

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD.

**ORIGINAL APPLICATION NO. 325 OF 2016**

**DIST. : HINGOLI.**

Shri Vishwanath S/o Shankarrao Dipak  
Age : 65 years, Occu: Pensioner,  
R/o : Sidharthnagar, Purna,  
Tq. Purna, Dist : Parbhani.

.. APPLICANT.

**V E R S U S**

01. The State of Maharashtra  
Through its Secretary/Deputy  
Secretary, Revenue and Forest  
Department, 1<sup>st</sup> Floor,  
Mantralaya, Mumbai.

02. The Commissioner cum  
Directorate of Land Records,  
Maharashtra State, Pune.

03. The Accountant General-2,  
Nagpur.

.. RESPONDENTS.

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APPEARANCE :- Shri I.G. Durani, learned Advocate  
for the Applicant.

: Shri M.P. Gude, learned Presenting  
Officer for the Respondents.

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**CORAM : HON'BLE SHRI J.D. KULKARNI,  
MEMBER (J)**  
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**J U D G E M E N T****[Delivered on this 24<sup>th</sup> day of January, 2017]**

1. The applicant is a retired Taluka Inspector of land records. He got retired on attaining the age of superannuation on 31.05.2009 from the said post. He has challenged the impugned order dated 18.2.2016 issued by respondent No. 1 viz. Secretary/Deputy Secretary, Revenue and Forest Department, 1<sup>st</sup> Floor, Mantralaya, Mumbai, vide which the departmental action has been taken against the applicant as under: -

*“५. सबब, श्री. दिपक यांच्याविरुद्धच्या विभागीय चौकशीअंती शासन खालील आदेश देत आहे:-*

*“श्री. व्ही.एस.दिपक, तत्का.तालुका निरीक्षक, भूमि अभिलेख, हिंगोली (सेवानिवृत्त) यांच्याविरुद्धच्या विभागीय चौकशी प्रकरणी महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम, १९८२ च्या नियम २७ अनुसार त्यांच्या सेवानिवृत्तिवेतनातून दरमहा १०% (दहा टक्के) इतकी रक्कम दोन वर्षाकरिता कपात करण्यात यावी.”*

2. According to the applicant, the departmental enquiry was initiated vide order dated 15.1.2013 almost four years after retirement. The period of enquiry as seems from the documents pertains to the period from 7.6.2008 to 31.5.2009 when the applicant was serving as Taluka

Inspector of Land Records at Hingoli. Permission to initiate the departmental enquiry was granted on 15.1.2013.

3. Perusal of the enquiry report shows that in all four charges were framed against the applicant and the basic charge seems to be that the applicant has intentionally recorded wrong mutation entry in respect of CTS No. 4809.

4. According to the applicant, the main charge against him is no more inexistence since the mutation entry recorded by him has been confirmed by the Appellate Authority, but this fact has not been considered by the Competent Authority, when the impugned order was passed. It is also stated that the applicant's defence was not considered by the Enquiry Officer. It is further stated that the charges against the applicant were not grave and, therefore, the action should not have been taken after retirement against the applicant.

5. The respondent No. 3 has filed affidavit in reply and tried to justify the action taken against the applicant.

6. Respondent Nos. 1 & 2 have filed their reply affidavit and submitted that the applicant has not taken due care and precaution and intentionally committed illegalities effecting Mutation Entry No. 5920 on 30.5.2009 in respect of property bearing CTS No. 4809 at Hingoli. The said entry was taken on the last but one day of his retirement and, therefore, the applicant has misuse his powers. The respondents have justified the order passed/ action taken against the applicant.

7. Perusal of the record will show that the main contention is twofold viz.

(i) That the applicant has taken mutation entry on the last but one day of his retirement from the service;

(ii) That he has intentionally taken that entry fraudently.

8. It is material to note that the applicant in his representation has submitted that the mutation entry, which he has taken has been confirmed by the Appellate Court. However, this was not considered. The learned

Advocate for the applicant has invited my attention to the Review Petition filed by the persons affected by the mutation and the order passed thereon. The impugned communication is from page Nos. 42 to 43 (both inclusive) and the order passed by the Appellate Authority dated 20.9.2014 is from page Nos. 44 to 48. It seems that the party aggrieved by the mutation entry taken by the applicant, has preferred an appeal before the D.I.L.R. D.I.L.R. vide his order dated 26.8.2010 was pleased to cancel the mutation entry taken by the applicant, but the said order passed by the D.I.L.R. has been quashed by the Appellate Authority and not only that the mutation taken by the applicant was confirmed. The final order in the said appeal is passed on 20<sup>th</sup> September, 2014, a copy of which is placed on record at page Nos. 44 to 48, which reads as under: -

**“-: आ दे श :-**

१. अर्जदार यांचा अर्ज मान्य करण्यात येत आहे.
२. जिल्हा अधिक्षक भूमि अभिलेख, यांचे आदेश दि. २६.०८.२०१० व उपसंचालक भूमि अभिलेख, औरंगाबाद प्रदेश औरंगाबाद यांचे आदेश दि. ३०.०६. २०११ रदद करण्यात येत आहेत. शहर हिंगोली येथील नगर भूमापन क्र. ४८०९

संबंधी प्रमाणित केलेली फेरफार नोंद क्र. ५९२० कायम करण्यात येत आहे व फेरफार नोंद क्र. ६४७६ रद्द करण्यात येत आहे.

३. खर्चाबाबत आदेश नाहीत.

सही/-

(श्याम तागडे)

सचिव व विशेष कार्य अधिकारी (अपील्स)”

9. In spite of such specific order, the competent authority seems to have not taken cognizance of it.

10. The learned Advocate for the applicant invited my attention to the explanation given by him to the Competent Authority on 10.1.2015. The copy of the said explanation is placed on record at page No. 33 (Exh. 'E').

In his explanation the applicant has stated as under: -

“.. .. .  
.. .. .संदर्भ क्रमांक ०२ चे अनुषंगाने मा. सचिव व विशेष कार्य अधिकारी (अपील्स) महसूल व वन विभाग मंत्रालय मुंबई माननिय महोदय यांनी शहर हिंगोली येथील नगर भूमापन क्रमांक ४८०९ संबंधी माझे कडुन प्रमाणित केलेली फेरफार नोंद क्रमांक ५९२० कायम ठेवुन मा. उपसंचालक भुमि अभिलेख औरंगाबाद प्रदेश औरंगाबाद यांचे कडील दिनांक ३० जुन २०११ रोजीचे आदेश रद्द केलेले आहेत तसेच मा. जिल्हा अधीक्षक भुमि अभिलेख हिंगोली यांचे कडील दिनांक २६ ऑगस्ट २०१० रोजीचे आदेशही रद्द करुन फेरफार नोंद क्रमांक ६४७६ ही सुध्दा रद्द केलेली आहे असे आदेश अपील प्रकरणामध्ये मा. महोदय यांनी दिनांक

*२० सप्टेंबर २०१४ रोजी पारीत केलेले आहेत. प्रकरणी आदेश समाविष्ट केलेले आहेत अवलोकन होणेस विनंती असे.”*

11. The respondent authority however, did not consider this fact and, therefore, the order passed by the Competent Authority imposing punishment on the applicant on 18.9.2016 seems to be without application of mind.

12. The learned Presenting Officer submits that the applicant has admitted his guilt while answering the charges. Even though the applicant might have accepted negligence on his part, but that does not mean that he has accepted the entire charges.

13. The learned Advocate for the applicant invited my attention to Sub-rule 2 (b) (ii) of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, and submitted that pension amount shall not be withheld, unless employee found guilty of grave misconduct or negligence. He has also relied on the judgment of State of Maharashtra Vs. K.B. Nimbalkar, reported in 2006 (2)

Bom C.R. 777-DB. It is held in the said judgment as under: -

***“The scope of rule 27 is also explained by the Division Bench in case of State of Maharashtra Vs. K.B. Nimbalkar, 2006 (2) Bom C.R. 777-DB. After considering the provisions of rule 27, it is observed in para 10 that the power to order withholding or withdrawal of pension or a part thereof, permanently or for a specified period is conditioned by the requirement that the pensioner is “found guilty of grave misconduct or negligence.”***

14. Considering the fact on the circumstances of the facts, I am satisfied that so-called illegal mutation entry on the basis of which the departmental enquiry was initiated against the applicant has been held legal and said mutation entry taken by the applicant has been confirmed by the Appellate Authority and, therefore, by no stretch of imagination, it can be said that the applicant has taken wrong mutation entry intentionally and this fact is not considered by the Appellate Authority. If the very



mutation entry is held valid nothing remains in the charge against the applicant and whatever other charges held to be proved are minor and not grave.

15. In view of the above, the impugned order of punishment is required to be quashed and set aside.

Hence, the following order: -

### **ORDER**

- (i) The present Original Application is allowed in terms of prayer clause 'B'.
- (ii) There shall be no order as to costs.

**MEMBER (J)**

O.A.NO. 325-2016(hdd)-2017 (Minor punishment)