

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 619/2018(S.B.)**

Shri Prakash s/o Ganpati Netam,
Aged 50 years, Occu. Service,
R/o. S. T. Boys Hostel, Armori,
Distt. Gadchiroli.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary,
Department of Tribal Development,
Mantralaya, Mumbai-32.
2. The Integrate Project Officer,
Tribal Development, Gadchiroli.
3. The Warden,
Government Tribal Girls Hostel,
Gadchiroli.

Respondents.

Shri G.G.Bade, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated: - 08th May, 2024.

JUDGMENT

Heard Shri G.G.Bade, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

The applicant was appointed as Class-IV employee in the office of respondent. The applicant was suspended on 18.10.2012. The respondents have initiated departmental enquiry. In the departmental enquiry charges levelled against the applicant were not proved. After receipt report of the Enquiry Officer, Disciplinary Authority has passed the impugned order dated 03.07.2018 by which the respondent no.2 imposed punishment treating the suspension period as not duty period. Therefore, the applicant has approached to this Tribunal for the following reliefs-

i) Quash and set aside the impugned order dated 03/07/2018 issued by the respondent no. 2 (at Annexure-A1), thereby direct the respondent no. 2 to consider the suspension period of the applicant as duty period.

ii) Grant any other relief which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case so also, in the interest of justice.

3. The O.A. is opposed by the respondents. It is submitted that the applicant has committed misconduct. Though charges are

not proved before the Enquiry Officer, but the Disciplinary Authority is at liberty to take the decision. Respondent no.2 has taken a proper decision. Therefore, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out the Rule 5 of the M.C.S. of (Discipline and Appeal) Rules, 1979. As per his submission, there is no such punishment is provided as imposed by the respondent no.2. Hence, he submitted that the punishment imposed by respondent no.2 is liable to be quashed and set aside.

5. The learned P.O. has submitted that there is no such punishment provided in Rule 5, but if this Tribunal comes to the conclusion that punishment is liable to be quashed and set aside, then matter is to be remanded back to the Disciplinary Authority to decide the appeal. In support of his submission pointed out the decision of the Hon'ble Supreme Court in the case of **the State of Punjab and Others Vs. Dr.Harbajan Singh Greasy decided on 12 April, 1996.**

6. From the perusal of report of Enquiry Officer, it appears that the minor charges were levelled against the applicant for locking room without any information --- etc.. During the enquiry not a single charge was proved by the respondents. Therefore, it was for

the respondents to take into consideration the evidence recorded by the Enquiry Officer. Not a single witness stated anything against the applicant. Accordingly, Enquiry Officer submitted his report. The respondent authority is at every liberty to differ the report of the Enquiry Officer, but it should be according to the provisions contained in the Rules. The respondent no.2 imposed punishment treating the suspension period as it is, but no such punishment is provided in Rule 5. The Rule 5 of the Maharashtra Civil Services of (Discipline and Appeal) Rules, 1979 is reproduced below-

5. Penalties

[(1) Without prejudice to the provisions of any law for the time being in force, the following penalties may, for good and sufficient reasons and as hereinafter, provided, be imposed on a Government servant, namely –

Minor Penalties.

- (i) Censure;*
- (ii) Withholding of his promotion;*
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to Government, by negligence or breach of orders;*

(iv) Withholding of increments of pay;

(v) Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay, grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of a Government servant during such specified period to the time-scale of pay, grade, post, or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period,-

(a) the period of reduction to time-scale of pay, grade, post or service shall operate to future increments of his pay, and if so, to what extent; and

(b) the Government servant shall regain his original seniority to the higher time-scale of pay, grade, post or service.]]

Major Penalties –

(vii) compulsory retirement;

(viii) removal from Service which shall not be a disqualification for future employment under Government;

(ix) dismissal from Service which shall ordinarily be a disqualification for future employment under Government:

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (viii) or (ix) shall be imposed;

Provided further that, in any exceptional case and for special reasons recorded in writing any other penalty may be imposed].

7. The learned P.O. has pointed out decision of the Hon'ble Supreme Court in the case of *State of Punjab and Others Vs. Dr.Harbhajan Singh Greasy decided on 12 April, 1996.* It is held by the Hon'ble Supreme Court that "It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he avoided responsibility as a Doctor to treat on flood victims and that was cause for the suspension. The appeal is accordingly allowed. No costs. Disallowance of the back wages would not stand in the way of computation of the pensionary benefits as if he had continued in service."

8. In the present matter there is no question of any faulty enquiry. It is not the contention of the respondents that enquiry was faulty. The decision of the respondents is not as per the Rules. There is no any provision to punish the employee by treating period of suspension as without duty period. Therefore, cited decision is not applicable to the case in hand. Hence, the following order –

ORDER

1. The O.A. is allowed.
2. The impugned order dated 03.07.2018 is hereby quashed and set aside.
3. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 08/05/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 08/05/2024.
Uploaded on : 15/05/2024.
