

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 65/2017(S.B.)

Shri Laxam s/o. Sonaji Dhule,
Aged about 51 years, Occu :
Service, R/o. At post Jalgaon,
(Jamod), Dist. Buldana.

Applicant.

Versus

1) The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai.

2) The Collector, Buldana.

3) Sub Divisional Officer,
Jalgaon (Jamod), Dist. Buldana.

Respondents

Shri G.G.Mishra, Ld. counsel for the applicant.
Shri H.K.Pande, Ld. P.O. for the respondents.

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

Dated: - 30thAugust 2022.

JUDGMENT

Judgment is reserved on 24th August, 2022.

Judgment is pronounced on 30thAugust, 2022.

Heard Shri G.G.Mishra, learned counsel for the applicant and Shri H.K.Pande, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

When the applicant was serving at Jalgaon Jamod as Talathi, he was served with a charge sheet dated 24.06.2011 (Annexure A-2) by respondent no.3. Two charges laid against him were that he had prepared Gaon Namuma without verifying earlier record, and he had prepared Gaon Namuna 12 without actual verification of crops. The applicant submitted a reply dated 6/8.08.2011 (Annexure A-3) and denied both the charges. Respondent no.3 appointed one Shri Satav as the Inquiry Officer. He conducted inquiry and by report dated 17.12.2012 (Annexure A-4) held both the charges to be not proved. Thereafter, respondent no.3 issued a show cause notice dated 12.02.2014 (Annexure A-5) to the applicant communicating thereunder that he had come to the conclusion that charge no.1 was partly proved, and why punishment of withholding one increment permanently be not imposed. The applicant was called upon to submit his reply to the show cause notice within seven days. The applicant submitted his reply. Without giving an opportunity of hearing respondent no.3, by order dated 19.01.2016 (Annexure A-6), imposed the punishment of withholding one increment permanently. The applicant challenged this order before respondent no.2 by filing an appeal (Annexure A-7) which was

dismissed by order dated 24.10.2016 (Annexure A-8). Both the impugned orders (Annexures A-6 and A-8) cannot be sustained on facts and in law. Hence, this O.A. for quashing and setting aside the same.

3. Reply of respondents 2 and 3 is at pp.44 to 53. According to them, the impugned orders do not suffer from any procedural defect and the same are squarely founded on proven facts.

4. The show cause notice (Annexure A-5) dated 12.02.2014 reads as under-

श्री.एल.एस.धुळे, तलाठी वाडी बु. तत्कालीन तलाठी बोराळा बु. तहसिल कार्यालय जळगाव (जा) यांनी तलाठी या पदावर कार्यरत असतांना म.ना.से. (शिस्त व अपिल) नियम १९७९ चे नियम ८ अन्वये विभागीय चौकशी सुरु करण्याबाबत जापन दि.२४/०६/२०११ दोषारोप जोडपत्रासह बजावण्यात आले आहे.

श्री.एल.एस.धुळे, तलाठी यांनी त्यांचे निवेदन दि.६/८/२०११ नुसार त्यांचेवर लावण्यात आलेले दोषारोप अमान्य केल्यामुळे त्यांचेवरील दोषारोपांची चौकशी करण्याकरीता चौकशी अधिकारी यांची नियुक्ती करण्यात आली. चौकशी अधिकारी यांनी त्यांच्या दि. १७/१२/२०१२ च्या अहवालानुसार चौकशी अहवाल सादर केला. त्यानुसार श्री.एल.एस. धुळे, तलाठी यांचेवर ठेवण्यात आलेल्या दोषारोप क्र.०१ अंशतः सिध्द झालेला आहे.

श्री.एल.एस.धुळे, तलाठी यांनी शासकीय कामात नितान्त सचोटी व कर्तव्यपरायणता राखली नाही त्यामुळे म.ना.से.(शिस्त व अपिल) नियम १९७९ चे नियम ५ (१) (चार) अन्वये त्यांच्या एक वेतन वाढ कायम स्वरुपी रोखण्याची शिक्षा त्यांचेवर बजावण्याचे योजिले आहे.

श्री.एल.एस.धुळे, तलाठी यांनी जापन मिळाल्यापासून सात दिवसांचे आंत त्यांचेवर वरील प्रमाणे शिक्षा का बजावण्यात येऊ नये, याबाबत त्यांचे लेखी निवेदन सादर करावे. विहित

मुदतीत त्यांचे निवेदन प्राप्त न झाल्यास त्यांना काही सांगावयाचे नाही, असे गृहीत धरून नियमानुसार कार्यवाही करण्यात येईल.

5. It was submitted by Shri G.G.Mishra, Id. Advocate for the applicant that the show cause notice (Annexure A-5) is bad in law because it does not set out the tentative reasons for disagreement of respondent no.3 with the findings recorded by the Inquiry Officer and hence, both the impugned orders passed in furtherance thereof shall stand vitiated. In support of this submission reliance is placed on *“Yoginath D. Bagde versus State of Maharashtra and another – 2000 (2) Bombay C.R. 658 (SC)”*. In this case it is held –

Before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of “not guilty” already recorded by the enquiring authority was not liable to be interfered with.

It is further held –

If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the Enquiry Officer.

6. The applicant has also relied on *"S.K.Virdi versus Union of India and Others 2017 (2) Mh.L.J. 559 (Bombay High Court)"* wherein the following observations in *Punjab National Bank and ors. versus Kunj Behari Misra, 1998 SCC (L and S) 1783* have been quoted-

These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the Inquiry Officer had given an adverse finding, as per Karunkar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry Officer. It will not stand to reason that when

the finding in favour of the delinquent Officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusion then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

7. The ratio laid down in both these rulings fully supports contention of the applicant that show cause notice (Annexure A-5) cannot be sustained since it does not set out the tentative reasons on which disagreement of respondent no.3 with the order of the Inquiry Officer was founded.

8. It was submitted by Shri H.K.Pande, learned P.O. for the respondents that in case this Tribunal finds that the show cause notice suffers from any

legal flaw rendering the orders passed subsequent thereto unsustainable, liberty be granted to respondent no.3 to proceed from the stage of issue of show cause notice in accordance with law. There is merit in this submission. Hence, the order.

ORDER

O.A. is allowed in the following terms-

Orders dated 12.02.2014, 19.01.2016 and 24.10.2016 (Annexure A-5, A-6 and A-8 respectively) are quashed and set aside. However, respondent no.3 shall be at liberty to proceed against the applicant from the stage of issue of show cause notice stating therein tentative reasons for his disagreement with the findings recorded by the Inquiry Officer, in accordance with law. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 30/08/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 30/08/2022.
and pronounced on
Uploaded on : 30/08/2022.