



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12382 OF 2023

The State of Maharashtra thr. The Principal
Secretary, Revenue and Forest Department .. Petitioner

Vs.

Mohanrao Rajaram Patil (since deceased)
thr. Legal heirs .. Respondents

...
Mr. N. K. Rajpurohit, Assistant Government Pleader for the
petitioner-State.

Mr. M. D. Lonkar i/by Adv. Advaita M. Lonkar, Mr. Om M. Lonkar,
Advocates for the respondents.

...

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 22nd NOVEMBER, 2024.

P.C. :

1. Heard.
2. The challenge raised in this writ petition is to the judgment dated 22nd August 2022 passed by the learned Members, Maharashtra Administrative Tribunal in Original Application No.650 of 2015. By the said judgment, the Tribunal has set aside the order of punishment of compulsory retirement as well as recovery of amount of Rs.4,67,825/- that was imposed by the Disciplinary Authority and confirmed in appeal on 29th May 2015.
3. The predecessor of the respondents who was serving as

Range Forest Officer was subjected to a Departmental Enquiry for various charges. The Enquiry Officer held that out of 19 charges, only 3 charges had been proved. The other 16 charges were not proved. The Disciplinary Authority however did not agree with the report of the Enquiry Officer. He prepared a confidential report and submitted the same to the Additional Chief Conservator of Forest. On that basis, the Disciplinary Authority imposed the aforesaid punishment. The Tribunal by the impugned judgment has found that the provisions of Rule 9(2) of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 had not been followed inasmuch as the delinquent was not communicated the tentative reasons by the Disciplinary Authority for disagreeing with the findings recorded by the Enquiry Officer. Another reason for interfering with the order of punishment was that the delinquent was not given proper opportunity of cross examination of the witnesses.

4. We have heard the learned Assistant Government Pleader for the petitioner as well as the learned counsel for the legal heirs of the delinquent. It is seen from the record that copy of the confidential communication that was issued by the Disciplinary Authority disagreeing with the findings recorded by the Enquiry Officer was not served on the delinquent. This resulted in breach

of the requirements of Rule 9 (2) of the Rules of 1979. A specific ground in this regard was raised by the delinquent in the appeal preferred on 6th November 2014. The same was not taken into consideration. In this regard, it is well settled in view of the judgment of the Supreme Court in *Yoginath D. Bagde Vs. State of Maharashtra & Anr.* (1999) 7 SCC 739 that supply of tentative reasons recorded by the Disciplinary Authority for disagreeing with the findings recorded by the Enquiry Officer ought to be communicated to the delinquent and the same was mandatory.

5. We therefore find that the Tribunal has rightly held the imposition of penalty to be vitiated. It has therefore interfered and set aside the order of compulsory retirement of the delinquent. We do not find any reason whatsoever to take a different view of the matter.

The learned Assistant Government Pleader submits that the proceedings ought to have been remanded to the Disciplinary Authority for curing the defect and proceeding thereafter in the enquiry. In the facts of the present case, we find that this contention was not raised before the Tribunal. Further the delinquent has since expired after the judgment of the Tribunal and hence no purpose would be served by sending back the proceedings. In that view of the matter there is no case made out

for exercising discretion under Article 226 of the Constitution. The Writ Petition stands dismissed with no order as to costs. The retiral dues of the deceased employee be released within a period of six weeks from today.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]