

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.872 OF 2017**

DISTRICT : MUMBAI

Smt. Sunita Prataprao Kadam,)
1781, Flat No.2, Indranil Residency, S.T. Stand Road,)
Sangli 416416)..Applicant

Versus

1. The Divisional Commissioner,)
Council Hall, Opp. Poona Camp Club, Pune-1)
2. The Collector, Rajwada Chowk, Sangli 416416)..Respondents

Shri M.B. Kadam, learned Advocate holding for
Shri S.S. Dere – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)
RESERVED ON : 24th August, 2018
PRONOUNCED ON : 28th August, 2018

J U D G M E N T

1. Heard Shri M.B. Kadam, learned Advocate holding for Shri S.S. Dere, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

Brief facts of the case:

2. The Applicant was working as Clerk in the Record Branch of the office of Tahsildar, Tasgaon District Sangli. It was alleged against her:

- (a) Instead of following the laid down rules she accepted additional amount from the clients for providing copies of documents,
- (b) Did not give them receipts for the amount accepted,
- (c) Took assistance of unauthorized private person to work in the Record Branch,
- (d) Did not write 17-B register on day-to-day basis, and
- (e) Did not obtain signature of Naib Tahsildar on the same.

3. On the basis of her written statement on 7.12.2013 recorded by Tahsildar, Tasgaon the Respondent No.2 issued the order on 7/11/2015 to stop her next increment on permanent basis. Aggrieved by the same, she appealed to the Respondent No.1. On this appeal, the order issued by the Respondent No.2 was confirmed by the Respondent No.1.

4. The Applicant has prayed to set aside the impugned order dated 31.8.2016 passed by the Respondent no.1 and the order dated 7.11.2015 passed by Respondent No.2 and release the stopped increment imposed on her as punishment.

5. The learned Advocate for the Applicant has furnished following grounds in support of the same:

(1) The Respondent No.2 did not appoint independent enquiry officer and enquired in the matter of DE by himself while acting as disciplinary authority. The Respondent No.2 has conducted the DE in illegal manner without following due process of law. (Para 7.1 of OA)

(2) No independent witness was examined. (Para 7.2 of OA)

(3) The Applicant did not get opportunity of cross-examination as no witnesses were allowed in the enquiry. (Para 7.3)

(4) The disciplinary authority was predetermined, highhanded, biased and acted illegally. (Para 7.4)

(5) He has indulged in violation of basic principles, fundamental and legal rights guaranteed by the Constitution. (Para 7.5)

Rebuttal by the Respondents:

6. Affidavit in reply (page 58 of OA) by the Respondents No.1 and 2 admits that, "though the Respondent No.2 did not appoint independent enquiry officer, prior to the same, enquiry was conducted under Rule 10 of the MCS (Discipline & Appeal) Rules, 1979. The principles of natural justice are followed during the enquiry and enquiry was completed in legal manner by following due process of law. The Applicant had given in writing that, she has accepted extra amount towards charges of certified

copies. This conduct of the Applicant was sufficient to hold her guilty to award punishment.”

7. Rule 10(2) of the MCS (Discipline & Appeal) Rules, 1979 reads as under:

“10. Procedure for imposing minor penalties.-

(2) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed, after considering the representation if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government's servant or to withhold increment of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period [the words or to impose any of the penalties specified in clauses (v) and (vi) of sub-rule (1) of the Rule (5)], an inquiry shall be held in the manner laid down in sub-rule (3) to (27) of Rule 8, before making any order of imposing on the Government servant any such penalty.”

8. The Affidavit further mentioned, “Independent witness was not examined at the time of departmental proceedings. In fact sole statement of the Applicant is sufficient to hold her guilty. Evidence of candidate was recorded during the enquiry and that was sufficient to prove the case.” (Para 6 page 59)

9. The Affidavit states, “As the enquiry conducted was of summary nature, the decision was relied upon the documents on record and statement of delinquent as well as witnesses before the final order. If the Applicant wanted to examine any witness, she was at liberty to examine the same. But the Applicant did not examine any independent witness neither she requested for cross-examination of witnesses. The Applicant had made a statement before the Tahsildar and accepted the charges

against her and therefore regular enquiry was not held and on the basis of a statement, department has proceeded for punishment.” (Paras 7 & 8, page 60)

10. The Affidavit contends, “Enquiry was conducted independently and punishment was awarded to the Applicant.” The Respondents further mention that as the Applicant accepted the charge, serving charge sheet again and holding enquiry was considered as a 'futile exercise'. The Respondents therefore plead that the OA is devoid of any merits and deserves to be dismissed. (Para 10 & 12, page 60, 61)

11. The Ld. Presenting Officer during hearing produced a communication dated 10.8.2018 from the office of Respondent number 2 stating that though the impugned order was issued, consequently no increment of the Applicant has been stopped so far. (Page 65)

Issue for consideration:

12. Whether the order issued by Respondents is illegal, biased and pre-decided?

Findings and reasons:

13. Respondent No.2 has depended on written statement by the Applicant before Tahsildar, Tasgaon on 7.12.2013 which states that while providing 36 copies it was expected that she will be charging Rs.360/-. Instead she charged him Rs.720/-. The Applicant had indulged in similar practice in respect of many others right from the time she had accepted the charge of the post. Though unauthorized, she appointed one private person namely Ujjwal Pandurang Jadhav in the Record Branch to assist her. She did not furnish receipts for the amount charged to the

Applicants. On the basis of the statement furnished by the Applicant, Respondent No.2 came to the conclusion that summary trial should be conducted for minor punishment of stopping of one increment on permanent basis. Respondent number 2 further decided that detailed enquiry in the matter would be of futile nature even though disciplinary enquiry was contemplated, as per the procedure.

14. Respondent No.2 has provided sufficient opportunity to the Applicant to explain her alleged illegal acts. The Applicant also does not dispute the charges against her. Hence, I find that the decision of imposing the punishment of stoppage of one increment on permanent basis after summary trial is after giving reasonable opportunity to the Applicant.

15. In view of the foregoing, for reasons explained above, the OA is dismissed, as it is devoid of any merits.

Sd/-
(P.N. Dixit)
Member (A)
28.8.2018

Dictation taken by: S.G. Jawalkar.