

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.82/2015

DISTRICT – LATUR/BEED

Sheetal Prakash Sonawane,
Age : years, Occ : Service,
R/o. Adarsh Nagar,
Shinde's Building, Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through: Secretary,
Revenue Department,
Mantralaya, Mumbai-32.
2. The Superintendent of Land Records,
Latur.
3. The Deputy Director of Land Records,
Aurangabad Region,
Aurangabad.
4. The Settlement Commissioner & Director,
Land Record, Central Building,
Pune.

...RESPONDENTS

APPEARANCE :Shri S.D.Dhongde learned Advocate for
the applicant.

Smt. Sanjivani Ghate, learned Presenting
Officer for the respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
A N D
Hon'ble Shri B. P. Patil, Member (J)

DATE: 18th August, 2017.

ORDER**[PER: MEMBER (J)]**

The applicant has challenged order dated 21-03-2014 passed by the respondent no.4 rejecting the appeal challenging the order dated 31-12-2011 passed in the departmental enquiry no.86/2011 and 98/2011 and order dated 31-12-2011 passed by disciplinary authority thereby reverting him from the post of Clerk to the post of Peon as a punishment and prayed to quash and set aside the said orders.

2. The applicant belongs to Scheduled Caste (SC) category. He was appointed as Peon on compassionate ground as his father was working with the respondents who died due to cancer. His grandfather had also served with the respondent department. Considering his better service record, he was promoted as Junior Clerk. He was working as Scrutiny Clerk in the office of Deputy Director of Land Records, Osmanabad. It was alleged that during his tenure as Scrutiny Clerk, Osmanabad, an inspection squad visited the office during the period from 11-10-2010 to 13-10-2010. Intimation was given to him about the

inspection schedule vide memos dated 01-10-2010 and 08-10-2010. It is alleged that he reported for duty on 11-10-2010 at 4.00 pm. On enquiry made by the inspection squad, he replied in most irresponsible manner to the members of the inspection squad. He had not supplied information in the prescribed format. On 12-10-2010, he left the office at 11.00 a.m. and came back at 4.00 p.m. After waiting for some time, he again left the office and reported on 13-10-2010 at 11.00 a.m. in drunken condition. It is further allegation against the applicant that he kept 47 matters in respect of measurement pending and did not submit report to the inspection squad. He did not maintain the measurement register up to date for the period from June, 2005 to June, 2009. He did not maintain proper record in respect of 47 matters and tried to destroy the record.

3. It is contention of the applicant that memo had been issued to him in respect of abovesaid allegations. He submitted his reply on 30-12-2010 and explained the true facts. On 01-02-2011, one Shri Tike made telephonic call to him and demanded bribe for revocation of suspension

order but he denied to pay the bribe. Therefore, Shri Tike managed to file false case against him by his application dated 07-05-2011.

4. It is contention of the applicant that the enquiry was conducted against him for the abovesaid charges by the Deputy Superintendent of Land Records, Phulambri. The Enquiry Officer held that the charges levelled against him were partly proved but copy of the enquiry report was not given to him. No opportunity of hearing was given to him. He was not allowed to examine any witness. The Enquiry Officer conducted the enquiry in violation of the principles of natural justice. The findings recorded by the Enquiry Officer were not proper and on the basis of facts. It is his contention that Deputy Superintendent of Land Records, Osmanabad was appointed as Enquiry Officer by order dated 06-04-2011 to enquire into other charges. He conducted enquiry in contravention of the principles of natural justice and submitted report on 29-08-2011 holding that charges were proved against the applicant. It is the contention of the applicant that in the absence of medical evidence, it was not proper to hold that he had

consumed liquor at the time of office inspection. He has further submitted that the Enquiry Officer had not supplied copy of the report to him. No show cause notice was issued to him before imposing punishment of reversion on 31-12-2011. But respondents issued order of his reversion from the post of Clerk to the post of Peon. It is his contention that the enquiry conducted was not in pursuance of the principles of natural justice. He was not given opportunity to lead his evidence. He was not given opportunity to defend the charges levelled against him. The charges were not proved but the Enquiry Officer had wrongly held that charges were proved against him. It is his contention that punishment imposed against him is highly disproportionate, and therefore, he approached this Tribunal by filing O.A.No.951/2012 but the O.A. came to be disposed of on 08-01-2013 with direction to the applicant to file departmental appeal before appellate authority with liberty to file a fresh O.A., if decision goes against him. Accordingly, he filed departmental appeal before the Settlement Commissioner and Director of Land Records Pune on 20-08-2013 but the said appeal came to be rejected mechanically on 21-03-2014. Being aggrieved by

the said order, he challenged the impugned orders dated 21-03-2014 and 31-12-2011 passed by the respondent no.4 and respondent no.3, respectively, by filing the O.A.

5. Respondent nos.1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have admitted the fact that the applicant was initially appointed as Peon on compassionate ground by respondent no.2. The applicant was promoted in Group "C" cadre as per his seniority on fulfilling requisite qualification. It is their contention that when the applicant was serving as Scrutiny Clerk in the office of Deputy Superintendent of Land Records, Osmanabad, an inspection squad was deputed for conducting inspection by the office of respondent no.2 during the period from 11-10-2010 to 13-10-2010. Said fact was informed to the concerned vide office letters dated 01-10-2010 and 08-10-2010. During the course of inspection, applicant had failed to supply requisite information asked by the inspection team. Instead of making such information available, he had replied in most irresponsible manner. In spite of knowledge of the inspection programme, the applicant came to office at

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4.00 p.m. on 11-10-2010. On 12-10-2010 inspection squad asked information for inspection in prescribed format but the applicant left the office on 11.00 a.m. and visited back at 4.00 p.m. and after few minutes he went away. On 13-10-2010 at 11 a.m. the applicant visited the office. The applicant was found in drunken condition while office hours during the period from 11-10-2010 to 13-10-2010. He gave replies in most irresponsible manner when the inspection team asked him about the measurement register and informed that he had not prepared monthly statement and the remaining items and they were not available. He had not maintained various registers up to date. He failed to maintain official record, which amounts to misconduct in view of the provisions of Maharashtra Civil Services (Conduct) Rules, 1979.

6. It is contention of the respondents that before joining office of Deputy Superintendent of Land Records, Osmanabad, the applicant was working as Scrutiny Clerk in the office of Deputy Superintendent of Land Records, Beed. He kept 47 measurement cases pending during the period June, 2005 to June 2009 and had not submitted the

report in those matters and had also not maintained up-to-date measurement register and other registers. Memo dated 18-02-2011 was issued under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 by the respondent no.2 to the applicant for his misconduct. The Deputy Superintendent of Land Records, Beed directed him to produce the measurement cases but the applicant kept the measurement cases pending deliberately. Due to misconduct of the applicant, administration as well as the public had suffered loss. He violated duties of the government servant intentionally which amounts to misconduct as per the rules.

7. It is their contention that on conducting enquiry, charges had been framed against the applicant who was then Scrutiny Clerk in the office of Deputy Director of Land Records, Osmanabad. Deputy Superintendent of Land Records, Phulambri was appointed as Enquiry Officer. The Enquiry Officer conducted enquiry and submitted his report on 11-07-2011 and held that the charges levelled against the applicant were partly proved. Proper opportunity was given to the applicant to defend himself

but he remained absent on several dates of hearing. Respondents have denied that copy of the report was not supplied to the applicant. It is their contention that the Enquiry Officer had recorded findings on considering the evidence adduced by the parties. On receiving report of the Enquiry Officer, respondent no.2 issued memo dated 12-07-2011 and called upon him to submit his reply to the report of the Enquiry Officer. As applicant had not submitted his report in stipulated time, pre-punishment memo dated 31-10-2011 was issued to the applicant on 22-11-2011 by the respondent no.2. The applicant had sent his reply by fax on 24-11-2011.

8. As regards above charges, the Deputy Director of Land Records Osmanabad was appointed as an Enquiry Officer. He conducted enquiry and held that the charges were proved against the applicant. Therefore, he submitted enquiry report on 03-09-2011. The report was supplied to the applicant. His written statement was called for. On receiving the written statement, respondent no.2 passed the impugned order of reversion of the applicant accepting the

report of the Enquiry Officer. They have denied that proper opportunity of defending the applicant in the enquiry was not given to him.

9. It is their contention that the applicant challenged the punishment by filing appeal dated 20-08-2013 before the Settlement Commissioner and Director of Land Records, M.S., Pune. Settlement Commissioner, after verifying the record and after hearing the applicant rejected the appeal by order dated 21-03-2014. It is their contention that the impugned orders are legal and proper. Therefore, they prayed to reject the O.A.

10. Heard Shri S.D.Dhongde learned Advocate for the applicant and Smt. Sanjivani Ghate, learned Presenting Officer for the respondents and perused documents produced on record by the parties.

11. Admittedly, the applicant was serving as Scrutiny Clerk in the office of Deputy Superintendent of Land Records, Osmanabad in the year 2010. Inspection team of Deputy Director of Land Records, Aurangabad visited office of Deputy Superintendent Land Records, Osmanabad for

inspection purposes during the period 11-10-2013 to 13-10-2013. Intimation regarding their visit had been given to the applicant vide memos dated 01-10-2010 and 08-10-2010. At that time, the applicant was working as Scrutiny Clerk in the office of Deputy Superintendent of Land Records, Osmanabad. As he had not supplied necessary information, registers and documents to the members of the inspection team for verification, work of the inspection team was hampered. Not only this, but it is alleged that he had not attended the office regularly during that period and he visited the office on 11-10-2010 at 4.00 p.m. On 12-10-2010, he left the office at 11.00 a.m. and came back at 4.00 p.m. and after waiting for short period, he again left the office and did not turn back. On 13-10-2010 he visited office at 11.00 a.m. On all those dates, applicant attended office by consuming liquor. Therefore, departmental enquiry bearing Enquiry No.86/2011 has been initiated against him.

12. It is not much disputed that another enquiry bearing no.98/2011 had been initiated against the applicant wherein it is alleged that he kept 47 measurement matters

with him when he was serving as Scrutiny Clerk during the period of June, 2005 to 10-06-2009 in the office of Deputy Superintendent of Land Records, Beed. It was also one of the charges against the applicant that during that period he had not maintained registers up to date, and therefore, his conduct amounts misconduct in view of the provisions of Maharashtra Civil Services (Conduct) Rules.

13. Admittedly, both the enquiries have been conducted by Enquiry Officers independently. Enquiry Officers conducted enquiries and submitted their reports holding the applicant guilty of the charges levelled against him and submitted their reports to the Deputy Director of Land Records, Aurangabad. It is not much disputed that Deputy Director of Land Records, Aurangabad after giving opportunity to the applicant passed the impugned order dated 31-12-2011 and reverted the applicant from the post of Clerk to the post of Peon. It is not much disputed that the applicant had preferred appeal challenging the impugned order passed by the Deputy Director of Land Records, Aurangabad before the Settlement Commission and Director of Land Records, Pune. His appeal came to be

dismissed on 21-03-2014.

14. Learned Advocate of the applicant has submitted that the Enquiry Officers have not conducted enquiries by following principles of natural justice. He has argued that the evidence on record shows that no charges were proved against the applicant but the disciplinary authority as well as the appellate authority has not considered the said aspect. He has submitted that the disciplinary authority has imposed punishment of reversion which is disproportionate to the charges levelled against the applicant which are of minor nature. He has submitted that the record was made available to the inspection squad during the course of inspection and this is evident from the statement of witness whose statement is filed at paper book page 62 to 64. He has submitted that the this fact has been recorded by the Enquiry Officer while recording findings against the charges levelled against the applicant but the disciplinary authority has not considered the said aspect and imposed penalty of reversion which is harsh one. He has submitted that, punishment of reversion of the applicant from the post of Clerk to the post of Peon is

disproportionate and harsh one but the said aspect had not been considered by the appellate authority. He has submitted that considering the past service record of the applicant, disciplinary authority as well as the appellate authority ought to have taken lenient view while imposing punishment. Therefore, he prayed to allow the O.A. and to quash and set aside the punishment imposed against the applicant.

15. Learned P.O. has submitted that two departmental enquiries had been initiated against the applicant. Charges in the departmental enquiry no.86/2011 have been proved except the charge that the applicant attended the office by consuming liquor. He has submitted that the Enquiry Officer has recorded findings after considering the evidence on record. He has argued that in another enquiry bearing departmental enquiry no.98/2011 both the charges have been established, and therefore, on appreciation of evidence of the disciplinary authority, the Enquiry Officer submitted his report on 29-08-2011. He has argued that after receiving the reports, notices were issued to the applicant along with copy of the report on 29-08-2011 by the

disciplinary authority, to which, the applicant has given reply. On considering his replies, Deputy Superintendent of Land Records, Aurangabad Region, Aurangabad passed the impugned order imposing punishment and reverting the applicant from the post of Clerk to the post of Peon. He has submitted that disciplinary authority has recorded reasons as to why he accepted the reports of the Enquiry Officers, and therefore, there is no illegality in the impugned order passed by the Deputy Director of Land Records, Aurangabad Region, Aurangabad.

16. Learned P.O. has further submitted that, the appeal preferred by the applicant challenging order of the disciplinary authority has been heard by the Settlement Commissioner and Director of Land Records, Pune. Opportunity of hearing was given to the applicant. On considering the evidence recorded by the Enquiry Officers, their reports and the order passed by the disciplinary authority, he rejected the appeal and upheld the order of the Deputy Director of Land Records, Aurangabad Region, Aurangabad dated 31-12-2011 by his order dated 21-03-2014. He has argued that the penalty imposed

against the applicant is just and proper on considering the gravity and seriousness of the charges levelled against the applicant. He has submitted that behavior of the applicant was not befitting to the Government servant. He intentionally kept the official record with him. He had not maintained record and registers up to date. Not only this but he had also not furnished necessary information and record to the inspection squad and he behaved in disorderly and in irresponsible manner with them during office hours. He has submitted that all these allegations are proved in the Enquiry. Said behavior of the applicant is not befitting to the Government servant. Therefore, impugned order has been passed by the disciplinary authority, and accordingly, proportionate punishment has been imposed on the applicant. Therefore, he prayed to reject the O.A.

17. We have gone through the reports of the enquiry officer in departmental enquiry no.86/2011. On going through the same, it reveals that the Enquiry Officer has considered the evidence of the witnesses and cross-examination made by the delinquent applicant. Thereafter, he has arrived at a conclusion that the charge no.1 that the

applicant had not furnished the information and record to the inspection team, which visited the office of the Deputy Superintendent of Land Records, Osmanabad during the period of 11-10-2010 to 13-10-2010 is proved. He has further held that the charge no.2 that he visited the office during the inspection period as per his whims and he had not produced register for verification of the inspection team has been partly proved against the delinquent applicant. He has held that charge leveled against the applicant that he attended the office by consuming liquor has not been proved, on the basis of material produced before him. He had submitted his report along with his findings on each of the charges of the disciplinary authority.

18. The Enquiry Officer had also submitted his report in the enquiry in departmental enquiry no.98/2011 on 29-08-2011 and held that the charges levelled against the delinquent that he kept 47 measurement matters pending with him when he was serving as Scrutiny Clerk in the office of Deputy Superintendent of Land Records during the period from June, 2005 to 10-06-2009 and had not maintained record up to date. On considering the evidence

adduced by the disciplinary authority, he has arrived at conclusion that both the charges have been proved against the delinquent-applicant. Accordingly, he submitted his report to the disciplinary authority.

19. On receiving the reports from the enquiry officers, disciplinary authority issued notice to the respondents and after giving an opportunity of being heard, he passed impugned order dated 31-12-2011 imposing penalty of reversion on the applicant. He has recorded reasons while passing the impugned order. The applicant has challenged the said order in appeal before the Settlement Commissioner and Director of Land Records, Pune. He has also given opportunity of hearing to the applicant, and thereafter rejected the appeal and upheld the order passed by the Deputy Director of Land Records, Aurangabad Region Aurangabad dated 31-12-2011.

20. All these facts show that at each and every stage of hearing opportunity of being heard was been given to the applicant. Therefore, it cannot be said that the principles of natural justice had not been followed by the Enquiry Officer as well as the disciplinary authority and appellate

authority. Therefore, we do not find substance in the submissions advanced by the learned Advocate of the applicant in that regard.

21. As regards submissions of learned Advocate of the applicant that punishment imposed on the applicant is disproportionate and harsh, we have gone through the charges levelled against the applicant. On going through the charges levelled against the applicant in both the departmental enquiries, it reveals that behavior of the applicant was not befitting to the Government servant. He was not discharging his duties properly. He had not maintained record up to date. He kept 47 measurement matters with him for long period when he was serving as Scrutiny Clerk in the office of Deputy Superintendent of Land Records, Beed and not maintained the registers and record up-to-date causing inconvenience to office and public at large. Not only this but when he was serving as Scrutiny Clerk at Osmanabad he had not furnished information, necessary registers and documents for inspection and verification to inspection team. Not only this but he has not attended office during the inspection

period and he visited office intermittently and left the office as per his own whims. Said conduct of the applicant is not befitting to the Government servant. Therefore, in our considered view, the sentence of reversion imposed by the disciplinary authority and confirmed by the appellate authority is just, proper and legal.

22. Disciplinary authority imposed punishment of reversion against the applicant in view of the provisions of Rule 5(1)(vi) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 ("MCS (D & A) Rules, 1979" for short), but has not been specified the period of reduction to a post from which the applicant was reduced, with direction as to whether or not he was eligible for promotion on expiry of the said period as provided under Rule 5(1)(vi) of the MCS (D & A) Rules, 1979. Rule 5(1)(vi) of the MCS (D & A) Rules, 1979 is reproduced below:

"5. Penalties.-(l) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties -

(vi) reduction to a lower time-scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post, or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period,-"

23. The disciplinary authority ought to have mentioned whether the reduction of the applicant to lower post was for a specific period while imposing penalty and whether it shall be a bar to promotion of the applicant during such specified period. Therefore, in our view, it is just to modify the order and specify the period in that regard. Considering the length of the service rendered by the applicant, in our view, it is just to reduce him to a lower post for a period of 5 years from the date of punishment and it shall be bar to his promotion during that period. Therefore, in our view, it is just to allow the O.A. partly, by modifying the order of reversion to that extent.

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24. Therefore, we proceed to pass following order which will serve the ends of justice.

ORDER

- (i) O.A. is partly allowed.
- (ii) Order passed by the disciplinary authority is modified as follows:

"The applicant is reverted from the post of Clerk to the post of Peon for a period of 5 years which shall be bar for promotion to the applicant during said period."

- (iii) There shall be no order as to costs.

(B. P. Patil)
Member (J)

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Aurangabad
Date : 18-08-2017.