

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 619 OF 2015

DIST. : BEED.

Shri Anil S/o Sopanrao Palekar,
Age: 52 years, Occu. Circle Officer,
R/o Morewadi, Po.Chanai
Tq. Ambajogai, Dist. Beed.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
Through the Secretary of Revenue
And Forest Department,
Mantralaya, Mumbai-32.

2. The Collector, Beed
Collector Office, Beed.

.. RESPONDENTS.

APPEARANCE :- Shri H.V. Tungar, learned Advocate
for the Applicant.

: Smt. Sanjivani 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 23rd day of January, 2017]

1. The applicant, Shri Anil S/o Sopanrao Palekar, in
this Original Application has challenged the impugned

order dated 29.6.2015 passed by the respondent No. 2, the Collector, Beed, thereby punishing the applicant by reverting him to lower pay scale. It is prayed that the said order be quashed and set aside.

2. The copy of the impugned order is placed on record at page-50 of the paper book (Annexure 'A-5'). According to the applicant, the said order has been issued without any departmental enquiry being initiated against the applicant and in fact, though it is mentioned that show cause notice has been issued to the applicant, the respondent No. 2 has inflicted punishment and then called upon the applicant to submit his explanation within a period of 15 days.

3. From the record, it seems that at the relevant time the applicant was serving as a Circle Officer at Nandurghat, Tq. Kaij, District Beed and one Shri A.L. Kulkarni, who was serving as Talathi at Sajja Borgaon (Bk), District Beed. A joint charge-sheet was served on the applicant, as well as, on Shri A.L. Kulkarni, and the

following charges were framed against the applicant and Shri A.L. Kulkarni.

“१. मा. विभागीय आयुक्त साहेब औरंगाबाद यांचे परिपत्रक क्रमांक २००८/मशाका-२/ जमिन-२, दि. ०२/०८/२००८ अन्वये एकुण २८ परिपुर्ण सुचना जंत्री फेरफार मंजूरीसाठी मागदर्शक म्हणुन दिली असतानाही सदर निर्देशचे पालन न करता फेरफार यादी मंजुर केल्या आहेत.

२. फेरफार नोंदीसाठी बहुतांश प्राप्त अर्ज पुर्व लक्षी प्रभावाने (**Backdate**) विना दिनांक (**Undated**) नोंदविले आहेत व अशा पुर्व लक्षी प्रभावाने (**Backdate**), नोंदी फेरफार नोंदवहीसारख्या सांविधानिक महत्व असलेल्या आणि अधिकार अभिलेखीचे हस्तांतर होण्यास कारणीभुत असलेल्या महत्वाच्या नोंदवहीत असदहेतुने आहेत.

३. महाराष्ट्र जमीन महसुल अधिनियम १९६६ चे कलम १४९ ते १५७, त्या खालील महाराष्ट्र जमीन महसुल (अधिकारी अभिलेख तयार करणे व सुस्थीतीत ठेवणे) नियम १९७१ अन्वये फेरफार असदहेतुने मंजुर केले आहेत.

४. नोटरी समोर साक्षांकित केलेले तथाकथीत दस्तऐवजांच्या नोंदी फेरफार नोंदवहीत घेतल्या नंतर त्या मंजुर करून नोंदणी विभागामार्फत मिळणा-या शासनाच्या महसुलांचे मुद्रांकशुल्क व नोंदणीशुल्कापोटी नुकसान केले आहे. उक्त नुकसानीसाठी व्यक्तिशः जबाबदार आहेत.

५. विहीर व बोअर यांच्या नोंदी फक्त खातेदारांच्या अर्जावर मंजुर केलेल्या आहेत. प्रत्येकात जागेवर जाऊन कुठलीही स्थळपाहणी केली नाही अथवा तशी नोंद केली नाही.

६. महाराष्ट्र जमिन महसुल अधिनियम १९६६ मुंबई तुकडेबंदी व जमिन एकत्रीकरण कायदा १९४७ नुसार विहीरी क्षेत्रापोक्षा कमी क्षेत्राचा फेरफार मंजुर करता येत नसताना भुखंडाचे फेरफार मंजुर केले व अशा १०० चौ.मि. पासुन ४०० चौ.मि. च्या नोंदी गट व इतर अधिकारात घेतल्या. सदर क्षेत्रांचे कुठेही अकृषीक

आकारणी आदेश पारीत झाले नव्हते. ज्यामुळे त्यांनी स्वतःचा अधिकारात शासनाचे अधिकार वापरून आर्थिक फायदा करून घेतला.

७. खरेदी फेरफारांचे नोंदी घेतांना कुठलेही अर्ज स्वीकारले आहेत अथवा नाहीत, त्यांच्या नोंदी ठेवल्या आहेत अथवा नाहीत, . प्रमाणित प्रती घेतल्या आहेत अथवा नाही याची खात्री केली नाही.

८. बोजा नोंदीच्या पत्रावर गट क्रमांकाचा उल्लेख नसतांना मनमानीपणे गटाचा उल्लेख करून लिहीलेला फेर मंजूर केला.

९. बँकेच्या बोजाची नोंद घेतांना त्याची रुजवाता खातेदारासोबत केली नाही.

१०. शासकीय कामात निष्काळजीपणा करणे.

११. अनाधिकृत गैरहजर राहणे.”

4. Shri B.C. Hange was appointed as an Enquiry Officer. The Enquiry Officer came to the conclusion and his conclusions are as under: -

“-: निष्कर्ष :-

प्रकरणात सादर करण्यात आलेले अभिलेखे / दस्तऐवज, सरकारी साक्षीदार क्रमांक १ व २ यांनी नोंदविलेल्या साक्षी, अपचारी कर्मचारी श्री. अनिल लक्ष्मणराव कुलकर्णी, निलंबित तलाठी यांनी त्यांच्या प्राथमिक निवेदनाद्वारे व प्राथमिक जबाबाद्वारे १ ते ११ दोषारोप मान्य असल्याची दिलेली स्पष्ट कबुली तसेच सादरकर्ता अधिकारी तथा नायब तहसिलदार, तहसिल कार्यालय, केज यांचे अंतिम अभिकथन (टाचण) विचारात घेता, अपचारी कर्मचारी श्री. अनिल लक्ष्मणराव कुलकर्णी, निलंबित तलाठी सज्जा बोरगांव सद्यस तलाठी सज्जा माळेगांव यांचेवर परिशिष्ट - I मध्ये ठेवण्यात आलेले दोषारोप खालील प्रमाणे सिद्ध होत आहेत.

- १) दोषारोप क्रमांक १ : पुर्णतः सिद्ध होत आहे.
- २) दोषारोप क्रमांक २ : पुर्णतः सिद्ध होत आहे.
- ३) दोषारोप क्रमांक ३ : पुर्णतः सिद्ध होत आहे.
- ४) दोषारोप क्रमांक ४ : पुर्णतः सिद्ध होत आहे.
- ५) दोषारोप क्रमांक ५ : पुर्णतः सिद्ध होत आहे.
- ६) दोषारोप क्रमांक ६ : पुर्णतः सिद्ध होत आहे.
- ७) दोषारोप क्रमांक ७ : पुर्णतः सिद्ध होत आहे.
- ८) दोषारोप क्रमांक ८ : पुर्णतः सिद्ध होत आहे.
- ९) दोषारोप क्रमांक ९ : पुर्णतः सिद्ध होत आहे.
- १०) दोषारोप क्रमांक १० : अंशतः सिद्ध होत आहे.
- ११) दोषारोप क्रमांक ११ : अंशतः सिद्ध होत आहे.

सही/-

(बी.सी.हंगे)
चौकशी अधिकारी, बीड”

5. On the said enquiry report the Collector, Beed, issued so-called show cause notice on 29.6.2015, which is at page-50 of the paper book (Annexure 'A-5'). The Collector accepted the report and has stated in the said show cause notice as under: -

“चौकशी अधिकारी यांनी त्यांचे चौकशी अहवालात उक्त नमुद सर्व दोषारोप पुर्णतः सिद्ध होत असलेबाबतचा निष्कर्ष नोंदविलेला आहे. सदर चौकशीअहवालाचे अनुषंगाने मी जिल्हाधिकारी बीड आपणाला महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ५ (१) (सहा) नुसार खालच्या वेतनश्रेणीवर आणण्याची शिक्षा ठोठावण्याच्या निर्णयाप्रत आलेलो आहे.

प्रकरणी चौकशी अधिकारी यांचे चौकशी अहवालाची प्रत यासोबत देण्यात येत आहे. तरी प्रकरणी चौकशी अहवाल व उक्त नमुद शिक्षेच्या अनुषंगाने आपणाला काही लेखी अभिवेदन/ निवेदन सादर करायचे असेल तर ते ही नोटीस मिळाल्यापासून १५ दिवसांचे आत मज समक्ष सादर करावे. अन्यथा प्रकरणी आपले काहीही म्हणणे नाही असे गृहीत प्रकरणी पुढील कार्यवाही अनुसरण्यात येईल.”

6. According to the applicant, the impugned order dated 29.6.2015 issued by respondent No. 2 is prima facie unjust, improper and contrary to Rules prescribed under the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, and, therefore, it is not legally sustainable. It is further stated that thought it was stated that the enquiry was being conducted against the applicant and Shri A.L. Kulkarni, no enquiry was conducted against the applicant, total enquiry was against Shri A.L. Kulkarni only. It is further stated that the enquiry officer did not record any finding on the charges framed against the applicant and all the charges were held to be proved against Shri A.L. Kulkarni, Talathi only. The Collector did not apply his mind before issuing the impugned notice. It is further stated that even though the applicant was kept under suspension from 18.4.2013, no subsistence allowance was even paid to the applicant. His

request for revocation of the suspension and payment of subsistence allowance was not considered. The entire proceedings and the alleged departmental enquiry are contrary to the principles of natural justice and the applicant was not given opportunity to defend himself.

7. The respondent No. 2 tried to justify the order by filing affidavit in reply.

8. The applicant has filed rejoinder affidavit reiterating the fact that the enquiry was never conducted against him and he was not given any opportunity. It is further alleged that his representation for revocation of suspension was not considered. Another rejoinder affidavit dated 25th October, 2016 has been filed by the applicant. In this rejoinder the applicant has stated that on 13.10.2016 the Deputy Collector (Land Acquisition), Beed has issued No Dues Certificate stating that the applicant has not been given any salary and subsistence allowance during the period from 18.4.2013 to 13.10.2016. It is specifically mentioned in the said No Dues Certificate dated 13.10.2016 (Annexure 'S', page-115) that enquiry against

the applicant is still pending and, therefore, contradictory stand has been taken by the respondents.

9. I have perused the order dated 13.10.2016 passed by the Collector, Beed. From the said order it seems that the applicant has been reinstated in service subject to the decision of the proposed enquiry against him. However, in the very first paragraph of the letter, it has been mentioned that enquiry is pending against the applicant under Rules of 1979. If so is the fact that the enquiry is pending against the applicant then it is really surprising as to how the applicant was served with a notice dated 29.6.2015, wherein it was stated that the Collector, Beed, has come to the conclusion that the applicant has breached the Rule 5 (1) (6) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and, therefore, he had come to the conclusion that the applicant be kept on lower pay scale.

10. I have also perused the enquiry report on the basis of which the impugned punishment / show cause notice has been issued by the Collector, Beed. It is material to note

that even though it is stated that the enquiry was held against the applicant, as well as, Talathi Shri A.L. Kulkarni, there is no document on record to show that the applicant ever accepted his guilt. There is nothing on record to show that the applicant was ever granted opportunity to cross-examine the witnesses or to file his written statement. The most material part of the enquiry report is the conclusions drawn by the enquiry officer. The said conclusions are on page No. 49, which are already reproduced earlier and from the said conclusions, it is clear that all the charges were held to be proved against Talathi Shri A.L. Kulkarni. From the entire report, it cannot be said that the enquiry officer came to the conclusion that the charges were proved against both the delinquents i.e. Talathi Shri A.L. Kulkarni and the present applicant. In fact, from the entire enquiry report, it is clear that nothing has been proved against the present applicant. In such circumstances, the applicant's statement that no enquiry was held against him and no opportunity was given to him seems to be true. This is further corroborated from the fact that the respondent No.

2 issued the letter dated 13.6.2016, whereby suspension of the applicant is revoked and in the said letter it is mentioned that the enquiry was pending/contemplated. Had it been a fact that the enquiry was concluded, there was no reason to mention that the same is pending/contemplated.

11. On the discussion in foregoing paragraphs, it will be thus, crystal clear that no proper enquiry as contemplated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was conducted against the applicant and the enquiry officer did not find any incriminating evidence against the applicant. In fact, no incriminating findings have been recorded against the present applicant and, therefore, the impugned letter; whereby the applicant has been called upon to explain, seems to be without application of mind. It is very sad to mention that the then Collector, Beed, seems to have not applied mind and it seems that he might not have even read the enquiry report on the basis of which the impugned letter dated 29.5.2016 has been issued. It is

also material to note that in the enquiry against Shri A.L. Kulkarni, Talathi, Presenting Officer himself was witness. The impugned letter is, therefore, illegal and is required to be quashed. I am satisfied that no enquiry was initiated against the applicant and I am also satisfied that proper opportunity has not been given to the applicant and no principles of natural justice have been followed. Hence, I pass the following order: -

ORDER

- (i) The impugned order dated 29.6.2015 passed by the Collector, Beed, is quashed and set aside.
- (ii) The respondent No. 2 is directed to pay full salary to the applicant from the date of his suspension till his revocation of the suspension.
- (iii) The respondent No. 2 shall also pay all the consequential financial benefits to the applicant as that may be admissible, including subsistence allowance from 18.4.2013.
- (iv) Accordingly, the present Original Application stands disposed of with no order as to costs.

MEMBER (J)