

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 513 OF 2017

DIST.: LATUR

Dinkar s/o Ramrao Bhosrekar,)
 Age: 62 years, Occ.: Pensioner,)
 R/o Shradha Niwas,)
 "Narayan Nagar", AUSA Road,)
 Latur, Dist. Latur.) **.. APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
 Through its Secretary,)
 Planning Department (E.G.S. -2),)
 Mantralaya, Madam Cama Marg,)
 Hutatma Rajguru Chowk,)
 Mumbai 400 032.)
- 2. The Secretary,**)
 Irrigation Department,)
 (Water Resources), Mantralaya,)
 Mumbai 32.)
- 3. The Divisional Commissioner,**)
 Aurangabad Division,)
 Aurangabad.)
- 4. The Collector, Latur.**)
- 5. The Chief Executive Officer,**)
 Zilla Parishad, Latur.) **.. RESPONDENTS**

 APPEARANCE :- Shri A.D. Gadekar, learned counsel for the
 applicant.

: Smt. Deepali S. Deshpande, learned
 Presenting Officer for the respondent
 authorities.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Vice Chariman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **30.01.2025**
PRONOUNCED ON : **28.02.2025**

ORDER

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Shri A.D. Gadekar, learned counsel for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for respondent authorities, are present.

2. By filing this Original Application, the applicant is seeking quashing and setting aside the order dated 01.09.2009 (Exhibit-"F") passed by the respondent no. 03, the Disciplinary Authority, whereby the punishment of recovery of Rs. 9,09,720/- from the applicant and withholding of one annual increment has been imposed on the applicant after conducting the departmental enquiry and also proposing punishment of recovery of 6% amount for one year from the pension of the applicant. The show cause notice dated 09.12.2013 (Exhibit-'I') issued by the respondent no. 01, the appellate authority, thereby dismissing the appeal preferred by the applicant and directing recovery of

amount of Rs. 9,09,720/- at once and to recover remaining amount from the pension of the applicant and the order dated 06.01.2017 (Exhibit-'P') passed by the respondent no. 01 on the appeal preferred by the applicant, thereby issuing same directions as per the show cause notice dated 9.12.2013 and further imposing punishment of recovery of 6% amount from the pension of the applicant for one year.

3. Brief facts giving rise to this Original Application are as under:-

(i) The applicant was in permanent service of Irrigation Department of the State and he was rendering his services on the post of Sub-Divisional Engineer since prior to 1999/2000. During the period from 1999-2000 to 2001-2002 the applicant was in service at Lower Terna Canal Sub-Division No. 05, Nilanga, Dist. Latur and he was subjected to the departmental enquiry initiated against him in respect of the alleged irregularities of the works of Jawahar Wells in Nilanga, Shirur Anantpal, Latur Talukas of District Latur. The applicant was suspended w.e.f. 20.08.2008 by the order dated 01.02.2010.

(ii) The respondent no. 03, the Divisional Commissioner, Aurangabad, who is a disciplinary authority, has appointed the Special Regional Officer, Departmental Enquiries, Aurangabad as a Enquiry Officer to conduct the said departmental enquiry. However, he was overburdened with departmental enquiries in pending 185 cases, the Divisional Commissioner, Aurangabad considering the request of the Special Regional Officer, Aurangabad has appointed one Shri N.R. Sawaleshwar as a Enquiry Officer.

(iii) It is the part of record that on completion of all the formalities like issuing memorandum of charges and calling upon the applicant to submit his explanation in support of his defense etc. and even after offering sufficient opportunity to the Department to prove the charges, the said Enquiry Officer has prepared the enquiry report recording his findings on each of the charges leveled against the applicant. The Enquiry Officer has held that charge nos. 01 to 03 are not proved against the applicant, however, held that charge no. 04 leveled against the applicant is proved and submitted the enquiry report before the disciplinary authority i.e. the respondent no. 03, the Divisional Commissioner, Aurangabad.

(iv) The respondent no. 03 has accordingly issued a notice to the applicant supplying therewith the enquiry report and communicating him that the respondent no. 03 being the disciplinary authority disagreeing with the findings and conclusions of the Enquiry Officer and further directed the applicant to submit his explanation for his defense to the final show-cause notice. The respondent no. 03 by issuing another show-cause notice communicated to the applicant as regards his disagreement with the findings and conclusions of the Enquiry Officer and thereby recording the findings that charge no. 01 is partly proved and held that the applicant is liable for misappropriation of Rs. 1,66,289/- and further held that the charge no. 02 is completely proved, charge no. 03 is partly proved and accordingly fixed the liability to the tune of Rs. 7,09,491/- on the applicant and agreed with the findings of the Enquiry Officer in respect of charge no. 04.

(v) The respondent no. 03, the disciplinary authority, by order dated 01.09.2009 held that the charge nos. 01 and 02 are partly proved against the applicant, charge no. 03 is not proved and charge no. 04 is proved and directed recovery of

Rs. 9,09,720/- from the applicant and further imposed punishment of withholding of one annual increment of the applicant. The said order came to be served on the applicant by letter dated 16.09.2009.

(vi) Being aggrieved by the order passed by the disciplinary authority i.e. respondent no. 03, the Divisional Commissioner, Aurangabad dated 01.09.2009, the applicant has preferred an appeal before the respondent no. 01, the State Government i.e. the appellate authority and by order dated 06.01.2017 the respondent no. 01 has dismissed the said appeal filed by the applicant. Hence, this Original Application.

4. The learned counsel for the applicant submits that, the disciplinary authority, the respondent no. 03, by notice dated 01.04.2009 provided the said enquiry report to the applicant communicating thereby that the disciplinary authority disagreed with the findings and conclusions recorded by the Enquiry Officer and directed further to the applicant to submit his explanation for his defense. The said notice dated 01.04.2009 is marked as Exhibit - 'C'.

5. The respondent no. 03 has also issued another notice of the same date i.e. dated 01.04.2009, thereby supplying his final remarks as regards his disagreement with the findings and conclusions of the Enquiry Officer. The said notice is marked as Exhibit – 'D'. In response to the said notices, the applicant has submitted his detailed reply on 06.04.2009 pointing out thereby as to how the findings and conclusions recorded by the Enquiry Officer in respect of charge nos. 01 to 03 are just and proper and as to how the conclusion of the Enquiry Officer in respect of charge no. 04 is contrary to the record and evidence. The applicant has accordingly requested the respondent no. 03 to exonerate him from all the charges leveled against him.

6. The learned counsel for the applicant submits that without considering the reply given by the applicant to the final show cause notice and without offering adequate opportunity to the applicant to adduce further evidence and cross examine the concerned witnesses, the respondent no. 03 directed recovery of Rs. 9,09,720/- from the applicant and further imposed upon him the punishment of withholding of his one annual increment.

7. The learned counsel for the applicant submits that though the applicant has preferred an appeal in the year 2009

itself i.e. on 09.10.2009 before the respondent no. 01 challenging the order dated 01.09.2009 passed by respondent no. 03, however, till year 2012 no decision has been taken on the said appeal and the applicant was informed that copy of the appeal preferred by him is not available. Therefore, the applicant along with his representation dated 21.11.2012 furnished the copy of the said appeal filed by him on 09.10.2009 to the respondent no. 01. The respondent no. 01 has issued a show cause notice dated 09.12.2013 (Exhibit – 'I') thereby calling upon the applicant to show cause as to why the appeal preferred by the applicant should not be dismissed. Accordingly, the applicant has submitted his detailed reply dated 15.01.2014 to the said show cause notice and requested to exonerate him from all the charges. However, the respondent no. 01 has not taken any decision for a long period. The applicant has time and again submitted representations and thereafter constrained to file the Original Application bearing No. 886/2016 challenging the said order dated 01.09.2009 passed by respondent no. 03 before this Tribunal. The respondent no. 04 has filed affidavit in reply in the said O.A. and informed to the Tribunal that the respondent no. 01 has passed the order dated 06.01.2017 and dismissed the said appeal. The applicant has thus withdrew the said O.A. No.

886/2016 with a liberty to challenge the said order dated 06.01.2017 passed by the respondent no. 01.

8. The learned counsel for the applicant submits that the respondent no. 01 without considering the grounds raised by the applicant in the appeal, without giving an opportunity to the applicant and without recording any valid reasons confirmed the order passed by the disciplinary authority. The learned counsel submits that the disciplinary authority did not consider the reply of the applicant to the final show cause notice in its proper perspective. The respondent no. 03, the disciplinary authority, has not considered the evidence on record. Though the Enquiry Officer held that the charge no. 01 is not proved against the applicant, however, the respondent no. 03, the disciplinary authority, without recording statements of the concerned authorities in respect of issuance of certificates and without offering an opportunity of cross examining them, directly held that the said certificates are bogus and further held that charge no. 01 is proved. The charge nos. 02 and 03 are not proved against the applicant. It was incumbent upon the respondent no. 03 to take consultation of the Commission as per rule 10(e) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, however, no such consultation was obtained. Thus, the

impugned order passed by the respondent no. 03, the disciplinary authority, is not sustainable. The learned counsel submits that this Original Application deserves to be allowed.

9. The learned Presenting Officer on the basis of the affidavit in reply filed by respondent no. 04 submits that as per the findings recorded by the Enquiry Officer, the charge nos. 01 to 03 are not proved. As per charge no. 01 the applicant has distributed the grants amounting to Rs. 3,11,593/- of 17 Jawahar Yojana wells to the beneficiaries with only recorded measurements in the measurement book without any execution of work. Further, in terms of charge no. 02 the applicant has distributed the grants amounting to Rs. 10,89,936/- of new 42 Jawahar diggings wells to the beneficiaries by recording measurements of existing old wells in measurement book without any execution of new work and in terms of charge no. 03 the applicant has followed the same practice for 103 Jawahar diggings wells and distributed the grants amounting to Rs. 11,94,317/- to the beneficiaries by recording excess measurements over the executed work. The Divisional Commissioner, Aurangabad, the disciplinary authority, has not accepted the said findings and held that the applicant is responsible for the loss caused to the Government to the tune of

Rs. 1,66,289/- and Rs. 7,43,431/- in terms of the charge nos. 01 and 02, which are duly proved.

10. The learned Presenting Officer submits that the respondent no. 03, the disciplinary authority, has followed the due procedure and also offered an opportunity to the applicant of being heard disagreeing with the findings recorded by the Enquiry Officer held the applicant guilty and accordingly imposed the punishment. The order passed by the respondent no. 03 being the disciplinary authority stands confirmed by the respondent no. 01, the State, by recording the reasons. There is no substance in this Original Application and it is liable to be dismissed.

11. On careful perusal of the annexures to the Original Application so also annexures to the affidavit in reply filed by the respondents, it appears that, though the Enquiry Officer has submitted the enquiry report and held that charge nos. 01 to 03 are not proved against the applicant and held him guilty against the charge no. 04, the respondent no. 03, the disciplinary authority, by taking action on the enquiry report served a show cause notice to the applicant together with own tentative reasons for disagreement with the findings of the Enquiry Officer. It appears that the disciplinary authority has accordingly recorded

its findings on the charge nos. 01 to 03 on the basis of the evidence adduced during the enquiry and imposed the punishment of recovery of amount from the applicant, who stood retired on 31.08.2013, from his pensionary benefits.

12. In this context, rule 9 of the M.C.S. (Discipline & Appeal) Rules, 1979 is necessary to be reproduced herein below:-

“9. Action on the inquiry report. – (1) *The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 8 of these rules as far as may be.*

[(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiry authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not the said Government servant.

[(2-A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).]

(3) *If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the minor penalties should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 10 of these rules on the basis of the evidence adduced during the inquiry held under rule 8 determine what penalty, if any, should be imposed on the Government servant and make an order imposing such penalty.*

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

4) *If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in [Clauses (vii) to (ix) of sub-rule (1) of Rule 5], should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:*

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.”

13. In terms of rule 9, two options are open to the disciplinary authority. Firstly, in case of any defect in the enquiry

conducted by the Enquiry Officer, the disciplinary authority may remit the case to the Enquiry Officer for further enquiry and report, and the Enquiry Officer shall thereupon proceed to hold the further enquiry according to the provisions of rule 8 of the M.C.S. (Discipline & Appeal) Rules, 1979. Secondly, the disciplinary authority shall forward the copy of the report of the Enquiry Officer with its tentative reasons for disagreement, if any, with the findings of the Enquiry Officer on any article of charges to the Government servant, who shall be required to submit, if so desires, his written representation or submission to the disciplinary authority within 15 days, irrespective of whether the report is favourable or not to the said Government servant. Further in terms of sub-rule (2-A) of rule 9, the disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4).

14. So far as the findings recorded by the disciplinary authority on the article of charges, the disciplinary authority has imposed on the applicant a minor punishment i.e. recovery from the applicant of the pecuniary loss caused to the Government and further withholding of his increment. In terms of the proviso to

sub-rule (3), if it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice. However, it appears that the disciplinary authority has not felt like so to consult the Commission for imposing the punishment on the applicant.

15. We find and record our satisfaction that the respondent no. 3, the Divisional Commissioner, Aurangabad, being the disciplinary authority has correctly followed the provisions of rule 9 of the M.C.S.(Discipline & Appeal) Rules, 1979. We find no substance in the submissions made on behalf of the applicant that without there being any evidence on record, the respondent no. 03, the disciplinary authority, disagreeing with the enquiry report submitted by the Enquiry Officer, recorded the findings to the charge nos. 01 to 03 in affirmative. We also find no substance in the submission of the learned counsel appearing for the applicant that the applicant has not been given an opportunity to further adduce the evidence and cross examine the authorities as the same is contrary to the provisions of rule 9 of the M.C.S. (Discipline & Appeal) Rules, 1979. There is no provision in rule 9 except to consider the representation submitted by the Government servant for recording the findings

by the disciplinary authority in the manner as specified in sub-rule (3) and (4).

16. We have carefully gone through all the annexures including the report submitted by the Enquiry Officer and so also findings recorded by the disciplinary authority. In our considered opinion, the applicant has been rightly held guilty for the illegalities and irregularities in the Jawahar Yojana wells digging scheme. The applicant and some other employees have recorded the measurements of the old wells and shown the same in respect of digging of new wells, when, in fact, new wells were not in existence at all.

17. We have also carefully gone through the order passed by the respondent no. 01, the State, in the appeal dated 06.01.2017. The respondent no. 01 being an appellate authority has recorded the reasons and accordingly confirmed the order passed by the disciplinary authority and dismissed the appeal. We find no substance in this Original Application and the same is liable to be dismissed. Hence, the following order:-

ORDER

- (i) The Original Application No. 513/2017 is hereby dismissed.

- (ii) In the circumstances, there shall be no order as to costs.
- (iii) The Original Application is accordingly disposed of.

MEMBER (A)
Place : Aurangabad
Date : 28.02.2025

VICE CHAIRMAN