

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 579/2017(D.B.)

Shri Premlal Dodkuji Tembhurkar,
Occ. Retired aged about 61 years,
r/o, Nashiknagar, Bhandara,
District Bhandara.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary,
Department of Revenue having its office at
Mantralaya, Mumbai- 400 032.
2. Commissioner Nagpur Division,
Nagpur.
3. Collector Bhandara,
Having its Office at Bhandara.

Respondents

Shri S.P.Palshikar, Ld. counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 30th August, 2023.

JUDGMENT

Judgment is reserved on 09th August, 2023.

Judgment is pronounced on 30th August, 2023.

The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

2. Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the Respondents. The learned counsel for both the parties have consented for final disposal and argued the matter finally.

3. The applicant has challenged the order passed by respondent nos.1 and 2 with following prayer.

i. Quash and set aside initial Order dated 27-01-2017 passed by Respondent no. 3 Collector Bhandara.

ii. Quash and set aside order dated 16-06-2017 which was received by Applicant on 17-07-2017, passed by Respondent no. 2 Commissioner, Nagpur Division, Nagpur as illegal bad in law.

4. Case of the applicant in short is as under.

The applicant was appointed as a Talathi on 01.02.1993. He was thereafter promoted as Mandal Adhikari. In the year 2011-12 Talathi Shri Pawan Arvind Tambat was entrusted work of maintaining records of 7/12 extract, Gav Namuna etc.

5. Shri Tambat has committed some irregularities, but the charge sheet was issued against the applicant and departmental enquiry was started by the respondents. One Shri V.W.Malame retired Tahsildar was appointed as Enquiry Officer. Thereafter, on 09.04.2013 the applicant was put under suspension. On 19.05.2014, Enquiry Officer has submitted its report with conclusion that the charges levelled against the applicant are proved. On 28.08.2014, the applicant has submitted his final statement in the enquiry. On 27.02.2015, respondent no.3 passed order confirming the conclusion of Enquiry Officer and punishment order was issued. The said order was challenged by the applicant before this Tribunal in O.A.No.352/2015, this Tribunal has allowed the said O.A. and directed the respondent no.3 to hear the applicant and pass the appropriate order.

6. After the direction of this Tribunal, the respondent no.3 heard the applicant, but without applying its mind wrongly issued the order dated 27.01.2017. The applicant has filed the appeal against the said order. The said appeal was dismissed without

applying mind, as per order dated 17.06.2017. Hence, the applicant approached to this Tribunal to quash and set aside punishment order passed by the respondent no.3 and confirmed by respondent no.2.

7. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was working as Mandal Adhikari. He has committed misconduct. One Mr.Ajay S/o Ramesh Bhagwat, R/o Bhandara made complaint against the applicant in respect of mutation entries and other serious allegations. The Sub-Divisional Officer (SDO), Bhandara submitted his detailed enquiry report. As per the report, the complainant purchased the land gat no.392, area 0.32 H.R. of Mouza Shahapur from Shri Lalit S/o Nandilal Bais as per the sale deed no.2807 dated 16.06.2012. The complainant applied to Talathi, Shahapur for mutation. Talathi took the mutation of the same, but the present applicant did not approve the same on the ground that the said land was reserved for rehabilitation of affected village Salebardi. Secondly, the non-agricultural land gat no.66 & 67 of Mouza Thana having 4280.67 Sq. meters including open space & road as per sanctioned by the Competent Authority. But, on the spot, there is only 3592.12 Sq. meters land means 688.55 Sq. meters., is less than sanctioned area. Thus, there are irregularities in the open space and road area. Thirdly, one Shri Ravikant S/o

Kashinath Dahiwale purchased one plot no.23are 155 Sq. meters from non-agricultural land gat no.61 of Mouza Thana. As per sale deed, Talathi took mutation no.2797, dated 08/11/2007, but the same has not been approved by then Mandal Adhikari (applicant) on ground that there is no remaining land on the spot as per sanctioned layout and rejected the mutation entry. Against the said order, Shri Dahiwale had filed appeal before Sub-Divisional Officer, Bhandara and Additional Collector Bhandara, both the appeals were dismissed. Even then, Talathi took mutation entry no.3707 on 5/10/2012 and the same has been approved by the applicant himself. Thus, it was found that there was substance in the complaint and therefore the applicant was liable for punishment, as per law.

8. The charge sheet was issued and departmental enquiry was started against the applicant. In the enquiry, the charges levelled against the applicant were proved.

9. After the decision by this Tribunal in O.A.No.352/2015, again the applicant was heard and final order was passed by the respondent no.3. The said punishment order was challenged before respondent no.2. Both the respondents have rightly decided contention of the applicant and the appeal was rightly decided by respondent no.2. Hence, the O.A. is liable to be dismissed.

10. During the course of submission learned counsel for the applicant has submitted that the respondents 2 and 3 have not applied their mind and wrongly passed the impugned order by which 1/3 pension for three years was directed to be deducted and suspension period treated as suspension period for all purposes. In support of his submission, he has pointed out the decision in the case of ***D.V. Kapoor Vs. Union of India & Ors., AIR, 1990 SC, 1923.*** He has also pointed out the Judgment of Hon'ble Bombay High Court in the case of ***Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur and another VS. Bhujgonda B.Patil, 2003(3) Mh.L.J., page 602.***

11. The learned counsel for the applicant has submitted that the respondent has wrongly passed the order and treated the suspension as such for all purposes.

12. The learned P.O. Shri S.A.Sainis has pointed out the decision of the Hon'ble Supreme Court in the case of ***the State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another,*** decided on 11.03.1996.

13. There is no dispute that the applicant was charge sheeted for committing misconduct. The Enquiry Officer has given full opportunity to the applicant and submitted his report that charges

levelled against the applicant are proved. The respondent no.2 passed the punishment order. The said order was challenged before this Tribunal in O.A.No.352/2015. This Tribunal has quashed and set aside the order dated 27.02.2015 and passed the following order.

- (i) The O.A. is allowed.*
- (ii) The impugned order dated 27.2.2015 (Annexure A-1, P.16) is quashed.*
- (iii) The respondents are at liberty to proceed with the matter from the stage of receipt of Enquiry Report and pass the order, giving opportunity to the applicant, according to law.*
- (iv) Since the matter is pending since long and enquiry is also completed, the order should be passed, in the light of the above observations within four months from the date of receipt of this order.*
- (v) There shall be no order as to costs.*

14. While allowing the said O.A., it was observed by this Tribunal that the respondent no.2 has wrongly passed impugned order under Rule 5 of the Maharashtra Civil Services (Disciplinary Appeal) Rules,1979, therefore, it is quashed and set aside the order.

15. There is no dispute about the right of employee to get pension. The pointed decision of Hon'ble Supreme Court in the case of ***D.V.Kapoor, Vs. Union of India and others, AIR 1990 SC,1923***, shows that it is right of employee to get pension. Statutory right of employee withholding of pension is against the Rule of 6. Pension cannot be withhold under rule 6.

16. The learned counsel for the applicant has relied on the decision of the Hon'ble Bombay High Court in the case of ***Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur and another VS. Bhujgonda B.Patil, (cited supra)***. The Hon'ble Bombay High Court has held that "reduction or withdrawal of pension-- Opportunity of hearing must be offered to the employee before the order under Rule 27(1) is made." The learned counsel for the applicant has pointed out the decision of Hon'ble Supreme Court in the case of ***Pandit D. Aher Vs. State of Maharashtra, 2007 (2) ALL MR,924***. The Hon'ble Supreme Court has observed as under-

14. It is now well-settled that what was necessary for imposition of punishment was to arrive at a finding of misconduct which is of grave nature or misconduct involving negligence on the part of delinquent officer. The

charge-sheet issued against the appellant fulfills the aforementioned conditions. He was found guilty of commission of alleged acts of misconduct. Thus, on the basis of the findings arrived at in the departmental inquiry that he was guilty of such misconduct, in our opinion, it was not required to specifically mention therein that the delinquent was guilty of grave misconduct or negligence.

17. After the Judgment of this Tribunal in O.A.No.352/2015, the respondent no.2 issued notice to the applicant against the enquiry and the documents were provided to the applicant. After hearing the applicant, the respondent no.3, i.e., Collector, Bhandara passed order dated 27.01.2017. Detailed order is passed by respondent no.2 by which the respondent no.2 come to the conclusion that applicant has committed grave misconduct. The applicant earlier has not confirmed the mutation entry. This order was challenged upto the Additional Collector. Appeal was dismissed. After the dismissal of appeal, the same mutation entry was confirmed by the applicant. It is against the orders of the Sub-Divisional Officer and the Additional Collector. There are many complaints against the applicant. The misconduct in the departmental enquiry is proved and therefore after the hearing the applicant, the order dated 27.01.2017 was passed by the

respondent no.3. The said order was challenged before the Divisional Commissioner, i.e., respondent no.2. Respondent no.2 Divisional Commissioner, Nagpur after hearing the applicant dismissed the appeal. It cannot be said that the respondents 2 and 3 without applying their mind passed the impugned order. The cited decisions are not applicable in the present case. The respondents have passed the order in view of the misconduct committed by the applicant.

18. The Hon'ble Supreme Court in the case of ***Pandit D. Aher Vs. State of Maharashtra (cited supra)*** has observed in para 14 that "imposition of punishment was to arrive at a finding of misconduct which is of grave nature or misconduct involving negligence on the part of delinquent officer. The charge-sheet issued against the appellant fulfills the aforementioned conditions. He was found guilty of commission of alleged acts of misconduct. Thus, on the basis of the findings arrived at in the departmental inquiry that he was guilty of such misconduct, in our opinion, it was not required to specifically mention therein that the delinquent was guilty of grave misconduct or negligence." On the basis of findings of the Enquiry Officer, the respondent no.3 has passed the right order. The said order was confirmed by respondent no.2. It cannot be said that respondents 2 and 3 have

not applied their mind. The Hon'ble Supreme Court in the case of **the State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another** has held as under-

"It is settled law that the court is not a court of appeal to go into the question of imposition of the punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is: whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order."

19. In view of the Judgment of the Hon'ble Supreme Court in the case of **the State of Uttar Pradesh and others Vs. Nand Kishore Shukla and Another**, this Tribunal is not Court of appeal to go into the question of imposition of punishment. It is for the Disciplinary Authority to consider what is the necessary punishment to be imposed. The respondent no.3 has passed the

order as per the provisions of Rules 5 and 6 of the Maharashtra Civil Services (Discipline and Appeal) Rules,1979 and as per the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules 1982. Hence, there is no merit in the O.A. Therefore, following order is passed.

ORDER

The O.A. is dismissed with no order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 30/08/2023

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman .
Judgment signed on : 30/08/2023.
Uploaded on : 31/08/2023.