

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13839 OF 2021

Nareshchandra s/o Subhash Joshi,
Age 48 years, Occupation Service,
R/o. 9-B, Raj City 3, Taloda Road,
Nandurbar, Tq. And Dist. Nandurbar. **...Petitioner**

VERSUS

1. The Divisional Commissioner,
Nashik Division, Nashik.
2. The chief Executive Officer,
Zilla Parishad, Nandurbar.
3. The Block Development Officer,
Panchayat Samiti Taloda,
Tq. Taloda, Dist.Nandurbar. **...Respondents**

.....

Advocate for Petitioner : Mr. A. S. Shelke h/f
Mr. A. R. Lukhe
AGP for Respondent No.1-State : Mr. P. G. Borade
Advocate for Respondent Nos.2 and 3 : Mr. R. N. Jain

.....

CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Judgment :
24/04/2023**

**Date of Pronouncing the Judgment:
28/04/2023**

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties,
heard finally.
2. By the instant petition, the petitioner is challenging the order

dated 24/05/2021 passed by the respondent No.1 the Divisional Commissioner, Nashik Division, Nashik, and the orders dated 06/02/2020 and 08/09/2020 passed by the respondent No.2 the Chief Executive Officer, Zilla Parishad, Nandurbar.

3. The facts leading to the filing of the petition can be summarized as under :-

The petitioner came to be appointed as a 'Peon' with the respondent No.2, in the Zilla Parishad, Dhule with effect from 25/05/1991. The petitioner was promoted as a 'Junior Assistant' with effect from 25/03/1997. The petitioner was promoted as a 'Senior Assistant' with effect from 12/08/2008 and posted at Panchayat Samiti Taloda.

4. The respondent No.2 initiated departmental enquiry against the petitioner for the following four charges :-

- (1) irregularities in administrative work and not following the orders of superior,
- (2) absenteeism and not residing at headquarters,
- (3) inaction in daily disposal, zero pendency and classification of record,
- (4) breach of Rule 3 of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rule, 4 of 1964.

5. The petitioner did not submit his explanation to the charges levelled against him vide charge sheet dated 23/10/2018. The respondent No.2 by order dated 28/03/2019 decided to conduct an ex-parte departmental enquiry against the petitioner. Accordingly, Enquiry Officer and the Presenting Officer were appointed by order dated 28/03/2019.

6. The Enquiry Officer initiated Departmental Enquiry on 30/04/2019. The Enquiry Officer conducted the enquiry on 04/05/2019, 15/06/2019, 04/07/2019, 03/08/2019 and 16/08/2019, and in support of the charges, examined three witnesses. All the proceedings had gone ex-parte as the petitioner was not represented before the Enquiry Officer.

7. It is the case of the petitioner that thereafter, on 03/09/2019 the Enquiry Officer contacted the petitioner on phone and the petitioner immediately attended the office of the Enquiry Officer, and the petitioner was served with notice for attending the final hearing of enquiry on 09/09/2019. The petitioner then submitted his defence statement denying the allegations levelled against him.

8. The Enquiry officer submitted his report on 16/09/2019 and

out of four charges, charge No.3 was held to be not proved, charge No.2 was held to be partly proved and charge Nos.1 and 4 are held to be proved.

9. On the basis of the enquiry report, the respondent No.2 i.e. the Chief Executive Officer issued show cause notice dated 25/11/2019 calling explanation as to why the petitioner should not be subjected to punishment of reversion. The petitioner submitted his explanation to the show cause notice. The reversion order was passed on 06/02/2020 wherein the petitioner had reverted from the post of 'Senior Assistant' to the post of 'Junior Assistant'. Thereafter, the order was further corrected on 08/09/2020 and the reversion was directed with retrospective effect.

10. The petitioner preferred an appeal against the order dated 06/02/2020 and the corrected order dated 08/09/2020 before the Additional Commissioner, Nashik. The learned Additional Commissioner by the impugned order dated 24/05/2021 dismissed the appeal and confirmed the impugned order of punishment dated 06/02/2020 as well as corrected order dated 08/09/2020 against which the present petition is filed.

11. It is the contention of the petitioner that the petitioner was not served with the notice of enquiry proceedings and that all the notices were issued on the earlier place of posting address as per the service book records. The respondent authority did not issue a single communication on the new address where he was transferred and posted. Notices were issued only as per the service book record on which the petitioner was originally posted and as such he was not served with any notice.

12. The petitioner contends that he has served for 14 years on the post of 'Senior Assistant' and he was due for promotion and reversion of the petitioner to the post of 'Junior Assistant' amounts to a major punishment and it is a violation of Service Rules.

13. The learned Advocate appearing for the petitioner has taken me through the report of the Enquiry Officer wherein it is mentioned that, all the notices have been returned without being served on the petitioner. It is also mentioned in the report that the allegation made in the report are vague wherein nothing is mentioned about the objectional behaviour of the petitioner, also when was the petitioner was absent and for what period, when he left the headquarters and in what period the petitioner did not come for job

on time, and thus the charges are vague.

14. The learned Advocate for the petitioner relied upon the Judgment of Hon'ble Supreme Court in *Surath Chandra Chakrabarty vs. State of West Bengal*, reported in 1970 (3) Supreme Court Cases 548, wherein at paragraph No.5 it is held as under :-

"5.....It is incomprehensible how the details as to date, time, place and person etc. would not have made the charges more definite as appears to have been the opinion of the Division Bench. We are unable to agree that the details without which a delinquent servant cannot properly defend himself are a matter of evidence. In this connection reference may be made to Fundamental Rule 55 which provides, inter alia, that without prejudice to the provisions of the Public Servants Enquiry Act 1850 no order of dismissal removal or reduction shall be passed on a member of service unless he is informed in writing of the grounds on which it is proposed, to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing

orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him....."

15. The learned Advocate for the petitioner also relied upon the Judgment of this Court in case of *Gorakshnath Dattatraya Darwade vs. The Municipal Commissioner, Writ Petition No.4160 of 2022, decided on 13th July, 2022, (Coram : Mr. Ravindra V. Ghuge and Mr. Anil L. Pansare, JJ.),* wherein it is held as under :-

"9. It is well settled that, whether it be a charge-sheet or a show cause notice in place of a charge-sheet, the delinquent is to be made known about the specific charges levelled upon him. A charge sheet or show cause notice cannot be vague and ambiguous. In the show cause notice dated 09/12/2021, there is no whisper as regards any particular day or date on which the petitioner was allegedly unavailable during working hours. There is no charge that he was absent on a particular date. A vague statement is set out that he used to be unavailable during office hours and the

citizens suffered.....”

16. Per contra, the learned Advocate appearing for the Zilla Parishad submits that the notices were issued to the petitioner on 04/05/2019, 15/06/2019, 29/06/2019, 04/07/2019, 03/08/2019 and 25/11/2019 at the address mentioned in the service book of the petitioner.

17. Since the notices were not issued on the new address of the petitioner at the place of his posting, and it were issued at the original address given in service book, the petitioner was not served with the notices. As such, at the time of examination and cross-examination of witnesses in the proceedings before the Enquiry Officer, the petitioner remained absent as he was not served with notices of Departmental Enquiry. The petitioner appeared in the said proceedings at the fag end when the entire evidence was over, as he was contacted on telephone by the Enquiry Officer. The petitioner could not also remain present whenever a notice was served to his address as per the service book record. The petitioner was transferred long back from the address mentioned in the service book record as he was posted at new address.

18. The submission of the learned Advocate for the Zilla Parishad, that the petitioner should have updated his service record, cannot be accepted as it is within the knowledge of the Zilla Parishad that the present place of posting of the petitioner. Since the Zilla Parishad was aware of the places of posting of the petitioner, endeavour should have made by the Zilla Parishad to serve the petitioner at the place of his posting.

19. As such, the order dated 24/05/2021 passed by the respondent No.1 the Divisional Commissioner, Nashik Division, Nashik, and the orders dated 06/02/2020 and 08/09/2020 passed by the respondent No.2 the chief Executive Officer, Zilla Parishad, Nandurbar, are quashed and set aside.

20. Since I have set aside the order passed against the petitioner on the ground of denial of natural justice, I have not dealt with the second argument of the petitioner as regards the charges being vague.

21. Liberty is granted to the Zilla Parishad to initiate fresh proceedings against the petitioner, if it so desires.

Rule is made absolute with above directions.

(ARUN R. PEDNEKER, J.)