

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 310 OF 2015

DIST. : DHULE.

Shri. V.D. Bhapkar,
Age : Major, Occ: Service,
Talathi having office at Behed,
Tal. Sakri, Dist. Dhule,
R/o. Deopur, Dhule.

--- APPLICANT.

V E R S U S

- I. The State of Maharashtra
Through the Secretary,
Revenue Department,
Mantralaya, Mumbai-400 032.
- II. The Collector,
Dhule.
- III. The Sub Divisional Officer,
Dhule Division, Dhule.
- IV. The Tahsildar,
Sakri.

.. RESPONDENTS.

APPEARANCE :- Shri Shrikant Patil, learned Advocate
for the Applicant.

: Smt. Sanjivaji Deshmukh-Ghate,
learned Presenting Officer for the
Respondents.

**CORAM : HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

J U D G E M E N T**[Delivered on this 9th day of January, 2017]**

The applicant is working as a Talathi at Village Behed, Tal. Sakri, Dist. Dhule and at the relevant time i.e. in between 08.11.1994 and 31.05.1998. While he was performing duties at village Satare, Tal. Sindhkheda, Dist. Dhule, a charge sheet was filed against the applicant for the alleged misconduct committed by him. The allegation was that he had issued bogus 6D extract for entries No. 563 to 575, and illegally scored the revenue entries and dates. It has also been alleged that the signatures of the Tahsildar on such extract are bogus. A departmental enquiry was conducted on the allegations without following due process of law and without giving an opportunity to the applicant. No show cause notice was issued to the applicant for proposed punishment. Findings of the Enquiry Officer were not given to the applicant and the respondent No. 3 i.e. the Sub-Divisional Officer, Dhule, imposed the punishment reducing the applicant's pay scale permanently on lower pay scale vide order dated 25.07.2007. The applicant also filed an

appeal against the order dated 25.05.2007, passed by the respondent No. 3, before the respondent No. 2, the Collector, Dhule on 3.1.2011. But, the respondent No. 2, vide order dated 6.7.2011 rejected the appeal filed by the applicant without giving an opportunity to the applicant.

2. The applicant thereafter approached the Hon'ble Tribunal by filing Original Application No. 535/2011. The Hon'ble Tribunal was pleased to allow the said O.A. No. 535/2011 vide its order dated 08.12.2011 and quashed and set aside the order passed by respondent No. 3 dated 25.5.2007. The Disciplinary Authority was directed to issue show cause notice to the applicant for proposed punishment to be inflicted, along with copy of enquiry report and shall give sufficient time to the applicant to submit his reply and thereupon, and to pass order within three months.

3. In view of the aforesaid direction given by this Tribunal, the applicant was served with a show cause notice and impugned order has been passed on 31.3.2012, a copy of which is placed on record at page No.

46 of the paper book. The Sub-Divisional Officer, Dhule was pleased to pass the following order: -

“१. श्री. व्ही.डी. भापकर यांना तलाठी संवर्गात खालच्या वेतन समयश्रेणी मध्ये पदावनत करण्याची शिक्षा कायम ठेवण्यात येत आहे.

२. श्री. भापकर हे तलाठी संर्गात रु. 5000-150-8000 या सुधारीत वेतनश्रेणीत वेतन घेत असल्याने त्यांना पाचव्या वेतन आयोगाच्या पुर्वीच्या वेतन श्रेणीत म्हणजेच रु.4500-125-7000 या खालच्या वेतन श्रेणीत कायमस्वरुपी पदावनत करण्यात येत आहे.”

4. The applicant has filed appeal against the order passed by respondent No. 3 dated 31.3.2012, but the respondent No. 2 dismissed the said appeal vide order dated 20.10.2014, and hence, this Original Application.

5. The applicant has claimed that the impugned order dated 31.3.2012 of permanent reduction of lower pay scale passed by respondent No. 3 and impugned order dated 20.10.2014 passed by respondent No. 2 in appeal, be quashed and set aside.

6. The respondent Nos. 2 & 3 resisted the claim by filing reply affidavit and tried to justify the order passed by both the competent authorities.

7. Heard Shri Shrikant Patil – learned Advocate for the applicant and Smt. Sanjivani Deshmukh-Ghate – learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by respondent Nos. 2 & 3. I have also perused the various documents filed by the learned Advocates for the respective parties.

8. The material point to be considered is whether the order passed by the respondent No. 3 dated 31.3.2012 and the order passed by the Appellate Authority i.e. respondent No. 2 dated 20.10.2014 are legal and proper?

9. The learned Advocate for the applicant submits that the order of punishment itself is illegal. The applicant has been demoted on the lower pay scale with permanent effect and this is totally against the Government Resolution dated 21.5.1985 issued by the Government of Maharashtra in its Revenue Department. The copy of the said Government Resolution is placed on record at page No. 56 & 57 of the paper book.

Perusal of the said Government Resolution shows that the competent authorities have been directed to

mention the specific period for which the employee has to be demoted as it was noticed that the employees were being demoted permanently and it is against the provisions of Maharashtra Civil Services (Pay) Rules, 1981.

10. It seems from the order passed in O.A. No. 535/2011 by this Tribunal that earlier the punishment was inflicted on the applicant by the Appellate Authority without following the due process of law and without issuing show cause notice and, therefore, the matter was remanded back to the Disciplinary Authority and thereafter, the respondent No. 2 seems to have followed the procedure, whereby only a show cause notice has been issued and thereafter the punishment has been inflicted. The Appellate Authority however, does not seem to have considered all the points raised by the applicant in his appeal. The copy of memo of the appeal is placed on record at page Nos. 49 to 55 onwards. In the said appeal memo the applicant has raised various points, such as, that the employee cannot be demoted with permanent effect as per the provisions of Rule 42 (1) of the

Maharashtra Civil Services (Pay) Rules, 1981 and para 3.5 (1) of the Departmental Enquiry Manual. The applicant has also referred to various issues such as the fact that the handwriting expert has clearly opined that he cannot state whether the signature in the name of Shri Devang was put by the applicant or whether the applicant fabricated the signature and documents. The applicant has also assailed the order of the Sub Divisional Officer on merits, but the Appellate Authority seems to have not considered all the legal points. While appreciating the report of the handwriting expert, it is mentioned in paragraph No. 2 in the order as follows: -

“२) सदर मुद्यात हस्ताक्षर तज्ञांचे मत त्यांचे लाभात असताना त्याचा फायदा चौकशी अधिकारी यांनी दिलेला नाही असे नमुद केले आहे. मात्र हस्ताक्षर तज्ञ, पुणे यांनी त्यांचे अहवालात सदरच्या सहया या श्री. देवांग यांच्या नाही, त्या बनावट आहेत असे स्पष्टपणे म्हटलेले नसले तरी त्या श्री. देवांग यांच्या आहेत असेही म्हटलेले नाही.”

11. These findings are contradictory to the report of the handwriting expert, who has specifically stated that he cannot give option as to whether signatures were forged by the applicant.

12. Perusal of the enquiry report and that of order passed by the respondent No. 2 shows that Shri Devang is important witness and even though he stated that the entries in form No. 6 in respect of entries Nos. 563 to 575 are not signed or written by him that does not mean that those entries are in the handwriting of the applicant. It seems that prima facie the report of hand writing expert has not been appreciated properly by the enquiry officer. It is not necessary to go into the merits of the said appreciation as it is the duty of the Appellate Authority to consider all these facts. The Appellate Authority shall have to consider as to whether the evidence of S/Shri B.Z. Patil, P.Z. Pathan & Prakash Zulelal Chavan is cogent and reliable and such evidence will have to be rightly appreciated in view of the report of the handwriting expert. It is also necessary to consider that the handwriting expert is not examined as a witness.

13. The Appellate Authority also has not considered as to whether the punishment of reduction to lower pay scale permanently is legal or not. The order passed by the respondent No. 2, therefore, seems to be without

application of mind and the respondent No. 2 has not appreciated the evidence with a proper perspective. All these points raised in the appeal memo have not been considered by the Appellate Authority. In such circumstances, without going into the merits of the order passed on 31.3.2012, it will be in the interest of justice and equity to remand the matter back to the respondent No. 2 for deciding it afresh, and hence, I pass the following order: -

ORDER

- (i) The present Original Application is partly allowed, in terms of prayer clause 13 (C).
- (ii) The impugned order dated 20.10.2014 passed by the respondent No. 2 in appeal No. 01 of 2014 is quashed and set aside.
- (iii) The respondent No. 2 viz. the Collector, Dhule, is directed to consider all the points raised in the appeal memo and shall pass a detail reasoned order on the appeal filed by the applicant against the order passed by the respondent No. 3 dated 31.3.2012, without being influenced by any of the observations

made in this order. The applicant shall give an opportunity of hearing before passing any such order in the appeal.

- (iv) The decision shall be taken in the appeal within a period of three months from the date of this order by the respondent No. 2 and the same shall be communicated to the applicant in writing.
- (v) In the facts and circumstances of the case, there shall be no order as to costs.

MEMBER (J)