

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT NAGPUR**

ORIGINAL APPLICATION NO.202/2017

DISTRICT : NAGPUR

Sachin s/o. Sudhakar Shinde,
Age : About 40 years, Occ : Service,
R/o. "Ganadi", Kothi Road, Mahal,
Nagpur.

....Applicant

VERSUS

- 1) The State of Maharashtra
Through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,
Nagpur Division, Nagpur.
- 3) The Collector, Nagpur,
District Nagpur.
- 4) The Residence Deputy Collector,
Nagpur.

...Respondents

CORAM : Hon'ble Shri A.D.Karanjkar, Member (J)

DATE : 30.09.2019.

ORAL ORDER:

Heard Shri M.I.Dhatrak, learned Advocate for the
Applicant and Shri A.M.Khadatkar, learned Presenting Officer
for respondents

2. Point involved in this O.A. is very short. It is grievance of the applicant that for period 01-04-2015 to 30-09-2015 and from 01-10-2015 to 09-02-2016, his ACRs were written by RDC, Nagpur and in the opinion of the RDC, Nagpur, the performance of the applicant was positively good. Therefore, Grade B+ (B Positive) was given to the applicant.

3. The matter was placed before the Collector, Nagpur who was the reviewing authority. The Collector, Nagpur observed that, in past, there was ACB trap against the applicant and during the tenure of the Collector, there were complaints received that in NA Section, brokers were interfering in the financial matters. With these observations, Reviewing Authority, Collector, Nagpur gave gradation as B- (B Negative) i.e. average to the applicant. Being aggrieved by this, the present Original Application is moved.

4. It is contended by the applicant that there was ACB trap against the applicant but the same authority i.e. Collector, Nagpur vide order dated 24-11-2014 refused to accord sanction to prosecute the applicant and observed that false complaint was lodged against the applicant only for taking revenge. The ACB officials approached to the Government for sanction to prosecute the applicant. Accordingly, the matter was again placed before the Collector, Nagpur as directed by the Government for review. The Collector, Nagpur again vide order

dated 09-07-2015, reviewed the earlier order and rejected the permission for prosecution of the applicant. Thus, it is clear that there was no substance in the observations made in the ACRs of the applicant regarding ACB trap.

5. Learned Counsel for the applicant has also invited my attention to Annexure A-12 (paper book page 83), order passed by Special Judge in Special ACB Case No.39/2015 on 31-05-2017. Vide this order, learned Special Judge discharged the applicant from the trial on the ground that the chargesheet was submitted without seeking the sanction of the competent authority.

6. In view of this material, I am compelled to say that there was no reason to observe in the ACR that the applicant was trapped, as a matter of fact the sanction for prosecution was refused by the Collector, Nagpur and there was no reason for writing about trap of ACB in the ACR of the applicant. In this background, it must be mentioned that the said anti corruption trap was led before 01-04-2015. Therefore, there was no reason to use this material for weighing the performance of the applicant from 01-04-2015 till 31-03-2016.

7. Learned P.O. was unable to point out to me whether there was any complaint received against the applicant about corruption while performing duty or regarding his misbehavior

with the public at large while performing the duty during the period from 01-04-2015 to 31-03-2016.

8. So far as the observation made by the Collector, Nagpur while reviewing the ACRs that there was interference of brokers in the NA section is concerned, I would like to point out that there was no allegation against the applicant that he was working in hand with any of the brokers. No doubt, the reviewing authority is empowered to review the ACRs of the Government servants working in his control, but this does not mean that the power is arbitrary. If the reviewing authority has to show disagreement with the view formed by the reporting officer then there must be some cogent material available for such disagreement.

9. In the present, it seems that in the absence of any reasonable or cogent material for disagreement with the observations made by the reporting officer, the impugned remarks are passed by the Collector, Nagpur and thereby the Collector, Nagpur has changed the gradation of the applicant from B Positive to B Negative. I, therefore, accept the submissions of the applicant that this action of the Collector, Nagpur is contrary to the legal norms and it cannot be sustained. I, therefore, pass following order:

ORDER

(A) Original Application is allowed.

- (B) Observations made by the Collector in the ACRs of the applicant for the period from 20-05-2015 to 30-09-2015 and 01-10-2015 to 19-02-2016 are hereby quashed and the remarks made by the reporting officer are confirmed.
- (C) In the circumstances, there shall be no order as to costs.

YUK Sb o.a.202 of 2017 nagpur

MEMBER (J)

I affirm that the contents of the order in PDF format are word to word same as per the original judgment.

Name of Stenographer (H.G.) : Y. U. Kamble

Court Name : Hon'ble Member (J)

Judgment signed and pronounced on : 30-09-2019.

Uploaded on : 01-10-2019.