duty as he was suffering from serious ailments, for which he has produced Medical Certificates. As such, the penalty of stoppage of two increments is completely unjustified. The order regarding not posting the Applicant on

an executive post is totally without authority as there is no such provision in Rule 5 of the M.C.S. (D & A) Rules. Learned Counsel for the Applicant argued that only provision for such an order is in Government circular dated 20.4.2013 regarding reinstatement of a Government Servant under suspension when a D.E. or Criminal case is pending against him. If such an employee is reinstated in services, he is required to be given a non-executive posting. The Applicant was never under suspension, so that G.R. is not applicable in his case.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the present O.A. is premature, as the Applicant had filed an appeal against the order dated 3.2.2016 before Revenue Minister, which is still pending. On this ground alone, this O.A. is not maintainable.

5. Learned P.O. for the Respondents contended that the Applicant was absent unauthorisedly from duty from 2.6.2014 till 30.6.2014. The Applicant again absented himself from duty from 14.7.2014 to 12.9.2014 without any permission or intimation to these superiors. The Medical Certificate issued by Civil Surgeon Pune, advised him leave from 14.7.2014 to 13.8.2014 only. The Applicant did not join duties on 14.8.2014. Again the Applicant applied for one days' leave on 24.9.2015 but remained absent indefinitely without permission. This has resulted in disruption of official work. The Applicant is a Group 'B' gazette officer, and he has to show sense of responsibility. Disciplinary

proceedings were started against him and minor penalty has been imposed. It has, also been decided not to give him any executive posting for next five years.

6. It is seen that the Applicant had remained absent from duty for long periods. He is a Group 'B' gazette officer. He is well aware of his responsibilities. He is definitely entitled to get admissible leave, specially if he is not keeping well. However, from the facts on record, it is clear that the Applicant had remained absent from duty, without even informing his superiors. In some emergency, it may not be possible to inform superiors immediately. However, the Applicant has to inform his superiors immediately thereafter. However, it appears that the Applicant informed his superior only when he was fit to resume duties. This conduct cannot be condoned. The medical certificate issued by the standing Medical Board, Sassoon General Hospital, Pune dated 19.6.2015 clearly shows that the Applicant was held eligible for Medical Leave for two months only. Rest of leave was not recommended for regularization on medical grounds. The Applicant has placed on record, a number of Medical Certificates. However, as a Group 'B' officer, he is well aware that Medical Certificates issued by Civil Surgeon or Medical Board are required to avail of leave on medical ground. The impugned order dated 3.2.2016 appear to have been passed after following proper procedure and on the basis of material of the case. In so far as the punishment of stoppage of two increments without cumulative effect is concerned, there is no ground to challenge the same. It is, however, made clear

that this observation will not come in the way of Hon' ble Revenue Minister, while deciding the appeal of the Applicant against order dated 3.2.2016.

7. The moot question is whether in departmental proceedings, punishment of not giving executive posting can be issued. In rule 5 of M.C.S. (D & A) Rules, there is no provision for imposing such a punishment. G.R. dated 20.4.2013, does provide for some such action, when a Government employee under suspension is reinstated. In the present case, the Respondents have not pointed out any provision under which such an order could be issued. This part of the order is, therefore, unsustainable. However, this will not mean that this Tribunal is holding that the Applicant should be given an executive post. The competent authority can decide to give appropriate posting to the Applicant considering all facts and circumstances.

8. Having regard to the aforesaid facts and circumstances of the case, this O.A. is partly allowed. In the impugned order dated 3.2.2016, the following is quashed and set aside, viz. “ तसेच श्री. शिंदे यांना भविष्यात पुढील ५ वर्षे कोणत्याही कार्यकारी पदावर नियुक्ती देणेस पात्र राहणार नाही.” There will be no order as to costs.

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 16.03.2017

Place : Mumbai

Dictation taken by : SBA

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