IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.451 OF 2018

DISTRICT : KOLHAPUR

Shri Sanjaykumar B. Bhat,)
Age 46 years, Occ : working as Forest)
Guard in the office of Range Forest)
Officer, Wild Life, Radhanagari,)
Dist. Kolhapur.)
R/o. A/P. Gargoti, Pophale Galli,)
Dist. Kolhapur.)**...Applicant**

Versus

1. The Deputy Conservator of Forest,)
Forest Division, Sawantwadi, having)
Office at Van Bhavan, Salai Wada,)
Sawantwadi, Dist. Sindhudurg.)

2. The Chief Conservator of Forest)
(Territorial), Kolhapur, O/at Van)
Vardhan, opp.Main Post Office,)
Tarabai Park, Kolhapur.)

3. The State of Maharashtra, through)
Principal Secretary (Forest))
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)**...Respondents**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 02.02.2021.

J U D G M E N T

The Applicant has challenged the order dated 10.03.2017 passed by the Deputy Conservator of Forest thereby imposing punishment of recovery of Rs.47,350/- for loss of Government property and censuring

him for remaining absent and not wearing uniform as well as for bringing pressure for transfer which has been confirmed by the Appellate Authority by order dated 22.08.2017.

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was working as Forest Guard (Class-III) on the establishment of the Respondent No.1- Deputy Conservator of Forest, Sawantwadi, Dist. Sindhudurg. He was served with charge-sheet dated 26.01.2006 under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 (hereinafter referred to as 'Rules 1979' for brevity) for following charges:-

"दोषारोप क्र.१ - वरिष्ठांकडे पुर्वानुमती न घेता व गणवेष परिधान न करता बदलीकरीता दबावतंत्राचा वापर करणे.

दोषारोप क्र.२ - पुर्वानुमती न घेता परस्पर कामावरुन गैरहजर राहणे.

दोषारोप क्र.३ - वनसंरक्षणात अक्षम्य निष्काळजीपणा करून चोरटया तोडीस कारणीभूत होवून चोरटया तोडीचा पुरावा नष्ट करण्याचा प्रयत्न करणे.''

The Applicant denied the charges by submitting reply to the charge-sheet on 16.02.2006. Surprisingly, no further step was taken by the Disciplinary Authority for more than nine years and the matter was kept under cold storage. It is only on 01.12.2015, the Enquiry Officer has been appointed to inquire into the matter and to submit its report. Accordingly, the Enquiry Officer conducted inquiry examined three witnesses out of eleven witnesses cited in charge-sheet and submitted inquiry report to the Disciplinary Authority on 20.06.2016 with the findings that the charge No.1 and 2 are not proved and charge No.3 is proved partly. Even in respect of charge No.3 what Enquiry Officer stated in his report is material and quite interesting which is as follows:-

"श्री.भाट यांच्या नियतक्षेत्रात अवैध वृक्षतोड झाली आहे का आणि त्या वृक्षतोडीमुळे झालेल्या नुकसानीस श्री.भाट जबाबदार / कारणीभुत आहेत का?

या प्रश्नाच्या उत्तरासंदर्भात समोर आलेले दस्तऐवज, कागदपत्रे आणि साक्षीदारांच्या अभिसाक्षी यांचा एकत्रित विचार करता अवैध वृक्षतोड झालेली आहे हेच सिध्द होते. परंतु त्याचबरोबर ही ही बाब खरी आहे की, श्री. भाट यांनी त्यांच्या नियतक्षेत्रात झालेल्या अवैध वृक्षतोडी संदर्भात आपल्या दि.१६ फेब्रुवारी, २००६ च्या निवेदनात दोषारोपपत्राससोबतच्या जोडपत्र -३ मध्ये नमूद केलेल्या सर्व राऊंड गुन्ह्याबाबत वस्तुनिष्ठ निवेदन राऊंड गुन्हातिहाय सादर केलेला खुलासा हेच स्पष्ट करतो की, त्यांनी चोरतुटीतील माल परत मिळविण्याचा व तो रितसर विक्री आगारावर पोचविण्याचा प्रयत्न केलेला आहे. त्यामुळे शासनाचे नुकसान व्हावे असा त्यांचा मुळीच हेतु नव्हता, हे स्पष्ट होते. शिवाय वनखात्यात चोरतूट ही काही नवीन बाब नाही. तर ती नित्याचीच झालेली आहे. त्यामुळे वनरक्षकाने कितीही प्रयत्न केला तरी त्यास पुरविण्यात येत असलेल्या सोयीसंविधांचा अभाव आणि नियतक्षेत्राचा विस्तार यांचा विचार करता आणि श्री.भाट हे वनरक्षक पदी नव्याने रूजू झालेले आहेत, या मुद्दयांचा विचार करता आणि चोरतूटीतील माल परत मिळविण्यासाठी श्री.भाट यांनी केलेले प्रामाणिक प्रयत्न विचारात घेता त्यांच्या या कार्यकाळात झालेल्या नगण्य नुकसानीस त्यांना जबाबदार धरणे हे त्यांचेवर अन्याय करण्यासारखे होईल. तरी याबाबतचा निर्णय प्रशासनाने सारासार विवेकबुध्दीने घ्यावा, असेच मी सुचवू इच्छितो.

एकंदरीत दोषारोप क्र.१ व २ बाबत श्री.भाट निर्दोष आहेत, तर दोषारोप क्र.३ बाबत ते अशंत: दोषी आहेत आणि त्यात झालेल्या नगण्य नुकसानीबाबत प्रशासन प्राप्त परिस्थितीचा व वरील विवेचनाचे आधारे सहानुभूतीपूर्वक निर्णय घेईल, अशी आशा करतो.''

3. Thereafter, the report of Enquiry Officer was furnished to the Applicant to which the Applicant has given reply on 20.02.2017. On receipt of it, the Respondent No.1 imposed punishment of recovery of Rs.47,350/- for loss caused to the Government property and censure by order dated 10.03.2017. The Applicant had challenged the order unsuccessfully in appeal. The Appeal was dismissed on 22.08.2017. Being aggrieved by the order of punishment the Applicant has filed the present Original Application.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant at the very outset pressed the issue of inordinate delay of more than ten years for completion of Departmental Inquiry (D.E.) and submits that on this ground alone the punishment is liable to be quashed. He has further submitted that though the Enquiry Officer had exonerated the Applicant from Charge Nos.1 and 2 and also partially exonerated him from Charge No.3, the Disciplinary Authority failed to give opportunity to the Applicant by recording his disagreement on finding recorded by the Enquiry Officer as mandated under Rule 9(2) of 'Rules, 1979. As regard, punishment of recovery of Rs,47,350/- he submits that there is nothing

on record as to how damages are quantified at Rs.47,350/-, and therefore, the impugned order of recovery is totally unsustainable in law.

5. Per contra, learned P.O. sought to defend the order of punishment relying on one sentence from the report of Enquiry Officer :-

"या प्रश्नाच्या उत्तरासंदर्भात समोर आलेले दस्तऐवज, कागदपत्रे आणि साक्षीदारांच्या अभिसाक्षी यांचा एकत्रित विचार करता अवैध वृक्षतोड झालेली आहे हेच सिध्द होते"

She has picked up only one sentence from the report of Enquiry Officer out of context without seeing entire paragraph of the report which is reproduced above.

6. As stated above, the Enquiry Officer has exonerated the Applicant from Charge Nos.1 and 2. In respect of Charge No.3 all that he has observed that it is partly proved but he has not recorded any specific fining. On the contrary, he made observation in favour of the Applicant and did not find him guilty for the said charge and left the decision to the Disciplinary Authority. Indeed, the Enquiry Officer was required to record the specific finding in affirmation or negative as the case may be. Be that as it may, one thing is certain that the Enquiry Officer himself was not sure about the guilt of the Applicant in respect of Charge No.3.

7. Shocking to note that though the Enquiry Officer has exonerated the Applicant from Charge No.1, the Disciplinary authority held the Applicant guilty for the said charge without recording tentative findings to that effect and to give opportunity to the Applicant as contemplated under Rule 9(2) of 'Rules 1979'.

8. Rule 9(2) of MCS (D & A) Rules 1979 is as under:-

> ***Rule 9(2):*** *The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority*

> *within fifteen days, irrespective of whether the report is (favourable or not to the said Government servant).*

9. Thus, it was incumbent and obligatory on the part of the Disciplinary Authority to supply the copy of inquiry report together with its tentative reasons for disagreement with the findings so that delinquent can make representation on the disagreement as well as findings recorded by the Disciplinary Authority. However, admittedly in the present case, no such disagreement was recorded by giving opportunity of hearing to the Applicant. The Disciplinary Authority on receipt of the report of Enquiry Officer simply forwarded the report to the Applicant and directly passed the impugned order holding the Applicant guilty for Charge No.1 and Charge No.3 which is totally permissible in law. As such, there is no compliance of mandatory provision contained in Rule 9(2) of 'Rules 1979' which has caused severe prejudice to the Applicant and there is breach of principles of natural justice.

10. Apart, the Disciplinary Authority imposed punishment of recovery of Rs.47,350/- from the Applicant for loss of Government property i.e. for illegal cutting of trees of forest. Significant to note that there was no specific charge of causing loss of Rs.47,350/- on account of illegal cutting of trees. The Charge No.3 was about alleged negligence in preventing illegal cutting of trees and to destroy the evidence as stated above. As stated above, the Enquiry Officer has not recorded specific finding on Charge No.3. On the contrary, he left it for Disciplinary Authority. The Enquiry Officer in fact exonerated the Applicant stating that the Applicant being newly recruited though he had taken efforts to prevent illegal cutting of trees, it was made beyond his capacity considering the large area of forest and want of basic infrastructure. He further observed that in such situation, if the Applicant is held guilty for illegal cutting of trees it would amounting to do injustice with the Applicant. If this is the state of record, the Disciplinary Authority was under obligation to take independent decision subject to recording tentative reasons and his finding disagreeing with the report of the Enquiry Officer and to give opportunity of hearing or submission of

explanation to the Applicant as mandated under Rule 9(2) of Rules 1979. However, admittedly there is no compliance of this Rule.

11. Apart as stated above, there was no specific charge for loss of Rs.47,350/- to the Government on account of illegal cutting of trees. The charge was about alleged negligence in preventing illegal cutting of trees and destruction of evidence. However, surprisingly even if there was no specific charge, the Disciplinary Authority imposed the punishment of recovery of Rs.47,350/-. In fact, there was no such iota of evidence before the Enquiry Officer so as to calculate the quantum of alleged loss. There is absolutely nothing in the impugned order as to what was the basis and evidence to calculate the loss of Rs.47,350/- which has been quantified by the Disciplinary Authority at his own. It is thus *ex-facie* that loss of Rs.47,350/- was quantified without any evidence and it was based only on assumption as well as surmises and conjuncture. Needless to mention that a Government servant cannot be imposed with such punishment on assumption or speculation. There is total lack of legal knowledge and basic principles of D.E. on the part of Disciplinary Authority. Suffice to say, the order of imposition of penalty of Rs.47,350/- is totally arbitrary and absolutely bad in law.

12. There is one more important aspect to be taken note of. The charge sheet was issued on 26.01.2006, the Applicant has submitted his reply on 16.02.2006. However, thereafter for years together the Disciplinary Authority kept the matter under cold storage. He appointed Enquiry Officer belatedly after nine years and eleven months on 01.12.2015. No explanation for such inordinate and undue delay is forthcoming. Indeed, in terms of Circular dated 07.04.2008, inquiry was required to be completed within six months and if it is not completed within six months, specific extension is required to be sought from the Competent Authority. Maximum permissible extension period is of one year. If the D.E.is not completed within one year in terms of Circular dated 07.04.2008, the matter is required to be referred to the Government for necessary orders. Circular dated 07.04.2008 further provides that where the period of more than five years is over for

completion of D.E. in that event Head of the Department is under obligation to make inquiry to find fix responsibility for keeping the D.E. pending and to initiate the department action. However, in present case, no such steps were taken and Circular dated 07.04.2008 has been contravened with impunity.

13. True, mere delay in completion of D.E. itself cannot be the ground to challenge the finding recorded therein. One needs to consider the gravity of charges, volume of documents/evidence etc. In present case, the charges were not of such nature which would require such a long time. Indeed, Enquiry Officer itself has been appointed after nine years and eleven months from the date of issuance of charge sheet which speaks in volume about laxity and casual approach of the concerned authority.

14. Suffice to say, the findings recorded by the Disciplinary Authority holding the Applicant guilty for Charge Nos.1 and 3 is totally bad in law and deserves to be quashed. Unfortunately, the Appellate Authority did not bother to see the material illegalities crept in the matter and mechanically without application of mind, dismissed the appeal. Apart, the delay of more than eleven years in completion of D.E. is also fatal.

15. I have, therefore, no hesitation to sum up that the impugned orders are totally indefensible and liable to be quashed. Hence, the following order :-

ORDER

(A) Original Application is allowed.

(B) Impugned orders dated 10.03.2017 and 22.08.2017 are quashed and set aside.

(C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Date : 02.02.2021
Place : Mumbai
Dictation taken by : Vaishali S. Mane
Uploaded on :
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