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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7710 OF 2015

Ramesh Gangaram Thorat,
Age : 62 years, Occ : Retired,
R/o Sevadas Nagar, Near FCI Godawan,
Chittod Road, Dhule.

...PETITIONER

-VERSUS-

- 1 State of Maharashtra.
Through the Principal Secretary,
Revenue Department,
Mantralaya, Mumbai-32.
- 2 The District Collector,
Nandurbar, District Nandurbar.
- 3 The Divisional Commissioner,
Nashik Divisional Office, Nashik.

...RESPONDENTS

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Mr.Jain Rakesh Nemichandji, Advocate for the Petitioner.

Smt.K.M.Suryawanshi, AGP, for Respondent Nos.1 to 3/State.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th August, 2015

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner is assailing the order passed by the District Collector, Nandurbar dated 25.07.2013 whereby, the punishment of permanent stoppage of one increment with cumulative effect has been imposed upon the Petitioner. The order dated 13.03.2015 passed by the Divisional Commissioner, Nashik in Establishment Appeal No.26/2013, by which the Appeal of the Petitioner has been rejected, is also called in question in this petition.

3 Shri Jain, learned Advocate for the Petitioner, has strenuously submitted that none of the charges levelled upon the Petitioner are proved. He was appointed as a Talathi in 1984. In 2003, he was promoted as a Mandal Adhikari. He has a clean past service record. By way of a promotional increment, he assumed the charge as Nayab Tahasildar.

4 Shri Jain submits that on 30.01.2013, the Additional Collector had visited river Nesu at village Vasda in connection with illegal excavation of sand by the so called sand mafia. Necessary instructions about the visit were issued. The Petitioner was not present at the said place during the said visit due to another official assignment. The District Collector, therefore, considered the fact situation and by the order dated 04.02.2013 placed the Petitioner under suspension pending disciplinary proceeding. It is stated that Rule 4(1)(a) under Part-II of the Maharashtra

Civil Services (Discipline and Appeal) Rules, 1979 was invoked and pending the disciplinary proceeding under Rule 8 of the 1979 Rules, he was suspended.

5 The Petitioner was to retire on 31.05.2013. Considering the same and the fact that the Petitioner made a representation, he was re-appointed on 28.05.2013 so as to give him the benefit of retirement as an on duty employee and not as a suspended employee. The Petitioner submits that after superannuating on 31.05.2013, he moved an application dated 11.06.2013 calling upon the District Collector to pay him the entire wages for the period 04.02.2013 till 28.05.2013 presuming that he was on duty. However, since the District Collector had conducted the departmental enquiry, he passed an order on 25.07.2013 considering the fact situation and imposed the punishment of stoppage of one increment permanently.

6 The Petitioner has questioned the said punishment by preferring Establishment Appeal No.26/2013. The Divisional Commissioner, Nashik has decided the said appeal by the order dated 13.03.2015 and rejected the same.

7 Shri Jain submits that no serious charge has been proved

against the Petitioner. He was reinstated in employment on 28.05.2013 and therefore, the punishment of stoppage of one increment is shockingly disproportionate. He further submits that no charge has been proved which would invite such punishment. He had put in clean service and therefore, does not deserve such punishment.

8 The learned AGP appearing on behalf of the Respondents has strenuously supported the order of punishment dated 25.07.2013 as well as the order of Respondent No.3 dated 13.03.2015. It is submitted that the procedure as is required to be followed, had been resorted to by the Respondents. The order passed by the District Collector after considering the explanation of the Petitioner clearly indicates that he has come to a conclusion that the Petitioner was negligent in duties and consequentially, unauthorized excavation of sand had occurred at the relevant place. It was, however, decided that a lesser punishment be awarded to the Petitioner in the form of stoppage of only one increment.

9 The learned AGP further submits that Respondent No.3/ Appellate Authority has considered the entire contentions of the Petitioner as can be found in details in the impugned order. The appeal has been rightly rejected and as such, this petition is devoid of merit.

10 I have considered the submissions of the learned Advocates as recorded above. The contentions of the Petitioner have been considered in details in the impugned judgment delivered by Respondent No.3. The rules applicable have also been considered. It was noted that the competent authority had considered the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and in the light thereof, it was concluded under Rule 5(1)(4) that the punishment of stoppage of one increment permanently would be a commensurate punishment.

11 Considering the fact situation with due circumspection, I do not find that the impugned order of punishment could be faulted on the ground that a disproportionate punishment has been inflicted upon the Petitioner. I do not find that the punishment awarded to the Petitioner could be said to be so shockingly disproportionate that it would shock judicial conscience. It is settled law that if the punishment awarded does not tantamount to a shockingly disproportionate punishment, there should not be an interference in the quantum of punishment as is decided by the competent authority.

12 In the light of the above, I do not find that this petition deserves to be entertained. The same is, therefore, dismissed.

13 The Petitioner, however, submits that since he has retired on 31.05.2013, his retiral benefits need to be released since no such misconduct has been proved against the Petitioner which could be said to be an act of moral turpitude.

14 The learned AGP confirms that the Petitioner is not held guilty of any act amounting to moral turpitude.

15 Considering the eligibility of the Petitioner in accordance with the Rules and Regulations applicable, his retiral benefits shall be released by the Respondent by following the due procedure laid down in law. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)