

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 160 OF 2017

DIST. : AURANGABAD

Shamsundar s/o Bajrang Tapase,
Age. 50 years, Occu. : Service,
R/o Amrutsai Plaza, R. No. E-32,
Near Railway Station,
Aurangabad.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Water Resources Department,
Mantralaya, Mumbai - 32.
2. The Superintending Engineer,
Jayakwadi Project Division,
Aurangabad.
3. The Superintending Engineer,
Aurangabad Irrigation Circle,
Aurangabad.
4. The Executive Engineer,
Jalna Irrigation Division, Jalna
(former : Lower Dhoodhana Project Division),
Selu, Dist. Parbhani.
5. The Executive Engineer,
Jalna Minor Irrigation Division,
Jalna.

-- RESPONDENTS

APPEARANCE :- Smt. Suchita A. Dhongde, learned
Advocate for the applicant.
: Shri B.S. Deokar, learned Presenting Officer
for the respondent no. 1.
: Shri Shamsunder B. Patil, learned Advocate
for respondent nos. 2 to 5.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN**
DATE : **14.8.2018**

ORDER

1. The applicant has challenged the order dtd. 25.4.2016 (Annex. A. 10 page 67), whereby a minor punishment has been imposed on him. The punishment is imposed for the misconduct viz. the applicant did not report for duty at the venue. The exact text of the charge reads thus :-

“कार्यकारी अभियंता, निम्न दुधना प्रकल्प विभाग, सेलू यांनी त्यांचे पत्र क्रं. निदुप्र/सेलू/ता-५/३८०३ दिनांक ०८/०८/२०१२ अन्वये कळविल्यानुसार वरील आपण केलेल्या कामांचे मोजमापे घेण्यासाठी दिनांक १६/८/२०१२ ते ३१/०८/२०१२ या कालावधीत निम्न दुधना प्रकल्प विभाग, सेलू येथे हजर राहणेसाठी आपणांस या मंडळाचे पत्र क्रं. जाप्रमं/आ-१/३९६९/वप्र दिनांक ०८/०८/२०१२ अन्वये आपणांस सूचित करण्यांत आलेले आहे. परंतु आपण संबंधीत कार्यालयास हजर राहिला नाहीत व कामे पुर्ण केले नाही. असे कार्यकारी अभियंता, निम्न दुधना प्रकल्प विभाग, सेलू यांनी त्यांचे पत्र क्रं. निदुप्रवि सेलू कॅम्प औरंगाबाद-१ दिनांक ०४/१०/२०१२ अन्वये या मंडळास कळविले आहे.”

(quoted from page 37 of O.A.)

2. According to the applicant, the order of punishment is unjust for the reasons that the applicant was not relieved by his immediate superior. The averments in that regard read thus :-

“i) The Junior Engineer / Section Engineer does not have authority to take policy decision and have to work under the control of Sub-divisional Engineer /officer, Executive Engineer and Superintending Engineers. Although the Superintending Engineer Shri Tandale

directed applicant to attend joint measurement, the applicant cannot act on such directions unless those directions are received to him through his immediate superior authority i.e. the Sub-divisional Engineer, Executive Engineer concerned. Therefore, the allegations of failure to obey directions cannot legally sustain and the findings to that effect are erroneous.”

(quoted from page 8 of O.A.)

3. The averments of the applicant contained in O.A., which are quoted in foregoing para, are answered by the respondents in evasive manner and as usual the fact that the applicant's superior did not relieve him, is still fully or deliberately left un-replied.

4. After hearing both the sides for some time, on 5.7.2018, this Tribunal observed in para 3 as under :-

“3. Admittedly, the applicant was working under the control of Superintending Engineer, Jayakwadi Irrigation Circle. It is not shown that the Superintending Engineer, Jayakwadi Irrigation Circle was pursued to relieve the applicant.”

(quoted para 3 of order of the Tribunal dtd. 5.7.2018)

5. Today, Shri Shamsundar B. Patil, learned Special Counsel for res. nos. 2 to 5 has filed affidavit in reply and has shown 'alleged' sincere efforts to pursue the immediate superior Officer of the applicant to relieve the applicant. The thrust and reliance is placed by learned Advocate Shri Shamsunder B. Patil on letter dtd. 28.12.2012 (page 102). It is not shown at any point of time

that any instruction / request or D.O. letter was issued to the immediate superior Officer to relieve the applicant.

6. On the ground that no efforts were made by the applicant for seeking directions from the superior controlling Officer to relieve him, the reply to the O.A. suffers from the defect of total non-application of mind.

7. In the result, it is evident from record that the applicant cannot be charged for failure to get relieved unilaterally. He could never have left his charge or taken additional charge without express directions of his immediate superiors in hierarchy.

8. In the circumstances, the O.A. succeeds.

9. O.A. is allowed in terms of para 9 prayer clauses (B), (D) & (E), which are quoted below :-

“9. Reliefs sought :

(B) The impugned orders passed by the Superintending Engineer, Jayakwadi Project Circle, Aurangabad dated 26.3.2013 withholding one annual increment of the applicant and also the order passed by the Secretary Water Resources Department, dated 25.4.2016 dismissing the appeal filed by the applicant against the order dated 26.3.2013 imposing punishment of stoppage of one annual increment be quashed and set aside.

(D) The respondents be directed to release the annual increment of the applicant withheld by virtue of the impugned order forth with.

(E) *It be declared that the applicant is exonerated of all the charges leveled against him in the aforesaid enquiry and that there is no stigma attached to his service book.”*

(quoted from page 12 of O.A.)

10. Parties are ordered to bear own costs.

CHAIRMAN

ARJ-O.A.NO. 160-2017 (MINOR PUNISHMENT) HON'BLE CHAIRMAN