

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**  
**BENCH AT AURANGABAD.**

**DIST. OSMANABAD.**

**ORIGINAL APPLICATION NO.655/2015.**

Shinde Arjun Bhanudas,  
Age 59 years, Occu. Retired  
Asstt. Project Officer (Employment),  
Dist. Rural Development Agency,  
Osmanabad,  
Address: Shikshak Colony,  
Bagal Plot, Osmanabad.

--

APPLICANTS.

**V E R S U S**

1. State of Maharashtra through its  
Principal Secretary, Rural Development  
& Water Conservation Department,  
Mantralaya, Mumbai 32.
2. The Divisional Commissioner,  
Divisional Commissioner Office,  
Aurangabad Division, Aurangabad.
3. The Chief Executive Officer,  
Zilla Parishad, Osmanabad.

-- RESPONDENTS.

**APPEARANCE** : Shri BV Thombre, learned Advocate  
for the Applicant.

: Shri DR Patil, Learned Presenting  
Officer for Respondents No.1 & 2.

: Shri P.P. More, learned Advocate for the Respondent No.3.

**CORAM** : **Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)**  
&  
: **Hon'ble Shri JD Kulkarni, Member (J).**

**DATE** : 20.10.2016.

**JUDGMENT**

**(Delivered on 20/10/ 2016.)**

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

1. Applicant Arjun Bhanudas Shinde has claimed that the impugned order dated 9.5.2014 passed by the Govt. of Maharashtra and subsequent orders in consequence of the said order i.e. order dated 21.10.2014 passed by Chief Executive Officer, Zilla Parishad, Osmanabad and order dated 25.11.2014 passed by the Chief Executive Officer, Zilla Parishad, Osmanabad regarding fixation of pay and recovery be quashed and set aside and to grant all consequential benefits with arrears of pay, increments, gratuity and commutation of pension, leave encashment etc. to the applicant.

2. The applicant was serving as a Assistant Project Officer (Employment) in the District Rural Development

Agency, Osmanabad and has retired on superannuation. He joined services as Block Development Officer in Panchayat Samiti, Washi, Dist. Osmanabad on 1.4.2009 and was promoted to Group B post in Maharashtra Development Service (M.D.S.).

3. The Departmental Enquiry was initiated against the applicant on following charges :-

**“जोडपत्र क्रमांक - १**

**श्री ए.बी. शिंदे गट विकास अधिकारी पंचायत समिती वाशी यांचे विरुद्ध विभागीय चौकशी सुरु करण्यासाठी तयार करण्यात आलेले दोषारोप पत्रांची यादी**

.....  
(कर्तव्य कालावधी दिनांक १.४.२००९ ते आजतागायत)

सन २००८-२००९, या वर्षात समाज कल्याण विभाग जि.प. उस्मानाबाद यांचेमार्फत दलित वस्ती सुधार योजनेअंतर्गत आपले अधिनस्त वाशी तालुक्यातील गावांमध्ये मागासवर्गीय वस्तीत विदयती करणाचे कामे हाती घेण्यात आलेली होती. सदर कामामध्ये आपण केलेल्या गैरशिस्तीच्या गैरव्यवहाराच्या गैरव्यवहाराच्या वर्तणूकीबद्दल आपणविरुद्ध विभागीय चौकशी सुरु करण्यासाठी खालील प्रमाणे दोषारोप पत्र ठेवण्यात येत आहेत.

१) म.जि.प. व पं.सं लेखा संहिता १९६८ मधील तरतूदीनुसार रु ५०,०००/- व त्यापेक्षा जास्तीची खरेदी असताना सदर खरेदी ही दैनिक वर्तमानपत्रामध्ये जाहिरात देवून न केलेबाबत.

२) खरेदी करण्यात आलेले साहित्य अधिकृत विक्रेत्याकडून अथवा कंपनीकडून खरेदी करण्यात आलेले नसताना प्रमाणकानुसार रक्कम अदाई करणेस मान्यता देणे.

३) रक्कम रु. १०००/- पेक्षा जास्तीची अदाई रेखांकित धनादेशाद्वारे करणे आवश्यक असताना रोखीने अदाई करणे.

४) सदर योजना दलितवस्तीसाठी मंजूर असताना योजना दलितवस्ती सोडून इतर वस्तीमध्ये राबवून योजनेचा उद्देश सफल न करणे.

५) म.ना.से. (वर्तूक) नियम १९७९ मधील नियम ३ चा भंग करणे.”

4. An inquiry report was submitted to the competent authority and the Government was pleased to pass order of punishment in the D.E. and since the applicant was found fully guilty of charges no.2,3 and 5 and partly guilty of charge no.1 the Govt. of Maharashtra was pleased to impose punishment as under :-

“१०. त्याअर्थी श्री. ए.बी. शिंदे, तत्कालीन गट विकास अधिकारी, पंचायत समिती वाशी, जि. उस्मानाबाद सध्या सहाय्यक प्रकल्प अधिकारी (रोजगार), जिल्हा ग्रामीण विकास यंत्रणा, उस्मानाबाद यांच्या विभागीय चौकशी प्रकरणी सिध्द होणा-या दोषारोपांचे स्वरूप विचारात घेता, “श्री. शिंदे यांचे समयश्रेणीतील वेतन एक टप्प्याने कायमस्वरूपी खाली आणण्यात यावे व या शिक्षेच्या कालावधीत त्यांना अनुज्ञेय असलेल्या वेतनवाढी देय राहतील.” असे आदेश याद्वारे देण्यात येत आहेत.

(शासन आदेशासोबत महाराष्ट्र लोकसेवा आयोगाच्या सदर पत्रातील अभिप्रायाचा उतारा सोबत जोडला आहे.) ”

5. In view of the aforesaid punishment inflicted in the D.E. the Chief Executive Officer, Zilla Parishad, Osmanabad was pleased to relief the applicant from his charge of the post of Assistant Project Officer (Employment) and additional charge of Block Development Officer,

Panchayat Samiti, Lohara. Consequently the order dated 21.10.2014 was passed by the Chief Executive Officer, Zilla Parishad, Osmanabad whereby the applicant's pay scale was reduced and it was directed that his pay shall be refixed. In view of said directions, vide order dated 25.11.2014, the C.E.O., Z.P., Osmanabad was pleased to refix the pay of the applicant and all these orders are under challenge in this O.A.

6. According to the applicant the Respondent ought to have conducted a common disciplinary inquiry as per Rule 12 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 since more than two Govt. servants were involved in the inquiry. It is stated that, the partial inquiry against some of the employees only is unjust. It is further stated that the conclusions drawn by the Enquiry Officer are illegal and the appreciation of evidence was also not properly done. The respondent did not consider the explanation given by the applicant on 29.10.2013. The penalty inflicted was for unspecified period and of permanent nature is illegal, in view of Rule 5 (1) (v) of the

Maharashtra Civil Services (Discipline & Appeal) Rules. It is also submitted that, the Respondents have committed partiality by imposing different penalties to different employees in the said case and therefore, the order of punishment is illegal.

7. The Respondents no.1 & 2 have resisted the claim by filing reply and justified the action taken against the applicant. It is stated that, the explanation given by the applicant was not at all satisfactory and therefore, the Assistant Commissioner was appointed as Enquiry Officer and the D.E. was conducted as per manual and full opportunity was given to the applicant. The penalty imposed on the applicant is most meager and can not be said to be disproportionate. On the contrary, meager penalties are imposed. It is stated that the applicant has not filed appeal before the Governor under Rules 17 & 18 of the M.C.S. (D & A) Rules, 1979 and therefore, the application is not tenable.

8. We have heard Shri B.V. Thombre, learned Advocate for the applicant, Shri D.R. Patil, learned Presenting Officer

for the Respondents No.1 & 2 and Shri P.P. More, learned Advocate for the Respondent no.3. We have also perused the application, affidavit, affidavit in reply filed by the Respondents and various documents placed on record by the respective parties. We have also perused the written notes of arguments submitted by learned Advocate for the Applicant.

9. The material points to be considered in this O.A. are as under:-

- i) Whether the Departmental Enquiry was conducted as per rules and regulations by giving full opportunity to the applicant ?
- ii) Whether the punishment imposed upon the applicant in the D.E. is disproportionate ?

10. The learned Advocate for the applicant invited our attention to Rule 12 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The said Rule 12 (1) reads as under :-

“12. **Common Proceedings** :- (1) Where two or more Government servants are concerned in any case, the Governor or any other authority competent to impose the penalty of dismissal from service on all such

Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings.”

11. According to the learned Advocate for the applicant number of other Officers were involved in the Departmental Enquiry and therefore, a common inquiry should have been conducted. The learned Advocate for the applicant invited our attention to the pleadings wherein it is mentioned that, one Shri Uparvat, who was Gram Sevak, similarly Sectional Engineer Shri S.T. Garad and then acting B.D.O. Shri Darade S.J. were concerned with the subject of inquiry and therefore, the proceedings should have been instituted against them also. It is stated that, Shri Darade was released first instalment of funds in 2009 and therefore, the inquiry should have been common as per Section 12 (1) of the M.C.S. (D & A) Rules, 1979.

12. Perusal of the Rule 12 as aforesaid clearly shows that, it is the discretion of the Governor or competent authority to initiate common inquiry as the words “may” have been used in the Rule, and therefore, it can not be said that, there is breach of Rule 12 in this case.

13. The learned Advocate for the Applicant further invited our attention to Rule 5 (1) (v), which deals with penalties and disciplinary authorities. Rule 5 (1) (v) stated as under :-

“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) --- -- ---

(ii) --- -- --

(iii) --- --- --

(iv) -- -- --

(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.”

14. According to the learned Advocate for the applicant reduction to lower scale in the time scale of pay must be for

specified period. However, in the present case the penalty has been imposed upon the applicant whereby no specific period has been mentioned for reduction in pay scale. We are unable to accept the said contention for the simple reason that, vide impugned order the applicant's pay scale to one step has been reduced permanently. Thus, the reduction is a permanent period and we do not find any ambiguity in the said punishment.

15. Amongst the other grounds raised by the applicant it is stated that, different findings and different penalties are imposed on various Officers. It is stated that, Shri Uparvat, who implemented the scheme at village level has been imposed with major penalty of stoppage of one increment permanently. The Sectional Engineer Shri Garad, who was Overseer was given punishment of minor penalty of stoppage of one increment temporarily, whereas Shri Darade, who was Incharge B.D.O. during 2007-08 and 2008-09 was punished with stoppage of one increment for one year only. Similarly Shri N.R. Jadhav, who was B.D.O. was imposed with minor penalty of stoppage of next

increment for one year with cumulative effect. Shri B.D. Chavan, the B.D.O. was imposed with minor penalty of stoppage of next increment for one year with cumulative effect, whereas one Mr. Salunke the B.D.O. of Tuljaplur was imposed with minor penalty of deduction of amount of 6% of pension every month for a period of four months. In this regard, it is material to note that the applicant has not placed on record any evidence to show as to what was the exact role played by these Officers in the alleged episode. Admittedly, these Officers were not prosecuted in the D.E. along with applicant and there is nothing on record to show as to whether these Officers were having equal responsibility with that of applicant and therefore, merely because different penalties are imposed on these Officers in the different inquiries, it can not be said that, there was discrimination of any kind.

16. It is material to note that, the respondents have stated that, they have conducted due inquiry and full opportunity was given to the applicant to defend. It is not the case of the applicant that, he was not given opportunity

to defend. In fact, there is not even a whisper about arbitrariness in conduction of inquiry and therefore, in such circumstances, we are satisfied that, the inquiry has been duly conducted by the respondents and full opportunity was given to the applicant to defend.

17. The learned Advocate for the applicant submits that, the penalty imposed on the applicant is disproportionate and harsh. It is material to note that, the allegation against the applicant is that, he has purchased various goods, the value of which was in Lacks, without even giving advertisement in the newspaper. He has not verified the genuineness of the Companies from which the goods were purchased, and even though it was necessary to pay the amount by way of cheques, he paid the amount in cash. The very intention of scheme which was to be implemented for down trodden people therefore, failed. Considering these allegations we do not find any illegality in the order of punishment imposed upon the applicant. On the contrary, we feel that, the penalty imposed upon him is most meager.

We therefore, do not find any reason to interfere in the impugned orders passed by the competent authorities.

18. The learned Presenting Officer submits that, as per the provisions of Rules 18 & 19 of the M.C.S. (D &A) Rules, 1979 appeal is provided against the order passed in Departmental Enquiry and the competent authority in this case is Governor. The applicant however, did not file appeal and therefore, the O.A. is not tenable. We are unable to accept this contention for the simple reason that non filing of appeal can not restrict the discretion of this Tribunal to entertain the cause. Since the O.A. has been heard on merits, this objection has lost its importance. Secondly, it is also material to note that, applicant has already retired on superannuation and therefore, there is no justification in directing him to file appeal, before filing of the O.A. itself.

19. On a conspectus of discussions in foregoing paragraphs we are therefore, satisfied that there is no merit in the O.A. Hence the order.

ORDER.

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

**MEMBER (J)**  
atpoa65515dbak

**VICE CHAIRMAN (A)**

