

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.420 OF 2021**

**DISTRICT : Sangali  
SUB : Minor Punishment**

Shri Mahadeo Shankar Shinde, Age-67 Years, )  
Retired as Sub Divisional Engineer with last )  
Posting at Lift Irrigation Management at Lift )  
Irrigation Management Division, Pune 37. )  
Residing at- Kaushiki, Plot No.50, Shriram )  
Colony, Datta Nagar, Vishrambag, Sangli. ).....Applicant

**Versus**

State of Maharashtra, through the Principal )  
Secretary, Water Resources Department, having )  
Office at Mantralaya, Mumbai - 400 032. )....Respondent

Shri M. S. Shinde, the Applicant in Person.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 20.03.2025

Pronounced on : 21.03.2025

**JUDGEMENT**

Heard the Applicant in person and Smt. Archana B. K, learned Presenting Officer for the Respondent.

2. Case of the Applicant is as follows. At the relevant time (between 01.09.2004 and 05.08.2008), the Applicant was working as Sub-Divisional Engineer in Takari Main Canal Sub-Division, Islampur, Peth Vasahat under Takari Pump House, Division-1, Islampur, District Sangali. Charges were laid against the Applicant and two others that they were jointly responsible for making excess payment to the Contractor to

the tune of 54.07 lacs. The Applicant was served with a charge sheet dated 15.06.2011. The Regional Departmental Officer, Pune Division, Pune conducted enquiry against the Applicant and two others. In the enquiry proceeding, the Applicant submitted final written statement of defence on 30.07.2012. The Enquiry Officer held charge against the Applicant to be partly proved. Accordingly, he submitted report of enquiry to the Disciplinary Authority i.e. the Respondent. The Respondent then issued a Show Cause Notice dated 06.05.2013 to the Applicant. To the Show Cause Notice he gave a detailed parawise reply. The Respondent issued a notice on 10.03.2016 proposing punishment of recovery of Rs.1,05,754/- from the gratuity of the Applicant, and deduction of 15% amount from monthly pension. To the notice dated 10.03.2016, the Applicant submitted reply dated 21.03.2016. Thereafter, on 01.10.2018 the Respondent proceeded to pass the order imposing punishment which was proposed by notice dated 10.03.2016. Against order dated 01.10.2018 the Applicant preferred appeal before the Hon'ble Governor of Maharashtra on 05.01.2019. The Appeal proceeding was transmitted for hearing to the Hon'ble Minister of State for Housing. The Appellate Authority passed the order on 27.01.2021 whereunder only the recovery of Rs.1,05,754/- was maintained. The Appellate Authority partly set aside the order of Disciplinary Authority to the extent of deduction of 15% amount from monthly pension. Hence, this Original Application impugning order dated 27.01.2021.

3. The charge framed against the Applicant was as follows –

“श्री. महादेव शंकर शिंदे, तत्कालीन उपविभागीय अभियंता, ताकारी प्रवेश मार्ग उपविभाग, इस्लामपूर, पेठवसाहत (सदयःस्थितीत उपविभागीय अभियंता, दक्षता पथक, पुणे परिमंडळ, पाटबंधारे विभाग, पुणे -११ येथे कार्यरत) यांनी निविदा विनिर्दिष्टाप्रमाणे काम नसतांना रु.५१.४३ लक्षचे देयक (अतिप्रदान रक्कम वगळून) अदा केल्यामुळे व त्याचबरोबर रु.२.६४ लक्षचे अतिप्रदान देयक (काम न होता) अदा केल्यामुळे शासनाचे एकूण रु.५४.०७ लक्ष रकमेचे नुकसान झाले आहे. या शासन नुकसानीस श्री.महादेव शंकर शिंदे, उपविभागीय अभियंता हे संयुक्तरित्या जबाबदार आहेत. यामुळे त्यांच्याकडून महाराष्ट्र नागरी सेवा (वर्तपूक) नियम, १९७९ च्या नियम ३ चा भंग झाला आहे.

The Enquiry Officer summed up his report against the Applicant as under :-

“वरिल सर्व ऊहापोहावरून अपचा-याने कि.मी.९१/१३५ बाबतचे ९ वे देयक ठेकेदारास अदा झाल्यानंतर कार्यकाल संपेपर्यंत तीन वर्षांच्या कालावधीत ठेकेदाराकडून पाठपुरावा करून काम पूर्ण करून घेणे, ठेकेदार तसे करीत नसल्यास ह्या बाबी वरिष्ठांच्या निदर्शनास आणणे ही जबाबदारी पार पाडली नसल्याने सदरचा दोषारोप अतिप्रदानाच्या बाबीपुरताच अंशतः संयुक्तरित्या अपचा-याविरुद्ध सिध्द होतो, ह्या निष्कर्षाप्रत मी येत आहे.”

I have already referred to the orders which were then passed by the Disciplinary Authority and the Appellate Authority.

4. Stand of the Respondent is that Rules governing conduct of departmental enquiry as well as principles of natural justice were scrupulously followed. The Applicant also availed remedy of appeal and the Appellate Authority was pleased to modify the order passed by the Disciplinary Authority. Thus, no exception can be taken to sustainability of the impugned order.

5. The Applicant has raised following contentions.

- (1) Initiation of Departmental Enquiry against the Applicant was malafide.
- (2) The Enquiry Officer did not hold the Applicant guilty of grave misconduct yet proceeded to invoke Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and imposed punishment.
- (3) The Enquiry Officer did not consider various defences raised by the Applicant.
- (4) The Respondent imposed punishment by order dated 01.10.2018. At every stage of the enquiry delay was caused. Such delay amounted to denial of reasonable opportunity to the Applicant.
- (5) Though, joint enquiry was initiated against the Applicant & two others, separate chargesheets were issued. Accordingly, enquiries were conducted. Therefore, the Applicant did not know what was stated by the witnesses in the enquiries conducted against the co-delinquents. Because of this, the very purpose of holding joint departmental enquiry was defeated.

(6) The Appellate Authority did not consider numerous grounds of appeal raised by the Applicant and proceeded to pass order which is non-speaking.

(7) Smt. Narkar was examined during the enquiry though she was not cited as one of the witnesses.

(8) The Enquiry Officer held the solitary charge against the Applicant to be partly proved. However, it was not specified in the report of enquiry to what extent the charge was proved and to what extent it was not proved.

(9) One Mr. Kadam was cited as a witness. However, he was not examined during the enquiry.

(10) The Applicant had issued several letters to the concerned Contractor to complete the work assigned to him without loss of time. The Applicant had also written several letters to Higher Authorities brining to their attention status of work from time to time. From these letters, it could be concluded that the applicant was not a silent spectator and he was doing whatever was expected to be done by him.

(11) The Enquiry Officer did not comply with Rule 8(20) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Due to non-compliance of this Rule which, in the facts and circumstances of the case, was to be mandatorily followed, the enquiry proceeding stood vitiated.

(12) As per terms and conditions of the contract with the concerned Contractor the amount of loss said to have been suffered by the Government could have been recovered from him as arrears of land revenue by invoking Clause 20.

6. So far as the last ground mentioned above is concerned, stand of the Respondent is as follows –

“12. With reference to contents of paragraph no. 10 I say and submit that provision under Rule 8(20) of M.C.S(Discipline and Appeal) Rules 1979 is as under:

*“8(20) The inquiring authority may, after the Government servant closes his case and shall, if the Government servant has not*

*examined himself, generally question him on circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him"*

12.1. From perusal of said provision it is seen that the same is applicable in the cases wherein the said Government servant had closed his case despite the fact he has not been examined. Further, in such circumstances, an opportunity is to be offered by the Enquiry Officer to the said Government servant so as to enable him to explain any circumstances appearing in the evidence against him. However, it is not in dispute that the present Applicant has participated in the said Enquiry Proceeding has also get examined himself. As such, principle of natural justice has been duly followed by the Enquiry Officer in the present Disciplinary Proceeding. Hence, adverse contentions of Applicant in this para are denied being devoid of merit.

12.2. With reference to contents of paragraph no. 11 I say that, all the actions have been done according to the rules. If the petitioner wanted to raise any questions under Rule 8(20) of the MCS (Discipline & appeal) Rule 1979, he was expected to make such a demand before the Inquiry Officer and present his views on the same. It does not appear anywhere that the inquiry officer rejected the demand of the petitioner in this regard."

7. Aforequoted stand of the Respondent shows that according to the Respondent, the Applicant himself ought to have applied for recording his statement as contemplated under Rule 8(20) of Rules of 1979 and since no such demand was made by the Applicant, there would be no question of enquiry having been vitiated on account of such non-compliance of Rule.

8. Stand of the Respondent shows that after recording of evidence in the enquiry was over, the Applicant was not generally questioned by the Enquiry Officer on circumstances appearing against him in the evidence for the purpose of enabling him to explain these circumstances. The Respondent does not dispute that during the enquiry the Applicant had not examined himself. In this factual background reliance may be placed on **Vijay Shamrao Bhale V/s Godavari Garments Limited,**

**Aurangabad and another reported in 2011 (2) Mh.L.J.983.** In this ruling, the Hon'ble Bombay High Court has held –

*“On perusal of the said Rule, it is manifest that the said Rule mandates the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence, so that the delinquent may get opportunity to explain any circumstances appearing in the evidence against him. In the present case, the delinquent has not examined himself. If the delinquent has not examined himself, in that case the Inquiry Officer is not left with any discretion but has to question the delinquent about the circumstances appearing against him. The use of the word shall shows that the said provision is imperative and the same is mandatory. In the first part of the said Sub rule the legislature has used the word 'may', but when the delinquent has not examined himself has used the word "shall", which itself clarifies that the word shall has to be considered as mandatory. The use of the word 'may' at one place and 'shall' at another place in the same rule would strengthen the inference that these words have been used in their primary sense, and that 'shall' should be considered as mandatory. The use of the word 'shall' therein as against 'may' shows that the same is mandatory. The use of the word 'shall' with respect to one matter and the used word 'may' with respect to another matter, in the same rule, would lead to the conclusion that the word 'shall' imposes an obligation. Whereas the word 'may' confers a discretionary powers. If, the delinquent has not examined himself, then it is obligatory on the inquiring authority to question the delinquent on the circumstances appearing against him in the evidence for the purposes of enabling him to explain any circumstances appearing in the evidence against him, and if the delinquent has examined himself, then the discretion vests with the Inquiry Officer to question the delinquent or not.*

It was further held –

*“In the present case, it is not disputed that the delinquent has not examined himself, in such circumstances it was mandatory for the Inquiry Officer to question the petitioner regarding the circumstances appearing against him. The said Rule has not been complied, and as such inquiry stands vitiated.”*

It was also held –

*“The Division Bench of this Court in the case of "Masuood Alam Khan-Pathan Vs. State of Maharashtra & others" referred supra has also observed that rule of Audi Alteram Partem is pregnant in the sub-rule(20) of Rule 8, departure therefrom would tantamount to violation of natural justice. On this count itself the inquiry vitiates, there cannot be any doubt that by non observance of the said rule the petitioner could not get the opportunity to explain regarding the circumstances which were prejudicial to him in the evidence.”*

9. In view of factual and legal aspects discussed above, the impugned order dated 27.01.2021 is quashed and set aside. The amount recovered, if any, from the Applicant by way of impugned punishment shall be refunded to him within three months from today failing which the unpaid amount shall carry interest @ 6% per annum from today till payment. No order as to costs.

**Sd/-**  
**( M. A. Lovekar)**  
**Vice-Chairman**

Place: Mumbai  
Date: 21.03.2025  
Dictation taken by: V. S. Mane  
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