

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

**ORIGINAL APPLICATION NO. 338 OF 2021**

DISTRICT : - BEED

**Madhukar s/o Laxman Dodake,** )  
 Age- 62 years, Occu. : Retired )  
 As Sectional Engineer, )  
 R/o Pimpargavan Road, Beed, )  
 Tq. & Dist. Beed. ) .. **APPLICANT**

VERSUS

**1. The State of Maharashtra,** )  
 Through its Secretary, )  
 Soil Water Conservation )  
 Department, Maharashtra State, )  
 Mantralaya, Mumbai. )

**2. The Divisional Commissioner,** )  
 Aurangabad Division, Aurangabad. )

**3. The Collector,** )  
 Collector Office, Jalna, )  
 Tq. & Dist. Jalna. )

**4. The Regional Water Conservation )**  
**Officer,** )  
 Aurangabad Region, Aurangabad, )  
 Tq. & Dist. Aurangabad. )

**5. Dist. Water Conservation Officer,** )  
 Jalna, Tq. & Dist. Jalna. )

**6. The Sub Divisional Soil )**  
**Conservation Officer,** )  
 Ghansavangi, Tq. Ghansavangi, )  
 Dist. Jalna. ).. **RESPONDENTS.**

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 APPEARANCE :- Shri K.G. Salunke, learned Counsel for the  
 applicant.

Shri M.S. Mahajan, learned Chief Presenting  
 Officer for the respondents.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora, Vice Chairman**  
**AND**  
**Hon'ble Shri Bijay Kumar, Member (A)**  
**DATE** : **14<sup>th</sup> June, 2022**  
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**ORDER**

*(Per : Justice P.R. Bora, Vice Chairman)*

Heard Shri K.G. Salunke, learned counsel appearing for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer appearing for the respondent authorities.

2. The applicant has filed the present Original Application seeking quashment of the charge-sheet dated 9.1.2021 issued by respondent no. 6 vide covering letter dated 4.2.2021. The applicant has also sought direction against the respondents to release his regular pension and to grant him all the pensionary benefits. The applicant has also prayed for grant of increments for the period between 2014 and 2017. Regularization of the period of suspension and payment of arrears towards the suspension period is the other relief sought by the applicant.

3. The applicant was on the establishment of respondent no. 6 and was working on the post of Sectional Engineer at the relevant time. The applicant was initially appointed on the post of Junior Engineer on 22.4.1983. In the year 1988 the applicant was promoted to the post of Sectional Engineer. The applicant was posted under

respondent no. 6 at Ghansavangi in the year 2004 and the applicant worked there till 2019. In the year 2015 the applicant was Sectional Engineer at Devgaon Tanda, Tq. Ghansavangi, Dist. Jalna. On 10.3.2015 the applicant was suspended by the Divisional Commissioner, Aurangabad with immediate effect. In the order of suspension dated 10.3.2015 it was mentioned that it was necessary to conduct a Departmental Enquiry against the applicant since in the preliminary enquiry conducted against the applicant, he was prima-facie found guilty. On 27.12.2016 the applicant was reinstated. In the said order it was however clarified that the suspension was revoked, subject to outcome of the Departmental Enquiry proposed against the applicant. On 31.7.2017 the applicant stood retired on attaining the age of superannuation. On 4.2.2021 memorandum of charge was served upon the applicant along with the statement of charge and the relevant documents. Aggrieved by the said order the applicant has preferred the present Original Application.

4. Shri K.G. Salunke, learned counsel appearing for the applicant assailed the aforesaid order mainly on the ground that the charge-sheet has been issued against the applicant after his retirement. The learned counsel further submitted that the misconducts alleged against the applicant in the charge-sheet served upon the applicant pertains to the events which took place more than 04 years before institution of the departmental proceedings. In the circumstances, according to the learned counsel in view of the provision under rule

27 of the Maharashtra Civil Services (Pension) Rules, 1982 (for short 'the Pension Rules, 1982') the charges leveled against the applicant stand vitiated. The learned counsel has placed reliance on the following judgments :-

(i) Judgment delivered by Aurangabad Bench of Hon'ble Bombay High Court in the case of Shankar Shivling Swami Vs. The State of Maharashtra & Ors., 2012 (3) MhLJ 886.

(ii) Judgment delivered by the Hon'ble Bombay High Court in the case of Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Vs. Bhujgonda B. Patil, 2003 (3) Mh LJ 602

(iii) Judgment delivered by the Hon'ble Bombay High Court in the case of Manohar B. Patil Vs. The State of Maharashtra & Others, 2013 (6) Mh L J 311.

5. Respondent Nos. 1 & 2 have filed the joint affidavit in reply thereby opposing the contentions raised by the applicant in the O.A. Respondent Nos. 4 to 6 have also submitted their joint affidavit in reply and have opposed the application so preferred by the applicant. Respondent No. 3 has submitted separate affidavit in reply and has opposed the contentions raised in the O.A. and the prayers made therein. The sum and substance of the contentions raised in the affidavits in reply filed on behalf of the respondents is that the departmental proceedings initiated against the applicant are well maintainable even though the statement of charge has been issued to the applicant after his retirement. The respondents have contended that since the applicant was suspended in the year 2015 i.e. much prior to his retirement, the departmental proceedings shall be

deemed to have been instituted on the date on which the applicant was suspended. It is further contended that in the preliminary enquiry conducted against the applicant sufficient material is revealed indicating the malpractice adopted by the applicant while carrying out the work of percolation tank. The respondents have prayed for rejection of the O.A.

6. We have carefully considered the submissions advanced on behalf of the applicant, as well as, the respondents. It is the contention raised on behalf of the applicant that the Departmental Enquiry initiated against the applicant and the memorandum of charge served upon him are liable to be quashed and set aside since these actions are taken after the retirement of the applicant. As against it, it is the defense raised by the respondents that since the applicant was suspended vide order dated 10.3.2015 the departmental proceedings must be deemed to have been instituted on the said date, and as such, the respondents are having right and authority to conduct the Departmental Enquiry even though the applicant stood retired.

7. The following facts are not in dispute :-

(i) that the applicant was suspended vide order dated 10.3.2015.

(ii) that the suspension was revoked vide order dated 27.12.2016 and the applicant was reinstated.

(iii) that the applicant stood retired on 31.7.2017 on attaining the age of superannuation.

(iv) that the memorandum of charge is served upon the applicant on 9.1.2021.

8. The provisions under rule 27 of the Pension Rules, 1982 are relied upon by both the parties. We, therefore, deem it appropriate to reproduce herein below the relevant part of the said rule :-

***“27. Right of Government to withhold or withdraw pension***

*(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement:*

*Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview: Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.*

*(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.*

*(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment- (i) shall not be instituted save with the sanction of the Government, (ii) shall not be in respect of any event which took place more than four years before such institution, and (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.*

(3) -- -- -- --

(4) -- -- -- --

(5) -- -- -- --

(6) *For the purpose of this rule-*

*(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date."*

9. The statement of charge issued against the applicant reveals that total 03 charges are leveled against the applicant. From the contents of statement of charge it is revealed that the misconduct alleged against the applicant pertains to the events, which took place in the period between 10.6.2004 to 31.12.2009. According to the applicant, the charges are pertaining to the events, which had taken place more than 04 years before institution of the departmental enquiry initiated against him, whereas according to the respondents, the departmental proceedings must be deemed to have been

instituted against the applicant on the date of his suspension i.e. on 10.3.2015. It has been argued on behalf of the respondents that the illegalities committed by the applicant in carrying out the works under Employment Guarantee Schemes came to be noticed on 8.10.2014 when the Committee constituted under the President-ship of the Deputy Collector, E.G.S. visited the work of percolation tank at Devidahegaon, Tq. Ghansavangi, Dist. Jalna. It was therefore the submission on behalf of the respondents that it was well within the power of the respondents to conduct the departmental enquiry against the applicant even after his retirement. The learned C.P.O. pointed out that the departmental proceedings are instituted with sanction of the State Government i.e. the appointing authority of the applicant.

10. In the case of **Shankar Shivling Swami Vs. The State of Maharashtra & Ors., 2012 (3) MhLJ 886** the petitioner therein was employed as a Cashier in the Municipal Council, Beed. He was suspended from his services on 16.1.1991 on the charge of misappropriation. However, no departmental enquiry was initiated against him immediately thereafter. The said petitioner was also prosecuted by instituting criminal cases. The petitioner was acquitted from both the criminal cases. The said petitioner retired from services on attaining age of superannuation on 31.3.2002. No departmental enquiry was initiated against the petitioner at any time before his retirement. The departmental enquiry was initiated



against the petitioner by an order dated 16.10.2008. The petitioner challenged the said order by filing writ petition and the same came to be allowed by the Hon'ble High Court. While allowing the said petition the Hon'ble High Court has held that :-

*“Departmental inquiry cannot be initiated against a person, who is lawfully allowed to retire from services, on superannuation. There is no question of terminating the services of an employee, who is not in service at all. Similarly, there is no question of holding an inquiry in regard of the allegations of misconduct against a person who is not in the service at all. The departmental enquiry which is sought to be against the petitioner after retirement, obviously was illegal”.*

The Hon'ble High Court with the aforesaid observations quashed and set aside the departmental enquiry initiated against the said petitioner. It is significant to note that in the said matter the petitioner was suspended from his services from 16.1.1991. Despite the said fact brought to the notice of the Hon'ble High Court, it was held by the Hon'ble High Court that the departmental enquiry sought to be against the petitioner after retirement was illegal.

11. In the case of **Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Vs. Bhujgonda B. Patil, 2003 (3) Mh LJ 602** the Hon'ble High Court has explained scope of rule 27 of the Pension Rules, 1982. In the said case the order of termination was challenged before the College Tribunal mainly on two counts viz. (1) that the employee having

attained the age of superannuation on 31.5.1996, the management could not have initiated disciplinary action after the said day, and (2) that the termination of service cannot be with retrospective date. The Tribunal accepted the contentions of the employee and the order of termination was set aside. The Hon'ble High Court also declined to interfere with the order of the Tribunal and dismissed the petition of the management. The Hon'ble High Court has dealt with rule 27 of the Pension Rules, 1982 in paragraph nos. 12, 13, 14 & 15 of the said judgment. We deem it appropriate to reproduce the said paragraphs which read thus :-

*"12. Rule 27(1) of the Pension Rules provides that :-*

*"Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:*

*Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:*

*Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government."*

*Apparently, the provision of law contended in Sub-rule (1) of Rule 27 of the Pension Rules, therefore, empowers the Government to pass an order withholding or withdrawing a pension if in any departmental or judicial proceedings the pensioner is found to be guilty of grave misconduct or negligence either during the period of his service or during the period of his re-employment. Apparently, Rule 27(1) is comprised of two parts. The first part speaks of power of the Government to pass an order regarding reduction or withdrawal of pension. The second part deals with*

*the circumstances in which such an order can be passed. The Rule nowhere empowers the Government to initiate or continue the disciplinary proceedings after the employee attains the age of superannuation. The Rule is meant for and confined to the power of Government to reduce or withdraw the pension of a pensioner on account of proved grave misconduct or negligence of such pensioner while he was in service. Besides, the Rule 2(a) of Rule 27 clarifies that the proceedings spoken of for the purpose of order relating to pension under Rule 27(1) though initially may be for disciplinary action while the pensioner was in service, those proceedings would be deemed to have been continued only for the purpose of action under Rule 27(1) relating to the pension and not for disciplinary action. Sub-rule (2)(a) of Rule 27 of the pension Rules reads thus:-*

*"The departmental proceedings referred to in Sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner if the Government servant had continued in service."*

*The above clause, therefore, in clear terms provides that the departmental proceedings initiated for disciplinary action can be continued after the employee attains the age of superannuation only for the purposes of reduction or withdrawal of the pension and gratuity and not for the purpose of disciplinary action. Further, Clause (a) of Sub-rule (6) thereof provides that "for the purpose of the said rule, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to be Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date."*

13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub-rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re-

*employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.*

*14. The fact that the proceedings are continued only to deal with the issue of reduction or withdrawal of pension is necessarily required to be made known to the employee even though there is no specific provision in that regard in Rule 27. The observations by the Apex Court in Brahm Datt Sharma's case are to the effect that the opportunity of hearing in that regard to the employee is necessary as any order of reduction or withdrawal of pension could affect the right of the employee to receive full pension. Principles of natural justice, therefore, need to be complied with in all the proceedings under Rule 27, to the extent that an opportunity of being heard must be offered to the employee before an order under Rule 27(1) is passed.*

*15. In the case in hand, as already seen above, it is not in dispute that the respondent was suspended on 24.11.1992. It is also not in dispute that charge sheet for preliminary inquiry held against the respondent was served upon the respondent on 28.12.1996. It is also not in dispute that the suspension was with the intention to initiate disciplinary proceedings on the ground of misconduct on the part of respondent. It is also undisputed fact that the charge sheet served upon the respondent on 28.12.1996 was in relation to the disciplinary proceedings. Besides the same was served after the respondent had attained the age of superannuation. In the background of undisputed facts if one reads the provisions contained in Sub-rule (6)(a) of Rule 27 and bearing in mind the expression*

*"departmental proceedings" relates to the continuation of such proceedings only for the purpose of decision pertaining to the payment of pension, neither any enquiry was held under Rule 27(1) nor the disciplinary proceedings allegedly commenced during the service tenure of the respondent were continued for the purpose of order relating to pension alone. It is pertinent to note that the petitioners have not brought to the notice of this court any other provision either in the Disciplinary Rules or otherwise empowering the petitioners to commence disciplinary proceedings or to continue the same after the employee attains age of superannuation and, the reliance in that regard was placed only on the provisions contained in Rule 27 of the Pension Rules. For the reasons stated above the provisions contained in Rule 27 cannot be of help to the petitioners either to justify initiation of disciplinary proceedings or continuation thereof after the respondent had attained the age of superannuation. The Apex Court in Bhagarathi Jena's case (Supra) while dealing with the issue as to whether continuation of disciplinary inquiry for the purpose of decision regarding reduction of retiral benefits payable to the employee clearly ruled that in the absence of provisions for conducting disciplinary inquiry after retirement of employee, the corporation therein had no legal authority to make any reduction in the retiral benefits of the employee on the basis of finding sin such inquiry. The decision apparently rules that for the purpose of initiation or continuation of disciplinary proceedings or inquiry in that regard on attainment of age of superannuation by employee, there must be specific provision of law in that regard. In the absence of any such authority, the inquiry, even if is initiated during the tenure of service or before the employee attains the age of superannuation, the same is to be deemed to have been lapsed on the employee attaining the age of superannuation. The relevant observation of the Apex Court in the decision of Bhagarathi Jena's case which reveals this ruling reads thus:-*

*"In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had*

*lapsed and the appellant was entitled to full retirement benefits on retirement."*

*Undoubtedly, in case where the provision of law permits imposition of reduction on the payment of pension by holding necessary inquiry in that regard or continuing the departmental inquiry only for that purpose, certainly the employer can order reduction or withdrawal of the pension, as is the case under Rule 27 of the Pension Rules in force in the State of Maharashtra. However, as already observed above those proceedings after attaining the age of superannuation can be only for the purpose of deciding the issue of pension and cannot have any link with the disciplinary proceedings. Once the disciplinary proceedings, in the absence of authority to continue the same after the retirement of the employee, are to be held as lapsed, such proceedings cannot enure to the benefit of the employer to impose penalty under Rule 27 in relation to the pension without adhering to the procedure prescribed under the said Rule 27 itself."*

12. The facts involved in the matter in hand if are analyzed in light of the observations and findings recorded by the Hon'ble High Court in the aforesaid judgment, the objection raised on behalf of the applicant appears sustainable. In the matter before the Hon'ble High Court also the employee concerned was suspended on 24.11.1992, but the charge sheet for enquiry held against the said employee was served upon him on 28.12.1996 i.e. after his retirement. Further it was not in dispute that the suspension of the employee was with an intention to initiate disciplinary proceedings on the ground of misconduct on the part of the said employee. In premise of facts as aforesaid it was held by the Hon'ble High Court that if one reads the provisions contained in Sub-rule (6)(a) of Rule 27, the expression "departmental proceedings" relates to the continuation of such

proceedings only for the purpose of decision pertaining to the payment of pension and cannot have any link with the disciplinary proceedings for any misconduct on part of the employee during the period of his service, initiated with an intention to impose punishment, if the said employee is found guilty.

13. In the present case also the applicant was suspended on 10.3.2015, however, the memorandum of charge was not served upon him till the date of his retirement and it came to be served upon him after about 03 years of his retirement. In the present case also the memorandum of charge is in respect of the misconduct allegedly committed by the applicant during the period from 10.6.2004 to 31.12.2009. The misconduct is admittedly of the period 04 years before serving of memorandum of charge against him. It is further evident that the charge is not in respect of or with an intention or for the purpose of imposing any reduction in the retiral benefits payable to the applicant. In the circumstances, the departmental enquiry initiated against the applicant and the memorandum of charge served upon him after his retirement alleging misconduct pertaining to the event which took place more than four years before, are liable to be quashed and set aside.

14. As held in the case of **Manohar B. Patil Vs. The State of Maharashtra & Others, 2013 (6) Mh L J 311**, rule 27 of the Pension Rules, 1982 permits institution of departmental proceedings after

superannuation of an employee only for the purposes of taking action contemplated in sub rule (1) of rule 27 in relation to pension and in the said proceedings, no penalty can be imposed in accordance with the Disciplinary and Appeal Rules.

15. For the reasons stated above, the following order is passed :-

**ORDER**

(i) The departmental enquiry proceedings initiated against the applicant and the statement of charge dated 9.1.2021 issued in that regard with the covering letter dated 4.2.2021 are quashed and set aside.

(ii) The respondents shall process the pension papers of the applicant expeditiously and shall release the pensionary benefits payable to the applicant in accordance with law.

(iii) The Original Application is allowed in the aforesaid terms with no order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**