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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3531/2011

Chayansing Gajesing Girase.
...Petitioner..

Versus

The Additional Divisional
Commissioner, Nashik & another.
...Respondents...

.....

Shri A.V. Hon, Advocate h/f Shri V.D. Hon, Advocate for
petitioner.

Shri D.R. Kale, AGP for respondent no.1.

Shri Unmesh B. Shriram, Advocate h/f Shri D.S. Bagul,
Advocate for respondent no.2.

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**CORAM: MOHIT S. SHAH, CJ &
T.V. NALAWADE, J.**

DATE: 28.08.2015

ORDER :

- 1] Heard learned counsels for the parties.
- 2] Present petition is filed for challenging the order made by the learned Additional Divisional Commissioner, Nashik Division, Nashik, dated 23.3.2011 by which the authority has directed to start the departmental inquiry against the present petitioner on the ground that he unnecessarily wasted the time of the authority by filing

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one more proceeding like appeal when previous proceeding filed by him was already disposed of. A relief of direction to the authority is also claimed to decide the appeal of the petitioner on merits.

3] We have considered the submissions made by the learned counsel for the parties. The record shows that the petitioner was held guilty in the departmental inquiry for misappropriation of Government money as also on other counts, and the penalty of fixing him in the lower scale was awarded. Admittedly, this order was challenged by filing the appeal alongwith the application for delay condonation. The application for delay condonation was rejected by the authority. This rejection order was communicated to the petitioner in the year 2004 itself. He is trying to put blame on his Advocate for not doing needful in the matter. Then he filed another appeal in the year 2011 with application for delay condonation. The authority has rejected the said application and has further directed to take departmental action against him.

4] Considering the fact that the penalty of aforesaid nature was given, it can be said that already a lenient

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view is taken. The petitioner filed second proceeding after lapse of about five years and tried to challenge the order of penalty. The first order of the authority, by which the application for delay condonation was rejected, is not challenged in the present proceeding.

5] Though there are aforesaid circumstances, it can be said that the conduct of filing one more appeal cannot be treated as an insubordination and for that, the departmental inquiry could not have been started. Hence, this Court holds that the order to that extent only can be quashed and set aside. However, a direction cannot be given to the authority to hear the appeal on merits.

6] In the result, the writ petition is partly allowed. The direction given by the learned Additional Divisional Commissioner, Nashik Division, Nashik, of starting the departmental inquiry against the petitioner for filing the appeal is quashed and set aside. No order as to costs.

(T.V. NALAWADE, J.)

CHIEF JUSTICE