

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 675 OF 2019

DISTRICT:- JALNA

Eknath Chelaji Sonawane,
Age-51 years, Occu. Circle Officer,
R/o. Balanagar, Pachod Road,
Ambad, Tq. Ambad,
Dist. Jalna.

.. **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**
Through its Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2. The Divisional Commissioner,**
Aurangabad.
- 3. The Collector,**
Jalna, Tq. & Dist. Jalna.
- 4. The Sub-Divisional Officer,**
Ambad, Tq. Ambad,
Dist. Jalna.
- 5. The Tahsildar,**
Tahsil Office, Ambad,
Tq. Ambad, Dist. Jalna.

.. **RESPONDENTS**

APPEARANCE : Shri Swapnil A. Deshmukh, learned
counsel for the applicant.

: Shri V.G. Pingle, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI V.K. JADHAV, MEMBER (J)
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)

DATE : 06.12.2024

O R A L O R D E R

[Per : Justice V.K. Jadhav, Member (J)]

Shri Swapnil A. Deshmukh, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent authorities.

2. The matter is finally heard with consent of both the sides at the admission stage.

3. By this Original Application the applicant is seeking quashing and setting aside the orders dated 29.06.2019 and 26.11.2018 thereby withholding 02 increments of the applicant permanently.

4. Brief facts giving rise to the present Original Application are as follows:-

(i) The applicant is working as a Circle Officer, Dhargar Pimpri, Tq. Ambad, Dist. Jalna since 11.09.2017. The applicant was subjected to the departmental enquiry in the year 2018 in connection with stock of the sand some

250-300 brass kept at Gut nos. 211 of Mauje Gondi, Tq. Ambad, Dist. Jalna and sand approximately 175 to 200 brass kept in Gut no. 209 of Smt. Gangubai Shankar Bairagi. The applicant, who was Circle Officer of that Circle, was directed to keep watch on the said stock of seized sand, which was illegally excavated from the riverbed of river Godavari. The District Mining Officer re-measured the said illegal stock of the sand recovered from the Gut no. 209 and 211 as per Panchanama/statement. However, it was found to be 3579 brass. The applicant being Circle Officer held responsible and accordingly subjected to the departmental enquiry.

(ii) By order dated 26.11.2018 the respondent no. 03, the Collector, Jalna, being the disciplinary authority on the basis of the report submitted by the Enquiry Officer imposed the punishment of stoppage of 02 increments permanently i.e. dated 01.07.2019 and 01.07.2020 respectively. Being aggrieved by the same, the applicant has preferred appeal before the Divisional Commissioner, Aurangabad. The Divisional Commissioner, Aurangabad vide judgment and order dated 29.06.2019 dismissed the said appeal. Hence, this Original Application.

5. The learned counsel for the applicant submits that the applicant has taken all the care to protect the bed of the Godavari river from the illegal excavation of the sand and even filed FIR against the culprits for transportation of the sand illegally from the Godavari riverbed.

6. The learned counsel for the applicant submits that as per the communication dated 20.06.2017 along with Naib Tahsildar, Ambad, the applicant has prepared Panchanama of Gut no. 209 and 211 situated at village Gondi, Tq. Ambad, Dist. Jalna, wherein sand was found to be illegally excavated from Godavari River without paying the royalty. As per the directions from Naib Tahsildar, Ambad the applicant made counter signature on panchanama prepared by the Naib Tahsildar, Ambad and copy of the panchanama dated 20.06.2017 is marked as Annexure A-3 collectively. Even on the same date the Naib Tahsildar, Ambad has filed complaint in connection with the said incident before the Police Station, Gondi and accordingly Crime came to be registered.

7. The learned counsel for the applicant submits that on 26.12.2017 the present applicant subjected to departmental enquiry for not taking steps for effective control of the illegal excavation of the sand from the Godavari River as a Circle

Officer, Gondi. It is also stated that the District Mining Officer again measured the illegal stock at later date and it was found to be 3579 brass as compared to the original stock, which was not exceeding 250-300 brass in total. Learned counsel for the applicant submits that even though the Enquiry Officer has found the applicant guilty for 03 charges leveled against him, however, the factual aspects were not considered by the Enquiry Officer. The District Mining Officer has prepared the Panchanama of the said stock after one month from the date of earlier Panchanama prepared by the Naib Tahsildar and countersigned by the applicant on 20.06.2017. The date of the subsequent Panchanama drawn by the District Mining Officer is of 14.07.2017. Learned counsel submits that the applicant and other officer had no adequate and scientific knowledge about the measurement of the sand. Learned counsel submits that there is no specific role attributed to the applicant in connection with the said departmental enquiry. The impugned order of the authorities appears to have been based on assumption and presumption and more particularly both the authorities failed to appreciate that there is no loss caused to the Government since the said stock of sand was already auctioned by the Government and recovered huge amount. The learned counsel submits that the Original Application deserves to be allowed.

8. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent nos. 02 and 03 submits that at the relevant time the present applicant was deputed in the stable squad (स्थिर पथक) at Mauje Gondi for supervision and control of the illegal excavation of the sand from the bed of Godavari River. On the basis of the panchanama dated 20.06.2017 the Naib Tahsildar, Ambad has filed FIR with Gondi Police Station vide CR No. 209/2017 for the offences punishable U/s 379 of the IPC and sections 3 and 4 of Mines and Mineral Act.

9. Learned Presenting Officer submits that so far as Panchanama drawn on 20.06.2017 in Gut No. 209 and 211 of village Gondi, that sand was again re-measured by the District Mining Officer, Collector Office, Jalna under the direction of the Divisional Commissioner, Aurangabad and drawn the Panchanama of Gut no. 209 and 211 of village Gondi. The said panchanama dated 14.07.2017 of village Gondi is annexed and marked as Exhibit R-1. As per this Panchanama total 3579.34 brass of sand was found stored illegally in Gut no. 209 and 211 respectively.

10. Learned Presenting Officer submits that departmental enquiry of the present applicant was proposed

and carried out under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short 'the Rules of 1979) and after complying the provisions of departmental enquiry and by following due procedure and also observing principles of natural justice the District Collector, Jalna passed the impugned order dated 26.11.2018 under Rule 5 of the said Rules of 1979 by stoppage of 02 increments payable to the applicant i.e. 1st July 2019 and 1st July 2020 respectively.

11. Learned Presenting Officer submits that due to the repeated complaints of illegal excavation and transportation of sand of village Gondi, Tq. Ambad, Dist. Jalna, the applicant was directed to keep 24x7 full time watch over the illegal excavation and illegal transportation of sand by remaining at headquarter only. Despite this the stock was found to be increased in Gut Nos. 209 & 211 respectively. Though Tahsildar, Ambad clearly warned the present applicant and Talathi to keep continuous watch by staying at headquarter only, the applicant has not obeyed the said order in true sense neither submitted any report to the Tahsil, Ambad about illegal excavation of sand. This conduct of the applicant is prima face appears to be utter negligence as well as total dereliction towards the official duty, therefore, District Collector Jalna issued show cause notice

dated 26.7.2017 to the applicant. The applicant has submitted his reply dated 03.08.2017 to the said show cause notice. However, said reply is vague and not specific and, therefore, the applicant was put under suspension vide order dated 28.12.2017 and the charge-sheet was issued to the applicant on 04.01.2018 by following procedure as contemplated under the Rules of 1979. The applicant was served with the charge-sheet on 17.01.2018. Thereafter, by following the principles of natural justice and also procedure as contemplated under the Rules of 1979, the Enquiry Officer conducted the enquiry and submitted its enquiry report on 28.05.2018 to the respondent District Collector, Jalna and 03 charges leveled against the applicant in the departmental proceedings were satisfactorily proved. Annexure R5 is the copy of the enquiry report submitted by the enquiry officer. Thus, the respondent District Collector Jalna by impugned order permanently withhold 02 increments of the applicant by order dated 26.11.2018. The said punishment is proportionate to the charges leveled as well as proved against the applicant. The said order was also confirmed in appeal by the office of Divisional Commissioner, Aurangabad by its order dated 29.06.2019. Learned Presenting Officer submits that there is no substance in the present Original Application and the same is liable to be dismissed.

12. We have carefully gone through the pleadings. Perused the annexures, report of the enquiry officer and the impugned order passed by the respondent District Collector. We are satisfied that the enquiry officer has followed the procedure as contemplated in terms of provisions of Rule 8 of the Rules of 1979. The applicant was given opportunity of being heard. The applicant has also filed his defense statement in the said departmental enquiry.

(a) We do not find any perversity in the finding recorded by the enquiry officer. It is pertinent to know that even though initial Panchnama was drawn by the applicant in connection with the said illegal sand stock kept at Gut Nos. 209 & 211 respectively, it was found to be 250-300 brass and 175-200 brass respectively and despite the direction given to the applicant to keep the watch on the further illegal excavation of the sand from the Godavari river and illegal transportation thereof the said stock was found increased. There is considerable difference which cannot be ignored. The district Mining Officer has re-measured and it was found 3579.34 brass. The applicant has failed to explain the same except with the repeated contention that he is not responsible for the same.

(b) The enquiry officer has recorded his opinion that either in the Panchnama dated 20.06.2017 the said illegal sand stock on the aforesaid Gut Number was deliberately shown less or the second possibility that in

between 20.06.2017 (Panchanama drawn by the applicant) and till 14.07.2017 (Panchanama drawn by the District Mining Officer) more sand was illegally excavated from Godavari river and kept the said sand in the aforesaid land.

(c) It further reflects from the record particularly annexure R-2, which is order dated 20.06.2017 passed by the Tahsildar communicated to the applicant to remain at headquarter 24x7 and keep watch on the illegal excavation and transportation of the sand from the river bed of Godavari.

13. In our considered opinion the increase stock of sand was done with an ulterior motive and expectations that the said stock will not be measured again and thus the excess sand can be conveniently transported without paying royalty. The enquiry officer has rightly come to the conclusion that the applicant is responsible and the charges leveled against him are fully proved. In our opinion respondent District Collector has taken a very lenient view of stoppage of 02 increments only, otherwise the proportionately the applicant should have been punished more severely. Let it be as it is but we do not find any illegality in the order. There is no substance in the Original Application. Hence, the following order: -

ORDER

- (i) The Original Application No. 675/2019 is hereby dismissed.
- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application accordingly disposed of.

MEMBER (A)**MEMBER (J)**

O.A.NO.675-2019(DB)-2024-HDD-Major Punishment