

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 998 of 2022 (S.B.)**

Hitendra Abhiman Gajbhiye,  
Aged about 58 years,  
Occ: retired as Headquarter Assistant,  
R/o At Post Kharati, Tq. Lakhani, District: Bhandara

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary, Department of Revenue,  
Mantralaya, Mumbai- 440 032.
- 2) Deputy Director of Land Record,  
Nagpur Division Nagpur, Old Secretariat Building,  
Room No. 17, 28 Civil Lines, Nagpur.
- 3) District Superintendent of Land Record,  
Ninave Building, Civil Lines, Bhandara,  
District: Bhandara.

**Respondents.**

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**Shri N.S. Warulkar, Advocate for the applicant.**  
**Shri V.A. Kulkarni, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

**Dated :- 19/10/2023.**

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**J U D G M E N T**

Heard Shri N.S. Warulkar, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant was working as Incharge Deputy Superintendent of Land Record at Lakhandur District Bhandara. On 24/05/2019 the charge sheet was issued against the applicant. The

applicant had given detailed explanation and denied the charges. Respondent no.3 without following due procedure of law and without verifying the record passed impugned order dated 06/06/2019 by which one increment was stopped. The applicant filed appeal before respondent no.2, i.e., the Deputy Director of Land Record. In the said appeal, two witnesses were examined by the Appellate Authority and by order dated 13/09/2022 enhanced the punishment for recovery of Rs.1,03,550/-. The Appellate Authority confirmed the punishment order and also enhanced punishment for recovery of Rs.1,03,550/-.

3. The applicant has challenged both the orders in this O.A. for the following reliefs-

*“ (8) (1) quash and set aside both the orders dated 06/06/2019 (Annexure A-3) and 13/09/2022 (Annexure A-5) passed by the respondent nos.3 and 2 respectively, the same is illegal and bad in law;*

*(2) direct the respondent no.3 to release the benefits of stoppage of one increment permanently vide impugned order dated 06/06/2019 and grant all other consequential and ancillary benefits arising thereof in the interest of justice.*

*(9) This Hon'ble Tribunal be pleased to grant stay to the effect, execution and operation of the impugned order dated 13/09/2022 issued by the respondent no.2 so far as recovery is concerned, in the interest of justice.”*

4. The O.A. is strongly opposed by respondent nos.2 and 3. It is submitted that the Disciplinary Authority and Appellate Authority

both have taken proper decision and therefore the O.A. is liable to be dismissed.

5. During the course of submission, learned counsel for applicant has pointed out the statement recorded by the Appellate Authority and the Certificate issued by Gram Panchayat. As per his submission, no any misconduct is committed by the respondents. He has completed the work of fixing stones in the village after measurement. The observations of Disciplinary Authority and Appellate Authority are perverse and liable to be quashed and set aside. The learned counsel for applicant has submitted that the applicant is retired and therefore he is entitled for pensionary benefits.

6. From the perusal of the statement recorded by the Appellate Authority and Certificate issued by the Gram Panchayat, it appears that the applicant has not committed any misconduct. There is no any misappropriation etc., but the Appellate Authority not recorded proper findings. Without any appeal for enhancement under Rule 23 (2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, the Appellate Authority has enhanced the punishment. The documents filed on record i.e. the statement of witnesses and Certificate issued by Gram Panchayat clearly show that the applicant has completed the work. He has fixed the marking stones as per the scheme of the Government. The Gram Panchayat, Virli has given one

Certificate signed by all the Members of Gram Panchayat stating that the applicant has fixed 155 marking stones in the village and the applicant has not committed any misappropriation. These documents and statement of witnesses are not considered by the Appellate Authority.

7. The learned P.O. has pointed out the decision of the Hon'ble Supreme Court in the case of the ***State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another***, decided on 11/03/1996 and submitted that this Court cannot interfere in the administrative order passed by the Disciplinary Authority. This Tribunal in O.A.No. 579/2017 has relied on the Judgment of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another*** and dismissed the O.A. The material portion in the Judgment is reproduced below –

*“(18) The Hon'ble Supreme Court in the case of **Pandit D. Aher Vs. State of Maharashtra (cited supra)** has observed in para 14 that “imposition of punishment was to arrive at a finding of misconduct which is of grave nature or misconduct involving negligence on the part of delinquent officer. The charge-sheet issued against the appellant fulfills the aforementioned conditions. He was found guilty of commission of alleged acts of misconduct. Thus, on the basis of the findings arrived at in the departmental inquiry that he was guilty of such misconduct, in our opinion, it was not required to specifically mention therein that the delinquent was guilty of grave misconduct or negligence.” On the basis of findings of the Enquiry Officer, the respondent no.3 has passed the right order. The said*

order was confirmed by respondent no.2. It cannot be said that respondents 2 and 3 have not applied their mind. The Hon'ble Supreme Court in the case of **the State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another** has held as under-

*“It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is: whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.”*

19. In view of the Judgment of the Hon'ble Supreme Court in the case of **the State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another**, this Tribunal is not Court of appeal to go into the question of imposition of punishment. It is for the Disciplinary Authority to consider what is the necessary punishment to be imposed. The respondent no.3 has passed the order as per the provisions of Rules 5 and 6 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and as per the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules 1982. Hence, there is no merit in the O.A. Therefore, following order is passed.

**ORDER**

*The O.A. is dismissed with no order as to costs.”*

8. In the present matter misconduct is not proved. Therefore, it will be proper to remand the matter for deciding afresh. Hence, the following order is passed -

**ORDER**

(i) The O.A. is partly allowed.

(ii) The impugned orders passed by respondent nos.2&3 are hereby quashed and set aside.

(iii) The respondent no.2 is directed to decide inquiry afresh after giving proper opportunity to the applicant and pass the appropriate order by considering the statement of witnesses and Certificate issued by the Gram Panchayat dated 24/06/2019.

(iv) The respondents are directed to take necessary steps for paying pensionary benefits, as per rules.

**Dated** :- 19/10/2023.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 19/10/2023.