MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 850/2010.

Dhananjay Gomaji Chavan,
Aged about 59 years,
Occ-Retired Naib-Tehsildar,
R/o Barshitakli, Distt. Akola. **Applicant.**

Versus

1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-440 001.

2) The Divisional Commissioner (Revenue),
Amravati Division, Amravati. **Respondents**

ORIGINAL APPLICATION NO. 851/2010.

Ganesh Mukundrao Patil,
Aged about 54 years,
Occ- Service as Tehsildar,
R/o Jalgaon (Jamod), Distt. Buldana. **Applicant.**

Versus

1) The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-440 001.

2) The Divisional Commissioner (Revenue),
Amravati Division, Amravati. **Respondents**

Shri Ganesh Iyer, Adv. holding for Shri S.Ghate, Adv. for the applicant.
Shri H.K. Pande , learned P.O. for the respondents.

Coram:- Hon'ble Shri R.B. Malik, Member (J)
Dated: - 10th February 2017.

Oral order

These two O.As, in view of identity of facts admit to their disposal by this common judgment.

2. The applicants hereby seek quashing of the order whereby the disciplinary authority directed the recovery of an amount of Rs. 5,87,823/- from the applicant of O.A. No. 851/2010 and amount of Rs.5,23,395/- from the applicant of O.A. No. 850/2010 and one annual increment to be withheld permanently. At the timer relevant hereto, the applicant in O.A. No. 850/2010 was working as Naib-Tehsildar wilth additional charge of Tehsildar while the applicant of the other O.A. was working as Tehsildar. Aggrieved by the said order, the applicants are before me by way of these O.As.

3. I have perused the record and proceedings of the O.A. and heard the submissions of Shri Ganesh Iyer, Advocate holding for Shri S. Ghate, the learned Advocate for the applicants and Shri H.K. Pande, learned P.O. for the respondents.

4. The charges levelled against the applicants were practically the same and they were three (Page 31 of the P.B.).

(i) It was alleged that the applicants failed to recover Zilla Parishad and Gram-Panchayat cess for the year 2005-2006 from the auction purchaser.

(ii) That applicants certified excess transport passes from sand ghats more than available sand for the auction purchaser .

(iii) And thirdly they failed to secure monthly statement from the auction purchaser. It was therefore alleged that they contravened the provisions of Rule 3 (1) (i) (ii) and (iii) of the Maharashtra Civil Services (Conduct) Rules, 1979.

5. Shri M.W. Konde, came to be appointed as Enquiry Officer. His report in O.A. No. 851/2010 is at Annexure A-12 (P.115 to 140 of the P.B.). After a detailed discussion, as against both the applicants, he returned the findings of the charges having been proved partly. To the extent necessary, I shall presently read the said report.

6. The disciplinary authority who received the report of the Enquiry Officer vide his order dated 23.4.2009 Annexure A-2 (P.25 of the P.B.) in O.A. No. 8512/2010 (second O.A.) accepted the findings of the Enquiry Officer and imposed punishment detailed herein above. No appeal was preferred there-against and this is clearly borne out from the record. However, the applicants made review / representation U/s 25 (A) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (in short D & A Rules) on 3.7.2009 and that review application came to be decided by the disciplinary authority by the order dated 28th September 2010 (Dhananjay Gomaji Chavan V/s State of Maharashtra which is Annexure A-1 (P.23 of the second

O.A.). The disciplinary authority affirmed his own earlier order and did not interfere therewith. Both these orders are being questioned herein by the applicants.

7. Before I embark upon reading to the extent necessary the report of the Enquiry Officer, it will be appropriate in my view to delineate the scope fo this Tribunal in the matters like the present one. This is the jurisdiction of judicial review of administrative action. Shri Pande, learned P.O. for the respondents relied on case law and I think I should note them down for guidance here and now. He relied upon the ***State of Tamil Nadu and another V/s S.Subramanium 1996 (1) CLR 386 (SC), (ii) Principal Secretary, Govt. Of Andhra Pradesh V/s M. Adinarayana (2004) 12 SCC 579, (iii) G.B. Gupta V/s General Manager (Operations), State Bank of India, New Delhi and others, 2008-I-LLJ- 930 (ALL), (iv) Dy. Commissioner, Kendriya Vidhayala Sangthan and others V/s J. Hussain (2013) 10 SCC 106, (v) High Court of Judicature at Bombay V/s Udaysingh Ganpatrao Naik Nimbalkar and others 1997 (2) Mh.L.J. 578, (vi) Ram Kumar V/s State of Haryana 1987 (II) LLJ 504, (vii) D.K. Rajepandhre V/s State of Maharashtra and others 2005 (4) Mh.L.J. 1067 (BB) and (viii) National Fertilizers Limited and another V/s P.K. Khanna 2008 SCC (L&S) 1006.***

8. Shri Ganesh Iyer, learned Advocate for the applicants relied on ***Roopsingh Negi V/s Punjab National Bank (2009) 2 SCC 570***.

The principle that can be culled out from the above case law and some other rulings in the field can be summarised as below:-

(i) Jurisdiction of this Tribunal is of judicial reviews of administrative action and is not an appellate jurisdiction.

(ii) Mere possibility of the existence of view other than what commended to the authorities below will not be *per se* and *ipso facto* sufficient to adopt a different course of action, provided the findings of the authorities below came true to reasonable person test.

(iii) The main concern of the Tribunal in exercise of jurisdiction of judicial view of administrative action is to make sure that the process by which the decision was reached was in keeping with the principles of natural justice. This process rather than conclusion itself will have to be scrutinized to make sure that the enquiry was in keeping with the principles of natural justice (*audi alterem partem*).

(iv) The Tribunal shall not just for the asking substitute its own views on facts to the view of

> the administrative authorities. Unless the said impugned view was such as to shock the conscience of the Tribunal and / or was completely unreasonable and such as no reasonable person in its place would reach such a conclusion.

9. The codified procedural law will not be applicable to the departmental proceedings. But still the Tribunal would ensure that the procedure adopted in the departmental enquiry was fair, just and reasonable and was not oppressive. The liberty to cross-examine the witnesses of the establishment must be given to the delinquent and at the same time in case he wanted either to examine himself or to examine any other witness or witnesses, he should have been given that opportunity.

10. The degree of proof necessary to arrive at a conclusion would be preponderance of probabilities and not the degree of proof required in the criminal trial of proof beyond reasonable doubt.

11. The strict procedural rules enshrined in the Code of Criminal Procedure, Code of Civil Procedure and the Evidence Act and any other procedural law, if any, will not in terms apply, but again the process will have to be informed with the principles of natural justice, fair play and impartiality.

12. The same principle will be applicable in the matter of imposition of punishment. The Judicial Forum like this Tribunal will not just for the asking interfere with the punishment imposed by the authorities below, if the conclusions were proper and warranted and if the punishment was not shockingly disproportionate. The Tribunal cannot act only with a view that had it been there in the shoes of either disciplinary authority or the appellate authority may be the findings of guilt was not returned or even if it was so returned, the punishment would not have been such as has been handed out by the administrative authorities. The practical effectuation of these principles has to be manifested in the approach of the Tribunal in dealing with such matters. These principles will have to be borne in mind just as I return to the report of the Enquiry Officer which was as already mentioned above accepted by the disciplinary authority in both the impugned orders. The witnesses examined in this matter were S/s R.A. Lanke, Naib-Tehsildar, Balapur (at the relevant time) and Shri S.R. Dongre, Junior Clerk in the office of Tehsildar, Balapur. It appears from the record that Shri Lanke held preliminary enquiry in this particular matter when it was still early days. The Enquiry Officer recorded the heads of charge such as they were. He also recorded the cases of the delinquent such as it was in respect of each one of those heads. In internal page No.7, he addressed himself to the issues such

as they were. The tone and tenor of the report suggests that speaking generally and by and large he did not find himself quite happily placed. Insofar as Presenting Officer was concerned, because at places more than one, he has mentioned that the notes of argument etc. were cryptic. At one place, he has apparently used Marathi word ñTrotakò He noted down that according to one of the applicants, he performed his duty to the best of his ability. But the property which should have been attached, did not fall within his jurisdiction and it was most probably in some other district. He referred to the fact that Shri Lanke, was examined before him. There are frequent references to his preliminary report and also the cases of two applicants and may be some repetition became inevitable and, therefore, the report assumes the form of being verbose. But I do not assail it for that inevitability. Wherever due, he has mentioned the fact that may be the others were also responsible. But he refused to take that the applicants were to be entirely free from blame and, therefore, he held both the applicants guilty under each one of the heads partly. He has apparently in his own way mentioned and stressed more than once that it is not as if the applicants did all that was expected of them in the set of circumstances presented by the facts. He has separately discussed the cases of both the applicants and ultimately reached the conclusion that he did. Left alone with the report of the Enquiry Officer, I do not

think that going by the principles based on the case law set out herein above, I could possibly have branded it as ôunreasonableô. Much as one would like perfection in the report such as this one to oneôs complete satisfaction, but nothing is perfect in the world and in actual practice from the non judicial authority howsoever highly placed, one cannot always expect a Court like sophisticated expression, consideration and discussion and, therefore, oneôs own estimate should not cloud oneôs judgment in such matters.

13. Shri Ganesh Iyer, the learned Advocate for the applicants bitterly assailed the case of the respondents generally and report of the Enquiry Officer and the order of the disciplinary authority particularly. According to him, Shri Lanke, Naib-Teshildar had conducted the preliminary enquiry and for all one knows Shri Dongre, Junior Clerk was a complicit and still over much significance has been given to the statement of these two witnesses. If I have correctly understood Mr. Ganesh Iyerôs submissions which in my opinion, were quite brilliant otherwise, he assailed the case of the respondents for the complete lack of objectivity, though he may not have used this particular word in his address. I am not in a position to subscribe to the view of the learned Advocate for the applicants. I have already set out the principle that must be adopted in dealing with such matters.

Whatever was not there is one aspect of the matter. But that does not mean that whatever is there should be completely ignored. One way of looking at Mr. Lanke and Mr. Dongreôs statements was which Mr. Ganesh Iyer, the learned Advocate for the applicants mentioned, but there is equally truly another side of the coin namely, that having been involved in the matter when it was early days, their non-examination or any dilution of their statements would possibly have exposed the case of the respondents even more making it more vulnerable. I must repeat times out of number that I do not have to preside over this forum in the set of these facts to re-evaluate the entire evidence and the circumstances emanating therefrom. That is the task of an appellate authority and not the one that is charged with the power of judicial review of administrative action.

14. In sum, in my opinion, the report of the Enquiry Officer was not such to be thrown out of the window. I am not in a position to concur with Shri Ganesh Iyer, learned Advocate for the applicant that it is the case of ñno evidenceò. I have perused the record such as it was and even as it may not be possible for me to dialate on each piece of evidence, but I must mention this much that the record read alongside the statements of two witnesses in juxtaposition with the report of the Enquiry Officer would produce a

result which will be in the manner of speaking õgoodò for the respondents.

15. The said Enquiry report was considered by the disciplinary authority being Divisional Commissioner, Amravati Division, Amravati who is the second respondent hereto. The first one being State of Maharashtra in Revenue and Forest Department. He has only cursorily made reference to the facts herein involved. But at the same time, he has also made number of references to the case of the delinquent such as it was. He has not made extensive reference to the witnesses. But in his own way, he has discussed the matter and recorded his concurrence with the Enquiry Officer. Now at this stage, it will be proper to return to the judgment in the matter of ***Ram Kumar*** (supra) and ***P.K. Khanna*** (supra). The essence of the mandate of the Hon'ble Supreme Court is that if the disciplinary authority agreed with the Enquiry Officer, then it was not mandatory to give reasons which would be necessary in the event of disagreement. As is commonly known the Enquiry Officer is but an extended arm of the disciplinary authority. The disciplinary authority can entirely agree with the Enquiry Officer, partly agree with him or totally disagree with him. From the two judgments just referred to, it clearly appears that in the event of complete agreement the order of disciplinary authority would be

accepted, if he agreed entirely with the Enquiry Officer, which in this particular matter, the disciplinary authority did.

16. I must immediately return to ***Roopsingh Negi's*** case cited by the learned Advocate for the applicants. He laid particular emphasis on para 23 thereof. It would become quite clear therefrom that the orders of disciplinary authority and the appellate authority were not supported by any reason. Their Lordships held that the said orders were pregnant with civil and severe consequences and, therefore, appropriate reasons should have been assigned. In that matter, there was a confession made and in that behalf Their Lordships observed that the administrative authorities should not have ignored an order made by the Court of criminal jurisdiction discharging the delinquent.

17. In my opinion, the principle laid down in the case law above discussed including ***Roop Singh Negi's*** case will have to be applied hereto. Here the report of the Enquiry Officer has been found to be easily acceptable and insofar as the order of the disciplinary authority is concerned, that was by virtue of two judgments of the Hon'ble Supreme Court hereinabove cited an acceptable course of action. It, therefore, follows that the fact situation in ***Roop Singh Negi's*** case was entirely different. Their Lordships held that when the

report of the administrative authority was such as to take diametrically opposite view that the Court of competent criminal jurisdiction, then the reasons were must. These particular O.As are such as to which Ramkumar (supra) and P.K. Khanna (supra) will apply.

18. Insofar as the second order dated 28.9.2010 is concerned, I have already mentioned above that it was made by the disciplinary authority himself in exericse of what has been described as review / representation. Rule 25 (a) has been quoted. I have perused it. I do not think that it in terms empowers the disciplinary authority to review his own order. But assuming and this is only an assumption if it did then in review jurisdiction, it may not be the necessity to reason out the findings of agreement much as it would be in case of an appellate authority and here no appeal has been preferred.

19. For the foregoing, therefore I find that the impugned orders suffer from no irregularity or illegality warranting either the intervention much less interference of this Tribunal. The fate of these O.As have become quite clear. Finally, Shri Ganesh Iyer, learned Advocate for the applicants made a fervent plea that I should grant liberty to the applicants to prefer administrative appeal which they actually did not do earlier. Hearing both sides, I must however, make it quite clear that even as the applicants shall be free to prefer the

appeals, if so advised within a period of four weeks from today, every aspect of the matter including limitation would be left open for the appropriate appellate authority to decide. I express no opinion thereabout

20. With these directions, these O.As stand hereby dismissed with no order as to costs.

(R.B.Malik)
Member (J)

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