

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.269 OF 2018

(Subject :- Minor Punishment)

DISTRICT : Jalgaon

Smt. Pramila w/o Bhanudas Narkhede)
Age:55 years, Occu. Service)
(as Awwal Karkoon, Supply Branch,)
Collector Office, Jalgaon),)
R/o: 489, Methaji Plot,)
Behind Vasant Talkies,)
Near Dosti Mandal,)
Bhusaval, Dist. Jalgaon.)...**Applicant**

V E R S U S

1. The Collecotr,)
Jalgaon.)
2. The Tahsildar,)
Bhusaval, Dist. Jalgaon.)...**Respondents**

Shri A.S. Deshmukh, learned Advocate for the Applicant.

Shri B.S. Devkar, learned Presenting Officer for the Respondents.

CORAM : B.P. Patil, Member (J)

Date : 15.01.2019.

J U D G M E N T

1. The Applicant has challenged the order dated 9.12.2016 passed by the Respondent No.2 imposing punishment

on her in view of the Rule 5 (1) (v) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (in short MCS (D & A) Rules) and the order dated 04.07.2017 passed by the Respondent No.1 in the appeal preferred by her challenging the order passed by the Respondent No.2 by filing the present Original Application and prayed to quash and set aside the impugned orders.

2. The Applicant belongs to O.B.C. category. She entered the service of the Respondent No.1 as a Census Employee on 26.04.2006 as a Clerk. In the month of August 2011, she was promoted to the cadre of Awwal Karkoons and since then she is serving in the said cadre. At present, she is posted at Supply Branch of the Jalgaon Collectorate. In the month of July 2013, she was posted as Awwal Karkoon in the office of Respondent No.2 at Bhusaval. While working there, on 20.07.2016, she was served with the show cause notice issued by the Respondent No.2 on 16.07.2016 calling explanation as to why disciplinary action should not be taken against her for dereliction in duty. The said notice was accompanied with the statement of imputation of mis-conduct and mis-behaviour as contemplated under clause (a) read with clause (ii) of Sub-Rule 3 of Rule 10 of the M.C.S.R (D & A), Rules, 1979. The Applicant

has given reply to the said notice on 20.7.2016. The Respondent No.2 has considered the reply and thereafter passed the impugned order dated 9.12.2016 imposing punishment of withholding of her one increment without affecting her further increments without considering the provision of Rule 10 of the MSCR (D & A), Rules.

3. It is her contention that she has challenged the order passed by the Respondent No.2 dated 9.12.2016 by preferring an appeal before the Respondent No.1 on 23.01.2017, but the Respondent No.1 had also not considered her contention and grounds raised in the appeal. The Respondent No.1 had also not considered the provision of Rule 10 of MCS (D & A) Rules and dismissed the appeal on 04.07.2017. It is her contention that both the Respondents have not considered the Rule 10 of MCS (D & A) Rules with proper perspective. They have not considered the explanation given by the Applicant on 20.07.2016. It is her contention that there is no material on record to arrive at the conclusion that she was guilty in alleged charge of dereliction in duty. It is her contention that impugned order passed by the Respondent No.2 on 9.12.2016 is in violation of statutory provision of Rule 10 of MCSR and therefore, it is bad in law.

The said fact has also not been considered by the Respondent No.1 while deciding the appeal. Therefore, both the impugned orders passed by the Respondents are illegal and not sustainable in law. Therefore, she prayed to quash and set aside both the impugned orders by filing the Original Application.

4. Respondent Nos.1 and 2 have filed their affidavit-in-reply and resisted the contentions of the Applicant. It is their contention that grounds raised by the Applicant are not sustainable in the eye of law as the applicant had been given opportunity of being heard by the Respondent No.2 by issuing show cause notice. The Applicant has also tendered reply to the show cause notice. The reply filed by the Applicant was not found satisfactory by the Respondent No.2 and thereafter he passed the impugned order imposing punishment on the Applicant. It is their contention that the Respondent No.2 had followed the procedure and provision of MCS (D & A) Rules while imposing punishment on the Applicant and therefore, there is no illegality in the impugned order. It is their contention that necessary documents have been supplied to the Applicant and the charges leveled against her have been mentioned in the show cause notice and therefore, there is compliance of statutory and

mandatory requirement of provision of MCS (D & A) Rules while issuing the impugned order by the Respondent No.2. It is their contention that there is no illegality on the part of Respondent while passing impugned order. It is their contention that the Applicant has abused her official position and there were serious misconduct and gross negligent on her part and therefore the order imposing punishment has been passed upon the Applicant. It is their contention that the impugned order passed by the respondent No.2 and order passed by the Respondent No.1 in appeal are as per provision of MCS (D & A), Rules 1979 and there is no illegality in the impugned order. Therefore they prayed to dismissed the Original Application.

5. I have heard Shri A.S. Deshmukh, learned Advocate for the Applicant and Shri B.S. Devkar, the learned Presenting Officer for the Respondents and perused the documents on record.

6. Admittedly, the Applicant had joined as Clerk on 26.4.2006 on the establishment of Respondent No.1. She was promoted as Awwal Karkoon in August, 2011 and since then she is working in the cadre. In the month of July 2013, she was

posted as an Awwal Karkoon in the office of Respondent No.2 at Bhusaval. There is no dispute about the fact that on 16.07.2016, the Respondent No.2 had issued show cause notice to the Applicant calling her explanation as to why disciplinary action should not be taken against her for dereliction in duty. The said notice was served upon her on 20.07.2016. The Applicant had given reply to the said notice and submitted her explanation on 20.07.2016. Admittedly, the Respondent No.2 who is disciplinary authority, has passed the impugned order dated 9.12.2016 and imposed punishment of withholding of her one increment without affecting her further increments in view of the Rule 5(i)(v) and Rule 10 of MCS (D & A) Rules. The Applicant has challenged the said order before the Respondent No.1 by preferring appeal on 23.01.2017. The Respondent No.1 has dismissed the appeal on 4.7.2017 and upheld the order passed by the Respondent No.2 on 9.12.2016 and confirmed punishment imposed on the applicant.

7. Learned Advocate for the Applicant has submitted that the applicant had joined as Awwal Karkoon at Bhusaval in the month of July, 2013 in the office of the Respondent No.2. On 16.07.2016 a show cause notice had been issued to her

regarding supply of Kerosene to the fair price shops illegally and she had given her reply to the said notice on 20.07.2017. He has submitted that neither the Respondent No.2, nor Respondent No.1 had considered the representation/explanation given by the Applicant while passing the impugned orders. He has submitted that the show cause notice dated 16.7.2016 (Annex. 'A-1, page no.15 of P.B.) shows that the explanation was called from the applicant on account of illegality and irregularity took place in distribution of Kerosene and she was called upon to show cause as to why a departmental enquiry should not be initiated against her. He has submitted that the said notice is not in accordance with the provisions of Rule 10 1(a) of MCS (D & A), Rules. He has further submitted that the Applicant has submitted reply to the said notice and thereafter, the Respondent No.2 passed the impugned order dated 9.12.2016. He has invited my attention to the impugned order dated 9.12.2016 passed by the Respondent No2 (page no.18 of the P.B.). He has submitted that the said order shows that there is no whisper about the representation/explanation given by the Applicant to the show cause notice. It shows that the Respondent No.2 had not considered her representation while passing the impugned order dated 9.12.2016. Therefore, it is in violation of the provision of

Rule 10 (1) (a) & (c) and therefore, it requires to be quashed and set aside. He has submitted that it was incumbent on the part of the Respondent No.2 to supply the documents regarding the imputation of mis-conduct and misbehaviour to the applicant along with the show cause notice and to give the Applicant reasonable opportunity of making a representation. He has submitted that the said statutory and mandatory provision has not been followed by the Respondent No.2 while imposing punishment dated 9.12.2016. The said order is in violation of provision made in Rule 10 of MCS (D & A), Rules and therefore, the said order is illegal and against the principle of natural justice.

8. Learned Advocate for the Applicant has further submitted that the Respondent No.1 has also not considered the said legal aspect while deciding the appeal preferred by the Applicant and he has confirmed the order of the Respondent No.2 and dismissed the appeal of the Applicant. He has submitted that both the Respondents have not considered the procedure for imposing minor penalty as provided in Rule 10 with proper perspective and therefore, he prayed to quash and set aside the

impugned orders passed by the Respondent No.2 & 1 allowing the Original Application.

9. Learned P.O. for the Respondents has submitted that the Applicant was working as Awwal Karkoon at Bhusaval at relevant time. During her tenure, she has distributed 58800/- litres kerosene illegally to the fair price shops of which license had been cancelled. Not only this, but she has distributed Kerosene to one of the shops which has been sealed by the Government. He has submitted that it was the duty of the Applicant to inspect the documents and to supervise the facts while distributing the Kerosene and therefore, on account of alleged misconduct and misbehaviour, show cause notice has been issued to her by the Respondent No.2 on 16.07.2017 (page no.15 of P.B.) calling her explanation on the facts mentioned therein. He has further submitted that the Applicant had given reply to the said notice on 20.07.2017. She had been supplied with the documents also. She was aware about the charges/allegation leveled against her and therefore, she had given reply to the said notice. Reply was considered by the Respondent No.2 i.e. Disciplinary Authority. The disciplinary authority found that the reply was not satisfactory and decided to

impose the minor penalty in view of the provision of Rule 5(1) (v) and Rule 10 of MCS (D & A), Rules by following the procedure laid down in Rule 10 and thereafter passed the impugned order dated 9.12.2016.

10. Learned P.O. has further submitted that the Respondent No.2 had recorded the reasons while passing the order and therefore, there is no illegality in the said order and therefore, supported the impugned order passed by the Respondent No.2.

11. Learned P.O. has further submitted that the Respondent No.1, being an appellate authority, has passed the order dated 04.07.2017 in the appeal preferred by the Applicant and dismissed it after recording reasons. He has further submitted that the Respondent No.1 had given opportunity of hearing to the Applicant while deciding the appeal and therefore, there is no illegality in the order passed by the Respondent No.1 in appeal. Therefore he has supported the impugned order dated 9.12.2016 passed by the Respondent No.2. Learned P.O. has submitted that there is no illegality on the part of the Respondent No.2 while passing the impugned order and therefore he has

supported the impugned order and prayed to reject the Original Application.

12. On perusal of the documents on record it reveals that the Respondent No.2 issued show cause notice to the applicant on account of illegality in distributing Kerosene to the fair price shops situated within the jurisdiction of the Applicant in the year 2013. He noted that the fair price shops were situated on the land of Ordnance Factory, Varangaon and in the year 2013, the administration of Ordnance Factory had informed the Collector, Jalgaon that the employee working in the factory were getting salary more than 1,0000/- p.m. and therefore, the ration cards of saffron colour be cancelled and White colour be issued to them. Not only this, but the administration of Ordnance Factory by latter dated 16.4.2013 had informed about the cancellation of fair price shop at Ordnance Factory Estate Varangaon. In spite of this, the applicant had distributed 5,8800/- litres Kerosene to fair price shops. Not only this, but the applicant had also distributed 85000/- litres Kerosene to Saptashrunji Society, Varadsim illegally. He noted that there is some illegality regarding distribution of 2655 ration cards. All this events occurred when the Applicant was incharge of the post and

therefore, he arrived at conclusion that the Applicant was negligent while discharging her duties. The Applicant was found guilty of alleged misconduct and therefore, the Respondent No.2 passed the impugned order dated 9.12.2016. Before passing the order, the Respondent No.2 had issued show cause notice to the Applicant on 16.07.2016 narrating alleged illegalities on her part while discharging the duties. The notice was served on the applicant on 20.07.2016. The applicant had given reply to the said notice on 20.07.2016. The applicant was aware about the charges/allegations leveled against her and therefore, she filed reply. The said notice shows that the reasonable opportunity has been given to the Applicant by the Respondent No.2 before passing the impugned order dated 9.12.2016. Therefore, in my opinion, there is sufficient compliance of Rule 10 (a) of MCS (D & A) Rules 1979 by the Respondent No.2 while proceeding against the Applicant and before imposing the minor penalty. Not only this, but the Respondent No.2 has considered the reply of the Applicant and found that it was not satisfactory and therefore, he passed the impugned order dated 9.12.2016. Therefore, in my view, after taking in to considered all the facts, the minor penalty has been imposed upon the Applicant and therefore, it is sufficient compliance of Rule 10 (1) (c) of MCS (D & A) Rules.

Merely because these no whisper about reply given by the Applicant to the show cause notice issued by the Respondent No.2 in the impugned order dated 9.12.2016, it can not be said that the Respondent No.2 has not considered the said reply while passing the impugned order dated 9.12.2016. There were several illegalities on the part of Applicant while discharging her duties and at the time of distributing Kerosene to the fair price shops and at the time of distributing the ration cards to the persons, who were not entitled to get it. The Respondent No.2 had passed the impugned order dated 9.12.2016 by recording sound reasons. He has recorded reasons and held the Applicant guilty. Thereafter, he passed the order dated 9.12.2016. Therefore, in my view, there is no illegality in the impugned order dated 9.12.2016 passed by the Respondent No.2. The Respondent No.2 has followed the mandatory/statutory provision of Rule 10 of MCS (D & A), Rules 1979 while passing the order dated 9.12.2016. He had followed the procedure laid down in the Rule 10 of MCS (D & A) Rules, 1979 while imposing minor penalty upon the Applicant. Therefore, the said order can not be said illegal.

13. The Respondent No.1 had given opportunity of hearing to the Applicant while deciding the appeal. He

considered the grounds raised by the Applicant in the appeal and after recording the reasons, dismissed the appeal of the Applicant. There is no illegality on the part of Respondent No.1 while deciding the appeal and dismissing it on 04.07.2017. He has also recorded sound reasons while dismissing the appeal and therefore, in my view, there is no illegality in the order dated 04.07.2017 passed by the Respondent No.1.

14. Both the Respondents had given an opportunity of hearing to the Applicant before passing impugned orders. They have followed the procedure of Rule 10 of MCS (D & A) Rules before passing the impugned orders. There is no illegality on their part in passing the impugned orders. Therefore, no interference is called for in the impugned order dated 9.12.2016 and 04.07.2017 passed by the Respondent No.2 and Respondent No.1 respectively. There is not merit in the present Original Application. Consequently, the Original Application deserves to be dismissed.

15. In view of discussion in the foregoing paragraphs, the Original Application stands dismissed. No order as to costs.

Place:- Aurangabad
Date :- 15.01.2019

SAS.SB.O.A.No.269 of 2018. Minor Punishment.

Sd/-
(B.P. Patil)
Member (J)