

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI  
BENCH AT AURANGABAD  
ORIGINAL APPLICATION NO.482 OF 2015**

**DISTRICT : NANDED**

Abdul Rauf Mohammed Khaja, )  
Age 52 years, Peon in Collector Office, Nanded, )  
R/o Itwara Machi Market, Nanded )..Applicant

Versus

1. The State of Maharashtra, )  
Through its Secretary, )  
Revenue Department, Mantralaya, Mumbai )
2. The Divisional Commissioner, Aurangabad )
3. The District Collector, Nanded )..Respondents

Shri M.R. Kulkarni – Advocate for the Applicant

Shri M.P. Gudde – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman  
Shri B.P. Patil, Member (J)

DATE : 16 August, 2017

PER : Shri Rajiv Agarwal, Vice-Chairman

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

1. Heard Shri M.R. Kulkarni, learned Advocate for the Applicant and Shri M.P. Gudde, learned Presenting Officer for the Respondents.
  
2. This OA has been filed by the Applicant challenging the order dated 15.12.2008 issued by the Respondent No.3 dismissing him from service. The Applicant has also challenged the order dated 23.9.2010 issued by the Respondent No.2 dismissing his appeal against the order of the respondent no.2 dated 15.12.2008. The Applicant has also challenged the order of the Respondent No.1 dated 3.3.2015, in Revision, maintaining orders of the Respondents No.2 and 3.
  
3. Learned counsel for the Applicant argued that a Departmental Enquiry (DE) was started against the Applicant on the ground that he turned hostile in the murder proceedings of a Peon, working on the establishment of the Respondent No.3. The Applicant was a witness in that case. Learned counsel for the Applicant argued that a criminal case of Murder viz. Case No.10 of 2004 was filed in the Court of Additional Sessions Judge, Nanded against a Peon viz. Shri Syed Alim Sayed Mohinddin in Collector Office, Nanded for murder of one Shri Datta Dantewar, who was also a Peon in the Collector Office, Nanded. The prosecution's case was that Shri Dantewar was pushed from the terrace of Collectorate Building by the accused Shri Syed Alim. The Applicant was a prosecution witness whose statement was recorded under Section 164 of the Code of Criminal Procedure by a Magistrate and who deposed that he has seen the accused pushing the victim from the terrace. However, in the court, the Applicant turned hostile and changed his deposition. A charge sheet was issued to the Applicant by Memorandum dated 2.2.2005

charging the Applicant that he dishonestly changed his statement before the Special Judicial Magistrate, Nanded, which was recorded under Section 164 of Cr. P.C., while deposing before Additional Sessions Judge, Nanded. This resulted in acquittal of Shri Syed Alim. The action of the Applicant was treated as misconduct under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Enquiry Officer submitted his report finding that the charge against the Applicant was proved. As a punishment, his pay was brought to the minimum in the time scale of pay. Learned counsel for the Applicant argued that Learned Additional Sessions Judge has held that the Special Judicial Magistrate did not record the statement of the Applicant by adopting correct legal procedure and he did not issue a certificate that the statement was voluntary and not under pressure. As such, the Respondent No.3 could not have punished the Applicant, for changing his statement, which was given by the Applicant before Special Judicial Magistrate under pressure of police. The Respondents No.2 and 3 failed to consider this aspect.

4. Learned Presenting Officer (PO) argued that the present OA is without any merit. The Applicant was a witness in the case of murder of his own colleague by another colleague. His statement was recorded by Special Judicial Magistrate, Nanded under Section 164 of Cr. P.C. The Applicant deposed that he saw the accused pushing the victim from the terrace which resulted in his death. However, during the trial before Additional Sessions Judge, the Applicant turned hostile and changed his statement. Either the statement of the Applicant before Special Judicial Magistrate, Nanded was false or his statement before Additional Sessions Judge, Nanded was false. The Applicant never reported that his statement before Special Magistrate, Nanded was under coercion. Learned PO argued that Learned Additional Sessions Judge has made observations about the conduct of the Applicant in his judgment dated 7.7.2004. The Applicant was not an accused in that case. DE against him was started

on totally different set of facts. DE was conducted as per rules and there was no procedural fault. There is no valid ground to challenge the order dated 15.12.2008 passed by the Respondent No.3. The Respondent No.2 has also passed a detailed and reasoned order considering all the issues raised by the present Applicant. There is no procedural lapse in the proceedings. The very fact that the Applicant changed his statement before learned Additional Sessions Judge, Nanded establishes that he was guilty of misconduct. Learned PO prayed that this OA may be dismissed.

5. We find that the Applicant has not alleged that there was any procedural irregularity while in the DE held against him in which punishment was imposed upon him by the Respondent No.3 by impugned order dated 15.12.2008. It is a reasoned order and the report of the Enquiry Officer, as well as the say of the Applicant has been analyzed at some length. The DE was not to ascertain whether the Applicant has actually seen the accused throwing the victim from terrace or not. That issue was decided by learned Additional Sessions Judge, Nanded by his judgment dated 7.7.2004 in Case No.10 of 2004. The charge against the Applicant was that he changed his statement which he had given before the Special Judicial Magistrate, Nanded under Section 164 of Cr.P.C. This is an admitted position that the Applicant turned hostile in the criminal trial and claimed that his earlier statement before Special Judicial Magistrate, Nanded was given under coercion. The issue was enquired into by the Enquiry Officer. It was found that there was no evidence that the Applicant was pressurized by the police or anyone else to give statement before Learned Special Judicial Magistrate, Nanded. The Enquiry Officer, found that charge against the Applicant that he changed his statement was proved. We do not find that the finding of the Enquiry Officer was perverse. In fact, it can be said that there was evidence on

record to support the aforesaid finding. We do not find it a case requiring our intervention.

6. Having regard to the aforesaid facts and circumstances of the case, this OA is dismissed with no order as to costs.

Sd/-

**(B.P. Patil)**  
**Member (J)**  
**16.8.2017**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**16.8.2017**

Dictation taken by: S.G. Jawalkar.

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