

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

**ORIGINAL APPLICATION NO. 583 OF 2019
(Subject – Recovery / Pension and Pensionary Benefits)**

DISTRICT : JALGAON

Bhaskar S/o Daulat Baviskar,)
Age : 64 years, Occ. : Nil,)
R/o. 430, Wadi, At Post Paldhi,)
Tq. Namner, Dist. Jalgaon.) **APPLICANT**

V E R S U S

- 1. The Divisional Commissioner,**)
Nasik Division, Nasik.)
- 2. The Collector,**)
Jalgaon.)
- 3. The District Supply Officer,**)
Jalgaon.) ... **RESPONDENTS**

APPEARANCE : Ms. Preeti Wankhade, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **31.03.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed challenging the impugned order of recovery

dated 24.08.2018 (Annexure A-15) issued by the respondent No. 2 i.e. the Collector, Jalgaon to the extent of applicant and consequently seeking direction to the respondents to extend the pension and pensionary benefits to the applicant.

2. The facts in brief giving rise to this Application are as follows:-

(i) The applicant entered into the service of Government of Maharashtra on the post of Peon in the Revenue Department on 05.01.1985 upon being so appointed by the Collector, Jalgaon. He was promoted as Clerk on 15.01.1992 and worked as such till his superannuation on 31.05.2013.

(ii) In the year 2012, the respondent No. 2 i.e. the Collector, Jalgaon issued show cause notice (Annexure A-1 (i)) to the applicant, which he received on 08.03.2012 thereby asking why the applicant should not be held responsible for the loss caused to the Government during the storage of coarse grains, which was stored in the godowns in Janmer and Shendurni Taluka during the period of 2008-09. The applicant submitted his reply dated

17.04.2012 (Annexure A-1(ii)) thereby pointing out as to how he was not responsible for the said loss.

(iii) Thereafter, the applicant stood retired on superannuation on 31.05.2013 and nothing happened thereafter for considerable period. The respondent No. 2 however issued recovery order dated 04.02.2016 (Annexure A-2) of Rs. 10,90,829/- from the applicant and one Shri Rajendra Mali in view of depreciation of weight of maize, which was stored in 11 Government Godowns at Jamner during the period of 2008-11.

(iv) Being aggrieved by the said order dated 04.02.2016 (Annexure A-2) issued by the respondent No. 2 i.e. the Collector, Jalgaon, the applicant preferred an administrative appeal before the respondent No. 1 on 02.03.2016. The respondent No. 1 by the order dated 05.10.2016 quashed and set aside the recovery order dated 04.02.2016 with further direction to the respondent No. 2 to conduct fresh inquiry and to take decision on its own merits. Annexure A-3 collectively are the copies of appeal memo and order of respondent No. 1 dated 05.10.2016.

(v) It is further stated that subsequent to the quashment of recovery order dated 04.02.2016, the respondent No. 3 i.e. the District Supply Officer, Jalgaon issued show cause notice to the applicant dated 16.03.2017 (Annexure A-4) to show cause as to why he should not be held personally responsible for the loss caused due to depreciation of weight of maize, which was stored in 11 Government Godowns at Jamner to the tune of Rs. 1,87,821/-

(vi) The applicant filed his reply dated 15.04.2017 (Annexure A-5) to the show cause notice dated 16.03.2017 (Annexure A-4) pointing out that maize was purchased in the year 2008 and was stored for almost three years i.e. till 2011. It was further pointed out that self-life of such coarse grains is only for 6 to 7 months, yet it was stored for period of 2 years and 9 months. It was further stated that by that time, the applicant was not getting even provisional pension and other pensionary benefits, though he retired about 4 and half years ago. He therefore, made another representation dated 04.12.2017 (Annexure A-6(i)) reiterating his earlier explanation and even out of frustration stated that he was ready to pay the recovery amount for the loss caused at Jamner only and not of

Shendurni godown, as he was never posted there. The respondent No. 3 sent reply dated 22.12.2017 (Annexure A-6(ii)) to the representation of the applicant dated 04.12.2017 along with annexure containing charge contemplating disciplinary action. However, the document of charge was not having any covering letter. In view of the same, it cannot be said that disciplinary action was initiated against the applicant.

(vii) It is further stated that in fact, the communication dated 21.05.2011 (Annexure A-7) addressed by the office of respondent No. 2 to the office of respondent No. 1 pursuant to the queries put-forth by the respondent No. 1 shows that the Food Corporation of India did not dispose of the stored maize within the stipulated period of time and therefore, quality of maize was depreciated. The entire responsibility of disposing the stored maize i.e. the coarse grain was of the officer from Food Corporation of India and to get rid of the said responsibilities the officers of Food Corporation of India raised doubts at some places / Godowns. Further the respondent No. 2 specified that disposal of maize was the responsibilities of the officers of Food Corporation of India and hence, the responsibility should be fixed upon such

officers, who did not fulfill their duties. Way back in the year 2013, the respondent No. 2 placed report dated 17.06.2013 (Annexure A-8) before the respondent No. 1 i.e. the Divisional Commissioner, Nasik contending that in fact there was no loss caused to the Government as major stock of maize was sold and it was duty of the officer of the Food Corporation of India to dispose of remaining maize. The period of storage of maize was extended because of lethargic attitude of Food Corporation of India. It was also conveyed that the basic responsibilities of storage is of Godown Keeper and there was also need to fumigation along with other procedures prescribed under Godown Manual.

(viii) It is further stated that thereafter the respondent No 3 by letters dated 29.12.2014 and 05.01.2015 (Annexure A-9 collectively) requested the Government to increase percentage of write-off for loss from 2% to 4%, as self-life of stored coarse maize is only for 6 to 7 months.

(ix) It is further stated that the respondent No. 2 sent communication dated 22.04.2017 (Annexure A-10) to the respondent No. 1 fixing the responsibility of the applicant

and others towards the loss caused to the Government in respect of stored coarse grains. But along with that certificate (page No. 69 of the paper book) signed by the respondent No. 2 annexing with said letter clearly mentions that loss caused from 2008 till 2011 is not because of negligence of any officer nor the loss is due to theft, misappropriation or fraud and that he was personally satisfied in that regard.

(x) In the circumstances as above, it is submitted that the impugned order of recovery dated 24.08.2018 (Annexure A-15) issued by the respondent No. 2 i.e. the Collector, Jalgaon to the extent of the applicant is not in accordance with law. Before issuance of said recovery notice, the Government by communication dated 27.07.2017 (Annexure A-12) addressed by the respondent No. 2 i.e. the Divisional Commissioner, Nasik specified that only 1% loss is acceptable in the storage of Coarse Grains in the year 2008-09. According to the applicant, parameters laid down in the Godown Manual as regards shortage (Annexure A-11) were not taken into consideration while fixing the responsibility on the applicant.

(xi) It is further submitted that if the recovery is sought to be effected after retirement of the applicant, it has to be effected only under Rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982 that too if the employee is found guilty in any Departmental or Judicial Proceedings. Further Rule 27(2)(b)(i) provides for initiation of departmental proceedings even after retirement of a Government employee, but only and only with the sanction of appointing authority and rule 27(2)(b)(ii) states that such proceeding can be only for the events which took place within four years from the date of such initiation. The impugned order of recovery is contrary to the provisions of said Rule 27(2)(b)(i) & (ii) of the Maharashtra Civil Services (Pension) Rules, 1982 and as such it is not sustainable and the same is liable to be quashed and set aside. Hence, this Original Application.

3. (i) The Original Application is resisted by respondent Nos. 1 to 3 by filing affidavit in reply by one Shri Prashant S/o Jayant Kulkarni, working as Assistant District Supply Officer, in the office of Collector, Jalgaon, Dist. Jalgaon, thereby he denied all the adverse contentions raised in the present Original Application. The impugned order of

recovery to the tune of Rs. 1,74,073/- against the applicant is justified contending that at the relevant time from 08.12.2008 to 19.06.2009, the applicant when admittedly was working as Godown Keeper at Jamner Godown, heavy loss was occurred in respect of the stored coarse grain. To recover the loss amount, show cause notice was issued to the applicant in March, 2012, to which the applicant replied on 17.04.2012. The earlier recovery order dated 04.02.2016 was set aside in appeal made by the applicant to the respondent No. 1 i.e. the Divisional Commissioner, Nashik and after conducting fresh enquiry, the impugned recovery order is issued. It is admitted that there was delay for disposal of coarse grains by the Food Corporation of India. The Government in exchange of communication allowed only 1% loss (deficit) and therefore, the impugned order of recovery dated 24.08.2018 came to be passed.

(ii) As regards pensionary benefits, it is submitted that provisional pension from the period of 01.06.1013 till date is given to the applicant and also G.P.G. amount of Rs. 2,05,838/- and G.I.S. amount of Rs. 30,270/- are being paid to the applicant. The Gratuity and Leave Encashment is pending due to recovery from the applicant as per the

report dated 02.08.2019 (Exhibit R-1) submitted by the Tahsildar, Jamner. The pensionary benefits of Rs. 3,42,807/- are withheld in view of letter dated 10.12.2019 (Exhibit R-2) issued by the District Collector, Jalgaon. In the circumstances, there is no merit in the present Original Application and the same is liable to be dismissed.

4. I have heard arguments advanced at length by Ms. Preeti Wankhade, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

5. Upon perusal of the rival pleadings, the following admitted facts emerge before me :-

(i) The applicant was working as Godown Keeper from 08.12.2008 to 19.06.2009 at Jamner Godown.

(ii) The applicant retired from the service on superannuation on 31.05.2013.

(iii) The impugned order of recovery of Rs. 1,74,073/- is issued by the respondent No. 2 vide order dated 24.08.2018 (Annexure A-15)

(iv) The loss was caused to the Government during the duty period of the applicant at Jamner Godown from 08.12.2008 to 19.06.2009.

(v) The Certificate (Page No. 69 of the paper book) issued by the respondent No. 2 i.e. the Collector, Jamner was sent to the respondent No. 1 along with proposal dated 22.04.2017 (Annexure A-10) proposing recovery of an amount of Rs. 1,87,821/- against the applicant and seeking Government sanction for the same. The text of said certificate at page No. 69 is relevant and hence, it is reproduced as under :-

“शासकीय गोदाम जामनेर

ता. जामनेर जि. जळगांव

धाब्याचा प्रकार -

मका थप्पी क्र. १/०८ ते ११/०८ कालावधी दि. ०८.१२.२००८ ते दि. ०७.०९.२०११

गोदाम मका तुट - ८.६५.७३७२५

गोदाम मका तुटीचा रक्कम रु. १०९०८२९/-

प्रमाणपत्र

प्रमाणित करण्यात येते की, कोणत्याही अधिका-याने / अधिका-यांनी व्यक्तिगत शिस्तभंगाची कार्यवाही होऊ शकेल असा कोणत्याही प्रकारचा निष्काळजीपणा केलेला नाही आणि झालेला हानी ही चोरी, अपहार किंवा लबाडी यामुळे झालेली नाही. याबाबत माझे व्यक्तिशः माझे समाधान झालेले आहे.

सही/-

(किशोर राजे निंबाळकर)

जिल्हाधिकारी जळगांव

(vi) In earlier communication dated 21.05.2011 (Annexure A-7) addressed by the office of respondent No. 2 to the office of respondent No. 1, it is stated emphatically that the loss in respect of weight in stored coarse grain is caused as after selling substantive stock of coarse grain, remaining coarse grain was not disposed of by the Food Corporation of India considering self-life is of 6 to 7 months, it was stored for about 2 years and 10 months. To some extent, the officials in Godown can be held responsible only of not keeping the stock of coarse grain as per the guidelines issued under the Godown Manual.

6. In view of above admitted position, the case of the applicant is required to be considered, as well as, also in the background of the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and more particularly Rule 27(2)(a) and (b)(i) & (ii) of the Maharashtra Civil Services (Pension) Rules, 1982, which is as follows :-

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

(1)

(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 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 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 [Appointing Authority],*
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and ”*

7. If the facts of the present case are considered in the background of the abovesaid rules, it can be seen that the applicant retired on superannuation on 31.05.2013. It is to be seen as to whether at or before his retirement on superannuation any disciplinary action in accordance with law was initiated against the applicant. The applicant has placed on record some text of the charges received by him. But the respondents have not placed any material on record to show that in accordance

with law memorandum of charges was served upon the applicant at or before retirement of the applicant on superannuation.

8. It appears that in respect of alleged irregularities, show cause notice was issued to the applicant in or about March 2012 (Annexure A-1(i)) and the applicant replied it by reply letter dated 17.04.2012 (Annexure A-1(ii)). Thereafter, recovery order was issued against the applicant vide order dated 04.02.2016 (Annexure A-2) issued by the respondent No. 2. However, the said order of respondent No. 2 was quashed and set aside by the respondent No. 1 vide order dated 05.10.2016 (Annexure A-3(ii)) deciding the administrative appeal memo (Annexure A-3(i)) filed by the applicant. Thereafter, pursuant to the said order of respondent No. 1, fresh enquiry was conducted by issuing show cause notice dated 16.03.2017 (Annexure A-4), to which the applicant sent reply dated 04.12.2017 (Annexure A-6(i)). Thereafter, the impugned recovery order dated 22.04.2017 (Annexure A-10) came to be passed by the respondent No. 2 i.e. the Collector, Jalgaon, but at the same time, the respondent No. 2 also issued certificate (page No. 69 of the paper book), which I have already reproduced. What is meant by initiation of disciplinary proceeding contemplated under Rule 27 of the

Maharashtra Civil Services (Pension) Rules, 1982 is not defined anywhere.

9. In the abovesaid scenario, it is seen that there was initiation of some alleged disciplinary action in the year 2012 i.e. before retirement of the applicant on superannuation. That was only in the form of issuing show cause notice. The recovery order dated 04.02.2016 (Annexure A-2) issued thereafter was quashed and set aside in appeal. In this regard, there is nothing on record to show that the memorandum of charge was served upon the applicant. From that it can be irresistibly inferred that the Departmental Enquiry was not initiated against the applicant, but some disciplinary action was initiated before his retirement on superannuation by issuing show cause notice. In view of the same, it is deemed to be proceedings under Rule 27(2)(a) of the Maharashtra Civil Services (Pension) Rules, 1982. In view of the same, even if the cause of action for departmental action is beyond four years i.e. of the year 2008-09, it is of no any consequences and the pensionary benefits automatically cannot be given to the applicant under Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982.

10. So far as the merit of the recovery order is concerned, from initial communication between the respondent No. 2 and the

respondent No. 1 dated 21.05.2017 (Annexure A-7), makes it crystal clear that there was loss of weight in stored coarse grain due to not disposing of the stock within a period of 6-7 months, which caused heavy loss of coarse grain. So far as the responsibility sought to be fixed upon the applicant is concerned, it is because of the procedure laid down in the Godown Manual not being followed by the applicant in respect of stored coarse grain. Except bare words in the show cause notice, nothing is produced to substantiate the same. In fact the respondent No. 2 himself has issued certificate (page No. 69 of the paper book) stating that no any negligence or theft or misappropriation of fraud can be attributed to the officials concerned.

11. The impugned recovery order is passed only by giving show cause notice and without adducing any evidence and without giving opportunity to the applicant to defend himself in accordance with law. In fact, the observations of the respondent No. 2 at page No. 69 of the paper book amounts to exonerating the applicant of alleged irregularities. In view of the same, the impugned order of recovery dated 24.08.2018 (Annexure A-15) is not sustainable in the eyes of law and is liable to be quashed and set aside for paucity of evidence.

12. In the circumstances as above, once it is held that the impugned order of recovery dated 24.08.2018 (Annexure A-15) is liable to be quashed and set aside, the applicant shall be entitled for the regular pension and pensionary benefits, which are due to the applicant in accordance with law. Therefore, this is a fit case to direct the respondents to extend the pension and pensionary benefits due to the applicant in accordance with law. Therefore, I proceed to pass following order :-

ORDER

The Original Application is allowed in following terms :-

- (A) The impugned order of recovery dated 24.08.2018 (Annexure A-15) issued by the respondent No. 2 i.e. the Collector, Jalgaon to the extent of the applicant is hereby quashed and set aside.
- (B) In view of the quashment of recovery order dated 24.08.2018 (Annexure A-15), the respondents are directed to process the case of the applicant for regular pension and pensionary benefits, which are due to the applicant in accordance with law at the earliest and in any case, within a period of three months from the date of this order.
- (C) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 31.03.2022

(V.D. DONGRE)
MEMBER (J)