

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.174 OF 2016

DISTRICT : SANGLI

Mr. Deelip Sadashiv Patil.)
Age : 55 Yrs, Occu.: Addl. C.E.O, Z.P,)
Sangli.)
Address for Service of Notice :)
Mr. P.V. Patil, Advocate, 10, Sai Sadan,)
4th Floor, 68, Janmbhoomi Marg,)
Opp. Siddharth College of Commerce,)
Fort, Mumbai 400 001.)...**Applicant**

Versus

1. The Principal Secretary,)
Rural Development & Panchayat)
Raj Department.)
2. State of Maharashtra.)
Through Secretary, G.A.D,)
Mantralaya, Mumbai.)...**Respondents**

Mr. P.V. Patil, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

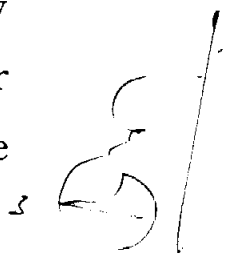


DATE : 17.04.2017

JUDGMENT

1. The Applicant, an Additional Chief Executive Officer at present working in Zilla Parishad, Sangli is aggrieved by the refusal on the part of the Respondents to grant Selection Grade to him in the pay scale of Rs.37400-67000 with Grade Pay of Rs.8700 w.e.f. 28.12.2015 and consequential benefits. While serving at Nagpur, the Applicant had to face a departmental enquiry (DE) and that is the reason put forth by the Respondents to deny to him the said benefit.

2. On 15.7.2010, when the Applicant was serving in the same capacity at Nagpur, a Memorandum of Charge was served on him and the DE got underway. The 1st Respondent is the Government of Maharashtra in Rural Development and Panchayat Raj Department and is the disciplinary authority and the 2nd Respondent is the State of Maharashtra through General Administration Department (GAD). On 19.7.2012, the Enquiry Officer by a very detailed report exonerated the Applicant of both the charges that were framed against him. The disciplinary authority disagreed with the Enquiry Officer (EO) in so far as the second charge was concerned while he accepted the



report in so far as the first charge was concerned. That order of the disciplinary authority – the State of Maharashtra in Rural Development and Water Conservation Department is at Exh. 'C' (Page 46 of the Paper Book (PB)) and is dated 13th December, 2012. It will be necessary to read this particular communication addressed to the Applicant, which is in Marathi. The first charge as already been mentioned above was held, 'not proved' while as far as the second charge was concerned, the following was observed :

“दोषारोप बाब क्रमांक २ बाबत असे नमूद करण्यात येते की, मुख्य प्रशासकीय अधिकारी म्हणून कामांना प्रशासकीय मान्यता देताना प्रस्तावातील मूळ प्रस्ताव बिनचूक आहे की नाही याची आपण खात्री करणे आवश्यक होते. त्यामध्ये खाडाखोड असल्यास त्यावर संबंधित तांत्रिक अधिका-यांची प्रती स्वाक्षरी घेणे आवश्यक होते. प्रस्तुत प्रकरणत नरखेड तालुक्यातील तारशिवार साठवणूक बंधा-याच्या कामाचा अंदाजपत्रकात खाडाखोड होती. तसेच काटोल तालुक्यातील मौ. पानवाडी साठवणूक बंधा-याच्या कामांच्या अंदाजपत्रकात खाडाखोड होती. या दोन्ही कामांच्या प्रशासकीय मान्यतेवर व कार्यालयीन टिप्पणीवर आपल्या स्वाक्ष-या आहेत. त्यामुळे बाब क्रमांक २ बाबत चौकशी अधिका-यांच्या निष्कर्षाशी सहमत होता येणार नाही. या बंधा-यांच्या कामांना प्रशासकीय मान्यता देताना खाडाखोड असलेल्या वाढीव अंदाजपत्रकास प्रशासकीय मान्यता देण्यास आपण जबाबदार असल्याचे दिसून येत आहे. तरी याबाबत आपणांस लेखी निवेदन देण्याची, बाजू मांडण्याची एक संधी देण्यात येत आहे. याकरीता हे पत्र मिळाल्यापासून ८ दिवसांच्या आत आपले अभिवेदन शासनास सादर करावे. आपणांस व्यक्तीशः आपले म्हणणे मांडावयाचे असल्यास त्याप्रमाणे शासनास अवगत करावे.”



It will be pertinent to note as to what the second charge precisely was. The charge was that in the year 2006-07 at the level of the Zilla Parishad (ZP) while granting administrative sanction, the Applicant did not properly ascertain the budgetary provision and disbursed the amount. Now, if Exh. 'C' quoted above is read along side the second charge, it will become very clear that the disagreement is not as it should have been, so as to give a clear idea of the opinion of the maker thereof. It was nowhere alleged in the charge that he had made scoring of. Further, the charge was such as to be capable of being ascertained by the documents about which the said Exh. 'C' makes no reference at all. Therefore, in my view, the disciplinary authority did not act in accordance with the law laid down by the Hon'ble Supreme Court in **Yoginath D. Bagde V/s. State of Maharashtra & Anr.: (1999) Supreme Court Cases (L & S) 1385 (D)**. The relevant Rule being Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (D & A Rules) have not been complied with by the disciplinary authority. The said sub-rule 2 was introduced by an amendment of 10.6.2010 which was after the Hon'ble Supreme Court rendered **Yoginath Bagde** (supra).



3. As a matter of fact, the OA can be decided on this point itself. However, there is a more formidable and almost unassailable reason why this OA should be allowed and I shall turn my attention thereto.

4. The Applicant was called upon to show cause and he showed cause by his communication of 21.1.2013 (Page 48 of the PB). The disciplinary authority vide the order dated 21.6.2014 (Exh. 'R-1', Page 104 of the PB) noted the two charges framed against the Applicant. The above discussed facts were also noted. It was recorded that the first charge had not been proved and the second charge was partly proved and the Applicant was called upon to show cause as to why, under the Rule quoted therein under the D & A Rules, his next increment should not be permanently held up with cumulative effect and then, without mentioning any other reason, the said punishment was imposed. I must make it very clear that even this order of the disciplinary authority is not at all satisfactory. However, I may proceed on assumption and I must emphasise that it is only an assumption, I proceed further.

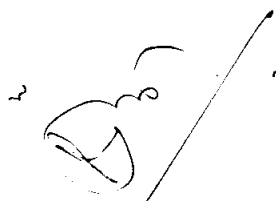
5. Paras 5, 6 and 7 of the Affidavit-in-rejoinder at Pages 116-117 make pertinent statement of facts. The

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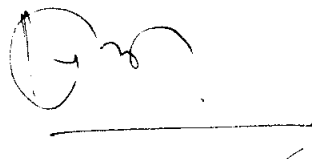
crux of the matter was that, no order was communicated to the Applicant after the enquiry and he went on making representations for early conclusion of the pending DE lest his future might get affected. Para 5 of the Rejoinder of the Applicant may now be quoted.

“5. I say that in August 2013 I was transferred to Sangli. On 19.08.2013 I resumed duty as Addl. C.E.O. at Z.P. Sangli. It appears from the contents of Order dated 21.06.2014 that though I was posted at Z.P. Sangli in August 2013, in June 2014 the said Order dated 21.06.2014 was forwarded to Z.P. Nagpur. It is pertinent to note that neither the Government nor the C.E.O. of Z.P. Nagpur communicated the said order to me. I learned about the said order first time when it was filed before this Hon'ble Tribunal in the form of Annexure-1 of the affidavit-in-reply dated 25.04.2016 filed in Reply to my O.A.”

6. In the Affidavit-in-sur-rejoinder of the Respondents filed through Mr. Vijay D. Shinde, Deputy Secretary in the first Respondent, the above Paragraph has been traversed. In fact, Paras 6 & 7 make a significant reading and the same need to be fully reproduced.



“6. With reference to para 5, I say that the contention in this paragraph is not denied. At the time of initiation of the Departmental Enquiry the applicant was posted as Additional Chief Executive Officer at Zilla Parishad, Nagpur. Therefore, after the completion of departmental enquiry the final order of imposing punishment dated 21.6.2014 was sent through the Chief Executive Officer, Zilla Parishad, Nagpur for implementation and compliance of the order. After that the copy of punishment order dated 21.06.2014 was received by the office of Chief Executive Officer, Zilla Parishad, Nagpur on 27.6.2014. The postal copy of acknowledgment signed by the receipt clerk of office of Chief Executive Officer, Zilla Parishad, Nagpur is attached herewith as **Exhibit-RJ-2**. As per the record of Chief Executive Officer, Zilla Parishad, Nagpur it is revealed that the copy of punishment order dated 21.6.2014 has actually not been served to the applicant. The punishment order has not been implemented so far. However, it is pertinent to note that the applicant vide letter dated 30.4.2016 had made appeal against the said punishment order dated 21.6.2014. Copy enclosed in Rejoinder at page 121.



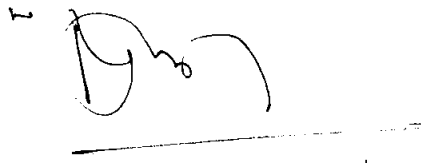
7. With reference to para 6, I say that the contention of the applicant in this para is denied for the reason that though there was procedural lapse in not serving the punishment order to the applicant, but the punishment was ordered after approval of Competent Authority. The Departmental Promotion Committee has rightly not recommended the applicant for promotion as he was under punishment."

7. In Para 10 also, it is clearly admitted that the reply was not given to the representations of the Applicant. Once having fully quoted the two Paragraphs from the Affidavit-in-sur-rejoinder, I do not think, anything more needs to be said or done about it. It is very clear that the Applicant was punished without the actual order of punishment being served on him because he had a right to take steps there against including preferring an appeal which he did apparently on 30.4.2016, but that was quite late in the day, after he gained the knowledge of the punishment. In which connection, useful reference could be made to Page 120 of the PB. This vital right of the Applicant was affected by a lapse on the part of the concerned Respondents. No doubt, the learned Presenting Officer (PO) Smt. K.S. Gaikwad tried to salvage the case of the Respondents by mentioning that the order was put in

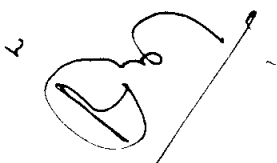


proper channel and that absolved the Respondents of any further responsibility, if those in the channel blocked the order, the Respondents are not to blame. I completely disagree with the learned PO in so far as this submission goes. The consequences of the non-communication of the order of punishment are serious and grave and consistently therewith, in my view, it was incumbent upon the concerned Respondent to make sure that personal service thereof was made to the Applicant. Here, it is very pertinent to note that even after the date of that order, the Applicant went on making representations which are there on record and which clearly exemplify that the Applicant did have no knowledge of the said adverse order that was made against him. At that time, the Respondents admittedly did not send a reply to his representations. Even if the proper channel claim was to be considered against the weight of the record, the Respondents should have lost no time in immediately conveying to the Applicant that the punishment was imposed on him.

8. The report of the Departmental Promotion Committee (DPC) dated 3.3.2015 is at Exh. 'RJ-1' (Page 146 of the PB). The name of the Applicant appears at Serial No.16 (Page 149 of the PB) and it is made clear that the DPC did not consider him for promotion because he

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was undergoing punishment above referred to. In fact, the Affidavit-in-reply envisages such a momentous consequence of this punishment as to claim that the Applicant would be disabled from promotion for rest of his career. That is a complete over-reaction and is totally unacceptable. Here, it also needs to be mentioned that at Serial No.14 in the DPC, there was a case of one Mr. Gulabsingh D. Rathod. DE was concluded against him and punishment was proposed and he was considered fit for promotion. In case of Mr. Avinath G. Gote, it was mentioned that there was a need to take a review of his DE and till such time, it was decided to keep his matter pending. It is, therefore, quite clear that it can very safely be mentioned that for some inexplicable reasons, two similarly persons were not similarly treated and in so far as the aggrieved Applicant is concerned, he has suffered and his constitutional rights have been offended. There is a reference to the Circular of 2nd April, 1976. It is very clear that, it was open to the Respondents to act in accordance therewith and treat the Applicant in accordance with what has been laid down therein. There are G.Rs. that form the part of the record which make it mandatory for the response to be given to the representations within a time limit and even that was not followed in letter and spirit. It is, therefore, quite clear that the decision of the DPC was

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flawed and based on uncommunicated punishment which in substance and not just in form would affect the valuable rights of the Applicant, and therefore, the said faulty decision of the DPC cannot be allowed to stand.

9. On behalf of the Respondents, reliance was placed on the Judgment of the Hon'ble Supreme Court in **Union of India Vs. K.V. Jankiraman : (1991) 4 SCC 109** and Para 8 thereof is fully quoted in Para 19.2 of the Affidavit-in-reply. Reliance was also placed on **Union of India Vs. Arrun Jyoti Kundu & Ors.: (2002) AIR SCW 2896**. It was held by the Hon'ble Supreme Court that, in the event, an employee was held guilty and was penalized and he was not promoted during the continuation of the punishment, he will have no shoulders to cry on. Now, it is very clear that, here the Respondents themselves are totally guilty of having suppressed from the Applicant the result of the DE and they still went ahead and visited the consequences on him of the denial of the grant of selection grade. If the principles of the Judgments of the Hon'ble Supreme Court cited by the Respondents themselves are applied to the present facts in true letter and spirit, I am very clearly of the view that a finding for the Applicant will have to be entered. After-all, ultimately, it is the ratio deducible from the Judgment of the Apex Court that is

~ GmD ~

binding and not the final result of the matter before Their Lordships which turned on its own facts.

10. It is hereby directed that the case of the Applicant for grant of Selection Grade of the scale mentioned in Prayer Clause (a) of the OA be considered, if need be, even by calling a Special DPC by treating the state of affairs such as they obtained on 3rd March, 2015 and to grant it to him, if there is no other impediment in his way and give him proper placement so as to cause no prejudice to him. The Original Application is allowed in these terms with no order as to costs. Compliance within two months.

Sd/-

(R.B. Malik)
Member-J
17.04.2017

17.4.17

Mumbai

Date : 17.04.2017

Dictation taken by :

S.K. Wamanse.

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