

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.49 OF 2015

DISTRICT : PUNE

Shri Ravindra Sampat Dalvi,)
Age : 42 years, Occ : Service,)
R/at. Post Lonikand, Tal. Haveli,)
Dist. Pune)

.... APPLICANT

VERSUS

1. The Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. The Divisional Revenue Commissioner,)
Pune Division, Pune.)
3. The District Collector,)
Pune.)

....RESPONDENTS

Shri K.R. Jagdale, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 22.04.2016.

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 07.10.2010 passed by Minister of State (Revenue) in Revision Application under Rule 25(1) of the Maharashtra Civil Services (Discipline and Appeal) Rule, 1979.

3. Learned Counsel for the Applicant argued that the Applicant's services were terminated by order dated 22.08.2007, without holding any Departmental Enquiry, by issuing only a show cause notice. Learned Counsel for the Applicant contended that a major penalty cannot be imposed on Government servant without holding a Departmental Enquiry (D.E). The Applicant filed appeal on 18.01.2008 against the termination order before the Respondent No.2. The Appeal of the Applicant was dismissed on 08.09.2008. The Applicant filed Revision Application on 29.09.2008 before the Respondent No.1 who passed the order on 07.10.2010, quashing the order of Applicant's dismissal. However, the said order has fixed the basic salary of the Applicant at the minimum of the pay scale and the period during which the Applicant was out of service has not been regularized. The Applicant applied to the Respondent no.2 on 18.08.2012 to

regularize his out of service period from 22.08.2007 to 26.10.2010. However, by order dated 01.07.2013, the Respondent no.2 has rejected the request. Learned Counsel for the Applicant argued that the order dated 07.10.2010 passed by the Respondent No.1 has resulted in double jeopardy against the Applicant which is in violation of Article 20(2) of the Constitution of India. The Applicant basic pay is fixed at the minimum of the Pay Band for a driver and the period of out of service from 22.08.2007 to 07.10.2010 has been ordered to be without pay. While passed the impugned order no notice was given to the Applicant nor opportunity of personal hearing was given to him. This is against the principles of natural justice.

3. Learned Presenting Officer (P.O.) argued that the claim of the Applicant that order dated 07.10.2010 has caused double jeopardy to the Applicant is not correct. In fact Article 20(2) of the Constitution is not attracted at all in the present case. The article deals with conviction in an offence and Article 20(2) provides that no person shall be prosecuted and punished for the same offence more than once. The Applicant has been punished only by order dated 07.10.2010 by bringing his pay to the minimum of the scale. The other order regarding treatment of period during which the Applicant was out of service is not an order of punishment. In fact, it is an incidental order, as how to treat the period during which a delinquent Government servant was out of service. Such

orders are passed routinely in almost all cases, where a person was under suspension or he was out of service for some time.

4. Learned P.O. contended that the order in Revision Application dated 07.10.2010 has considered the claim of the Applicant that he was removed from service without holding a D.E. under Rule 8 of the M.C.S. (D & A) Rules, 1978. That was the main reason, why the order dated 22.08.2007 passed by the Respondent No.3 and order in appeal dated 08.09.2008 passed by the Respondent No.2 were quashed and set aside. As the Applicant has now been given a minor punishment, his claim that a D.E. was necessary does not hold good. Learned P.O. argued that the Applicant was given personal hearing by the Revisional Authority and his claim that he was not heard is incorrect. There was no violation of the principles of natural justice.

5. It is true that the Respondent No.3 had passed order dated 22.08.2007, removing the Applicant from service, without holding a Departmental Enquiry against him. Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 makes it clear that no major penalty can be imposed on a delinquent Government servants unless an enquiry under Rule 8 is held. The punishment of removal from service is a major penalty as per Rule 5(1)(viii) of the said Rules. The Appellate Authority, also dismissed the appeal against the order of the Respondent No.3 by order dated 08.09.2008. A

copy of this is not placed on record by the Applicant. The Applicant filed Revision Application before the Respondent No.1 which was considered under Rule 25 of the M.C.S. (D&A) Rules. The Applicant was personally heard by the Respondent No.1 on 07.07.2010 as mentioned in the order dated 07.10.2010. It was noted that :-

“श्री. दळवी यांच्यावरील दोषारोपांच्या अनुषंगाने त्यांनी सादन केलेला खुलासा विचारात न घेता त्यांना महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ च्या नियम ५(अ)(१) अंतर्गत मोडणारी किरकोळ शिक्षा देणे क्रमप्राप्त व अचित असताना त्यांना ‘सेवा समाप्त’ करण्याची शिक्षा ही याचा नियमावलीच्या नियम ५(अ)(१)(आठ) नुसार देण्यात आली आहे व ही शिक्षा ‘जबर शिक्षा’ या सदरात मोडते. जबर शिक्षा देण्यासाठी या नियमावलीच्या कलम ८ मध्ये नमुद केलेल्या कार्यपद्धतिचा अवलंब करणे आवश्यक आहे. या कार्यपद्धतिचा अवलंब न करता तसेच विभागीय चौकशी न करता त्यांना दिलेली सेवा समाप्तीची शिक्षा कठोर आहे”

6. It is quite clear that the Revisional Authority has quashed the orders of the Respondent No.3 removing the Applicant from service by order dated 22.08.2007 mainly on the ground that the D.E. was not held against him. The order is appeal dated 08.09.2008 was also quashed. However, as the Applicant was given a show cause notice, and his reply to that notice was on record before the Revisional Authority, that Authority decided to impose minor penalty of reducing the pay of the Applicant to the minimum of pay scale. This punishment does not require holding of a Departmental Enquiry. Ultimately proceedings of the Respondent No.3 and the Respondent No.2 got merged in the proceedings of the

Respondent No.1 and the issue of not holding D.E. is not relevant, as only minor punishment was imposed on the Applicant. The Applicant was given opportunity of personal hearing. No separate notice regarding quantum of punishment was required in case of minor penalty. There was no violation of the principles of natural justice.

7. The Applicant has raised the issue of double jeopardy which is prohibited under Article 20(2) of the Constitution. Strictly speaking, as the Applicant has not been punished for an offence, this Article is not applicable. The Applicant's claim that he has been punished twice is not correct. If that claim is accepted, any delinquent Government servant, who is punished after holding a D.E. and if he was under suspension and the period of suspension is treated as such, will claim double jeopardy. In fact order is para (3) of the operative part of order dated 07.10.2010 is not an order of punishment at all. It is covered by Rule 70 of the M.C.S. (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981. The authority competent to order reinstatement is required under this rule to consider and made a specific order regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty. The Respondent No.1 has passed this order in exercise of powers under Rule 70 considering all the facts and circumstances. The Applicant is trying to take benefits of that part of the order dated 07.10.2010 which is favourable to him

and challenging the other parts, which are unfavourable. When the order regarding out of service period of the Applicant was passed by the Government, there was no point in filing 'appeal' before the Respondent No.2 on 18.08.2012, who is subordinate to the Respondent No.1 and is not the appellate authority. Order of the Respondent No.2 dated 01.07.2013 (on page 16 of the paper book) has correctly informed the Applicant that the decision was taken by Minister of State (Revenue) and there was no question of any action being taken by the Respondent No.2. Incidentally, the representations of the Applicant dated 10.08.2012 and 25.05.2013, are mentioned in this letter dated 01.07.2013 of the Respondent No.2 though the Applicant had given dated of representation as 18.08.2012 (which is not placed on record). This Tribunal cannot substitute its judgments with the judgment of the disciplinary authority, in this case Revisional Authority. The order dated 07.10.2010 does not suffer from any legal infirmity and there is no need to interfere with it.

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

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 22.04.2016
Typed by : PRK