

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD.

DIST. NANDED.

ORIGINAL APPLICATION NO. 440/2010.

Shivaji s/o Govindrao Dhutraj,
Age 57 years, Occu. Service,
R/o At post Belanagar, Deepnagar,
Nanded.

-- APPLICANTS.

V E R S U S

1. State of Maharashtra,
Through its Secretary,
Agriculture Department,
Mantralaya, Mumbai 32.
2. The Commissioner of Agriculture,
Maharashtra State, Pune.
3. The Divisional Joint Director of
Agriculture, Latur Division, Latur.

-- RESPONDENTS.

APPEARANCE : Ms. Bhavna Panpatil, Ld. Advocate holding for
Shri SB Talekar, learned Advocate for the
Applicant.

: Smt SK Ghate Deshmukh, Ld. Presenting
Officer for the Respondents.

CORAM : Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)

&

: Hon'ble Shri JD Kulkarni, Member (J).

DATE : 23.09.2016.

JUDGMENT

(Delivered on 23rd September, 2016).

(Per: : Hon'ble Shri JD Kulkarni, Member (J)).

1. The Applicant Shivaji Govindrao Dhutraj has challenged the impugned order dated 26.3.2010 issued by the Divisional Joint Director of Agriculture, Latur Division, Latur i.e. Respondent no.3. Vide said order the applicant has been reduced to the rank of Sr. Clerk from the post of Assistant Superintendent and he has also been directed to pay Rs.41,000/- along with interest @ 6 % per annum. The relevant order is as under :-

“बाब क्रमांक एक :-

श्री शिवाजी गोविंदराव धुतराज सहाय्यक अधिक्षक यांनी श्री. एन. एफ. खिराडे, सेवा निवृत्त कृषि सहायक यांचे कडून वेतनाची दि. १९.८.२००३ रोजी रु ४१०००/- वसुलकेलेली रक्कम चलनाने कोषागारात जमा न करता स्वतः जवळ ठेवून तिचा खाजगी वापर करून शासकिय रकमेचा तात्पुरता अपहार करून गंभीर विविध अनियमीतता करून त्यांनी महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम ३ चा भंग केला आहे.

बाब क्रमांक दोन :-

श्री शिवाजी गोविंदराव धुतराज सहाय्यक अधिक्षक यांनी वरिष्ठांचे आदेशाचे पालन नकरणे कार्यालय प्रमुखांशी/कर्मचा-यांशी उध्दटपणे वर्तणुक करून त्यांनी आपले कर्तव्यात कसुर केलेला आहे.

बाब क्रमांक तीन :-

श्री शिवाजी गोविंदराव धुतराज सहाय्यक अधिक्षक यांनी रजेवर जाताना कार्यालय प्रमुखाची पुर्व परवानगी न घेता कार्यालय व मुख्यालय सोडणे तसेच अनधिकृतपणे वारंवार रजेवर जाउन आणि कार्यालयाशी/कार्यालयीन अधिकारी यांच्याशी संबधित असलेला पत्र व्यवहार योग्य मार्गाने न पाठविता सरळ पत्र व्यवहार करून कर्तव्यात कसुर केलेली आहे.

बाब क्रमांक चार :-

महाराष्ट्र नागरी सेवा (वर्तणुक) नियम १९७९ मधील नियम ३ चा भंग केला आहे. सदर दोषारोप औपचारिक कर्मचारी श्री शिवाजी धुतराज सहाय्यक अधिक्षक यांनी अमान्य केल्यामुळे त्यांच्यावर ठेवण्यात आलेल्या दोषारोपाची चौकशी करणेसाठी विभागाचे आदेश दिनांक १३.१०.२००८ अन्वये चौकशी अधिकारी व सादर कर्ता अधिकारी यांची नियुक्ती करण्यात आली. चौकशी अधिकारी यांनी दि. ५.१०.२००९ च्या पत्रान्वये त्यांचा चौकशी अहवाल शिस्त भंग विषयक प्राधिकारी यांना सादर केला. या

विभागाचे गोपनिय पत्र क्र. अ-६/८११४/०९ दि. २३.१०.२००९ अन्वये सदर चौकशी अहवाल उपविभागीय कृषि अधिकारी, परभणी यांचे मार्फत श्री. शिवाजी धुतराज स. अ. यानां तामील करण्यात येवून त्यांचे अधिवेदन जिल्हा अधिक्षक कृषि अधिकारी, परभणी यांचे पत्र क्र. आस्था-३/गो.प./५०९५/०९ दि. २३.११.२००९ अन्वये विभागास प्राप्त झाले.

निर्णय :-

अपचारी कर्मचारी श्री. शिवाजी गोविंदराज धुतराज सहाय्यक अधिक्षक, यांचे वर ठेवण्यात आलेले दोषारोप, चौकशी अधिकारी यांचा निष्कर्ष, चौकशी अहवालाचे अनुषंगाने श्री. शिवाजी धुतराज स.अ. यांचे विभागास प्राप्त झालेले अभिवेदन व हे नियत वयोमानानुसार दि. ३१.०३.२०११ रोजी सेवानिवृत्त होत असल्यामुळे सेवा निवृत्तीसाठी असलेला अल्प कालावधी विचारात घेता याचा सर्वकंष विचारानी त्यांना पुढील प्रमाणे शिक्षा देण्याचा निर्णय शिस्त भंग विषयक प्राधिकारी यांनी घेतला आहे.

शिक्षा :-

- १) श्री शिवाजी गोविंदराज धुतराज हे दिनांक २९.०३.२००३ रोजी मध्यान्हानंतर सहाय्यक अधिक्षक पदावर हजर झालेले आहेत. या सहाय्यक अधिक्षक पदावरून पदावन्नत (Reduction in Rank) करून त्यांना वरीष्ठ लिपीक पदावर आणण्यात येत आहे.
- २) वरीष्ठ लिपीक पदावर पदस्थापित केल्यानंतर सहाय्यक अधिक्षक पदावर पदोन्नती होण्या पुर्वीच्या दिनांकापर्यंत वरीष्ठ लिपीक पदाच्या वेतन श्रेणीतील वेतन देय राहिल. या पुढील वेतन वाढी न देता त्या गोठविण्यात येत आहेत.
- ३) वरीष्ठ लिपीक या पदावर सलग १२ वर्षे सेवा पुर्ण झाल्यामुळे पदोन्नती साखळीतील मिळालेले वरच्या वेतन श्रेणीतील वेतनावर या पदावन्नतीचा परिणाम होणार नाही.
- ४) श्री शिवाजी गोविंदराज धुतराज यांचे कडून स्वकम रु. ४१०००/- व त्या स्वकमेवरील दिनांक ०१.०९.२००३ पासून साधारण व्याजदर दर साल दर शेकडा रु. ६/- या दराने (मुद्यल अधिक व्याजाच्या स्वकमेसह) वसुल करण्यात येत आहे.”

2. The applicant has stated that, one Shri N.F. Khirade got retired from service in 2003 and applied for G.P.F. The applicant released the G.P.F. amount to the tune of Rs.1,61,014/- on 19.8.2003. Shri N.F. Khirade also put his signature on the revenue stamp of Rs.1/- on the pay bill register. Thus, he received the entire amount. However, Shri N.F. Khirade filed a false application on 11.2.2004 making false allegations to the effect that, Rs.41000/- were deducted from his G.P.F. by the applicant and the same was not refunded to him. He filed two applications making similar allegations on 17.2.2004 and 15.3.2004. The copies of the said applications were however not given to the applicant.

3. The applicant was served with a charge-sheet on 29.4.2008 under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 to which he filed reply on 22.5.2008. The said charge-sheet was however, withdrawn and a fresh charge-sheet under Rule 8 of the M.C.S. (D &A) Rules, 1979 was served on the applicant. The applicant was also kept under suspension vide order dated 15.6.2008. The said suspension was ultimately revoked on 30.1.2009.

4. The Enquiry Officer submitted his report on 5.10.2009 and ultimately the impugned order of punishment was passed.

5. According to the applicant, the copies of the letters filed by Shri N.F. Khirade were not supplied to the applicant. The applicant could not offer the effective explanation regarding temporary misappropriation of Rs.41,000/- for want of letters written by Shri N.F. Khirade. It is also the contention of the applicant that, the Enquiry Officer wrongly recorded findings in respect of temporary misappropriation of Rs.41,000/-. The Enquiry Officer ought to have considered that Shri N.F. Khirade filed a complaint almost after six months as regards the deduction of Rs.41,000/- from G.P.F. The de-novo inquiry initiated under Rule 8 was illegal and that the report of inquiry is perverse being contrary to the evidence on record and that the punishment is grossly dis-proportionate to the allegations in the charge-sheet.

6. Amongst other grounds the applicant contended that, the inquiry was initiated almost five years after the incident and that the

copy of the report of preliminary inquiry was not served on the applicant.

7. The Respondents no.1 to 3 have justified the action taken by the Respondents in their reply affidavit. The respondents denied that, no opportunity was given to the applicant or that the documents were not supplied. It is stated that, the applicant has filed appeal against the order in Departmental Enquiry and the said appeal is pending before Respondent no.2 and without awaiting for the said result the present O.A. is filed.

8. Heard Ms. Bhavna Panpatil, Ld. Advocate holding for Shri S.B. Talekar, learned Advocate for the Applicant, and Smt. DS Deshpande, learned Presenting Officer for the Respondents. We have also perused the application, affidavit, affidavit in reply and various documents placed on record.

9. It seems from the charges framed in the D.E. that the charge of temporary misappropriation of Rs.41,000/- by the applicant is material, which can be said to be grievous than the other two charges,

which are regarding adamant behaviour of the applicant and leaving Head Quarter without permission etc. As per material charge the applicant seems to have recovered Rs.41,000/- from one Shri N.F. Khirade, Retd. Agriculture Assistant. Though this amount was recovered on 19.8.2003 the applicant did not deposit the said amount in the Treasury through Chalan, but kept it with him and used it for his own and therefore, he has committed temporary misappropriation of this amount.

10. We have perused the report of inquiry submitted by the Enquiry Officer. The said report is at Exh.J paper book page nos.44 to 83 (both inclusive). From perusal of the enquiry report dated 5.10.2009 as aforesaid it seems that, the D.E. was initiated against the applicant in which the Retired Tahsildar, Class I Shri S.H. Walsangkar was appointed as Enquiry Officer. Shri Walsangkar has recorded evidence of as many as 16 witnesses against the applicant, which includes Shri N.F. Khirade also. From the said inquiry it seems that, the applicant was to disburse Rs.1,61,014/- towards GPF to Shri N.F. Khirade. He obtained signature of Shri N.F. Khirade on a receipt for receiving the said amount, but the applicant retained Rs.41,000/- from

the said amount for depositing the said amount in Treasury through Chalan, but did not do so. It is clear from the inquiry report that Shri N.F. Khirade filed three applications alleging retention of Rs.41,000/- by the applicant and in order to sort out the complaint filed by Shri N.F. Khirade a meeting was taken on 23.01.2008 in which one Shri M.S. Boinwad, Agriculture Officer, Hadgaon, Shri G.K. Kaulwar Circle Agriculture Officer, Shri Ghumanwad, Agriculture Officer, Shri Shinde, Agriculture Officer, Shri Bantewad, Circle Agriculture Officer, applicant and Shri N.F. Khirade were present. In the said meeting the applicant admitted that, he has retained Rs.41,000/- out of which Rs.16,000/- were spent by him. He also agreed to refund the remaining amount of Rs.25,000/-. All these persons present in the meeting are examined by the Enquiry Officer, as witnesses in the inquiry against the applicant. Thus, it will be clear that, there was sufficient evidence against the applicant before the Enquiry Officer. Even though it is not necessary for this Tribunal to appreciate the evidence in the D.E., there is prima-facie evidence to hold that, the Enquiry Officer has appreciated the evidence on record with a proper perspective.

11. From the inquiry report it seems that the applicant was given full opportunity to submit his case and he was also given opportunity to cross examine the witnesses and applicant has cross examined some of the witnesses and therefore, the allegation that no proper opportunity was given to the applicant are not proper. It is not the case of the applicant that the entire amount was to be paid through cheque. The applicant has not denied that the amount was not given to Shri N.F. Khirade. On the contrary, it is so that the entire amount of Rs.1,61,014/- was paid to the applicant. There is no reason as to why Shri N.F. Khirade will depose false against the applicant.

12. Even though it is stated in the reply affidavit that, the appeal was pending against the punishment given to the applicant from the letter dated 3.2.2011 placed on record at paper book page no.118. It seems that, the appeal was dismissed and against the said order of dismissal of appeal the applicant approached the Govt. of Maharashtra and the Govt. of Maharashtra was pleased to inform the applicant that, once the appeal was dismissed by Commissioner (Agriculture) there was no provision for filing appeal to the Government.

13. Ms. Bhavna Panpatil, learned Advocate for the applicant submits that, the punishment given to the applicant in the Departmental Enquiry is disproportionate. We are enable to accept this contention for the simple reason that, it has been proved that, the applicant has retained the amount of Rs.41,000/- illegally with him. He has recovered the said amount illegally from Shri N.F. Khirade and ought to have deposited the said amount in the Treasury by Chalan he neither refunded` that amount to Shri N.F. Khirade nor deposited the said amount in Treasury office, though he agreed to do so before number of witnesses. In spite of such misappropriation of the amount the only punishment is given is reduction in rank and refund of the amount with interest. By no stretch of imagination the punishment can be said to be disproportionate considering the grievous charges of misappropriation of the amount against the applicant.

14. In view thereof, we do not find any force in the merit of the O.A. and same deserves to be dismissed. Hence the following order.

ORDER.

- i) The Original Application is dismissed.
- ii) No order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

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