

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH AURANGABAD**

ORIGINAL APPLICATION NO. 769 OF 2006

DISTRICT :A'bad

Smt. Shakuntala Gorakhnath Mali,)
Age :- Major, Occu:- House Wife,)
R/o. N-11-E-72/2, Mayur Nagar,)
Hudco, Aurangabad.)...**Applicant**

VERSUS

1. Govt. of Maharashtra in Finance Deptt.)
Mantralaya, Bombay -32.)

2. Sr. Treasury Officer)
Lekhakosh Bavan)
Fazil Pura, A'bad.)

3. Dy. Director of Accounts &)
Treasuries Aurangabad.)
Region Aurangabad.)....**Respondents**

Shri S.D. Dhongde, learned Advocate for the Applicant.

Shri N.U. Yadav, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri J.D. Kulkarni, Member (J)**

DATE : 18.10.2016

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri S.D. Dhongde, learned Advocate for the Applicant and Shri N.U. Yadav, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant (who has since died and his widow has been brought on record as legal heir) challenging order dated 22.7.2004 passed by the Respondent No.2 and order dated 27.6.2006 passed by the Respondent No.3 confirming the order dated 22.7.2004 compulsorily retiring the Applicant from service.

3. Learned Counsel for the Applicant stated that the Applicant was compulsorily retired from service w.e.f. 23.7.2004. The Original Applicant died on 19.11.2010. His prayer for reinstatement in service is, therefore, not pressed and it is prayed that he may be ordered to be paid full salary till the date of his superannuation and paid full pension till the date of his death and the present Applicant be paid family pension as per rules.

4. Learned Counsel for the Applicant argued that a Departmental Enquiry (D.E.) was started against the Applicant (for the sake of convenience, Original Applicant is referred to as the Applicant) on 9.7.2003 by the Respondent No.2 on 14 charges. Learned Counsel for the Applicant

argued that the main charge against the Applicant was that he remained absent unauthorisedly when by order dated 15.7.2002, he was transferred from Aurangabad to Paithan. Learned Counsel for the Applicant stated that the Applicant was working as Senior Clerk, while he was transferred to the post of Junior Clerk. He had filed O.A.No.376 of 2002 before this Tribunal challenging his transfer to Paithan. By order dated 8.10.2002, this Tribunal directed the Respondents to consider his representation to be kept at Aurangabad. However, his representation was not considered. The Applicant could not join at Paithan due to ill health and the charge sheet was issued to him on 2.7.2003. Learned Counsel for the Applicant stated that the Applicant was not informed about completion of D.E. against him, and the copy of enquiry report was not given to him. No show cause notice was issued to him before the order compulsorily retiring him from service was passed. Learned Counsel for the Applicant argued that impugned order is issued in violation of established procedure and the Principles of natural justice and is therefore bad in law.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant had been working in Aurangabad for 10 years and was due for transfer. He was accordingly transferred by order dated 15.7.2002 to Paithan. As the Applicant's conduct at Aurangabad was not in accordance with conduct rules, it was considered not desirable to keep him at Aurangabad. However, the Applicant never joined at Paithan, nor did he apply for leave.

His claim that he was unable to join duties due to medical reasons is incorrect as he submitted certificate from Medical Officer, G.M.C. & H certifying his illness from 1.5.2004 to 31.7.2004, much after D.E. was started against him. The Applicant was transferred as Sr. Clerk and not to the post of Jr. Clerk to Paithan. Learned P.O. stated that the Applicant neither submitted leave application nor any medical certificate regarding his illness except the certificate of illness from 1.5.2004 to 31.7.2004. Several notices were issued to the Applicant calling him to join his post at Paithan. As he was not available to receive the Memorandum of D.E. dated 9.7.2003, it was affixed on his door. Later he received the Memorandum on 28.8.2003, and signed in acknowledgement. Learned P.O. stated that D.E. was conducted by District Enquiry Officer, Aurangabad and he submitted his report on 27.2.2004. The copy of Enquiry Report was given to the Applicant on 20.3.2004 and he submitted his defence statement on 20.5.2004. A show cause notice dated 2.6.2004 was also issued to the Applicant before passing final order in the D.E. Learned P.O. argued that the procedure prescribed in Rules 8 and 13 of the Maharashtra Civil Services (Discipline & Appeal) Rules was followed scrupulously and there was no violation of the Principles of natural justice. Learned P.O. argued that D.E. was conducted during the period from 22.7.2003 to 27.2.2004 and during this period the Applicant was physically and mentally fit. His Medical Certificate dated 17.6.2004 that he was undergoing treatment for head injury was from 18.4.2004 onwards. Learned P.O. argued that the

charges against the Applicant were proved and there is no need for any interference by this Tribunal.

6. We find that the Applicant had claimed that he was transferred to a junior post of Junior Clerk at Paithan. It is true that he was posted to Paithan in place of Shri H.H. Khan, who was working as Jr. Clerk. However, this by itself does not mean that the Applicant was posted to a Junior post. He would have continued to get the salary of a Senior Clerk at Paithan as the transfer order dated 15.7.2002 did not state that he was demoted to the post of Jr. Clerk. This plea was not taken by the Applicant that the O.A.No.376 of 2002, otherwise the order of this Tribunal would have mentioned that fact. The other claim of the Applicant that he met with an accident and therefore could not join at Paithan is also not supported by facts on record. The transfer order was dated 15.7.2002. The D.E. was started on 9.7.2003. The copy of Medical certificate issued by Dr. Milind Dunakhe (Exhibit R-32 A, page 295 of the Paper Book) is dated 17.6.2004, which shows that he was admitted in hospital for brain injury from 18.4.2004 to 22.4.2004. The Applicant has not placed any copy of leave application or medical certificate on record for the period from 15.7.2002 to 9.7.2003. The contention of the Respondents in this regard has to be taken as correct. The Respondents have claimed that the charge-sheet was affixed on the door of residence of the Applicant on 20.8.2003. That report is at page 108 of the Paper Book. On page 109 of the Paper Book, the acknowledgement of the Applicant having received the copy of memorandum of D.E.

dated 9.7.2003 on 28.8.2003 is there. It is seen from the report of Enquiry Officer dated 27.2.2004 that the charges no.1,3,4,6,7,8,10,11,12,13 and 14 were fully proved and charge no.9 was partly proved against the Applicant. A notice dated 20.3.2004 was issued to the Applicant, enclosing a copy of the Enquiry Report. By letter dated 17.5.2004, the Applicant wrote to the Respondent no.2 (Exhibit 'R-25', page 254 of the Paper Book) which reads:-

“ मी पी. आर माळी २००४/१४९ दि.२०.३.२००४ हे पत्र मला डाक द्वारे भेटले नाही, त्यामुळे आपण मला दि.१०.५.२००४ पत्र देऊन दहा दिवसांच्या आत अभिवेदन निवेदन सादर करावे असे म्हटल्या प्रमाणे मी खालील प्रमाणे आपणास निवेदन सादर करित आहे.”

This is a clear admission that the copy of the Enquiry Report was given to the Applicant and he was given opportunity to assail the conclusion of the Enquiry report. A notice dated 2.6.2004 was issued to the Applicant asking him to show cause as to why the punishment of compulsory retirement may not be imposed on him. On 25.6.2004, the Applicant had replied to this notice which is at Exhibit 'R-27' (page 257 of the Paper Book). From these documents, it is clear that the claim of the Applicant that the impugned order was passed in violation of principles of natural justice is not correct. There is nothing on record to conclude that D.E. against the Applicant was not held in accordance with the Rules. The quantum of punishment is not disproportionate considering the nature of charges. This is a case where no interference from this Tribunal is called for.

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

(J.D. Kulkarni)
(MEMBER) (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 18.10.2016

Place : Mumbai

Dictation taken by : SBA

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