

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

**ORIGINAL APPLICATION NO. 619 OF 2019  
(Subject – Recovery / Pension and Pensionary Benefits)**

**DISTRICT : JALGAON**

**Arjun s/o Rau Pawar,** )  
Age : 62 years, Occ. : (Retired), )  
R/o. 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, Dist. Jalgaon. )  
**(applicant died on 30.12.2021)**

**Arjun s/o Rau Pawar,**  
Since dead through his L.Rs.-

A-1) Smt. Rukhmini w/o Arjun Pawar, )  
Age : 56 years, Occu. : Household, )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9595155053. )

A-2) Sunil s/o Arjun Pawar, )  
Age : 40 years, Occu. :, )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9552283030. )

A-3) Kavita d/o Arjun Pawar, )  
Age : 37 years, Occu. Household, )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9421636392. )

A-4) Dipali w/o Rajesh Rathod, )  
Age : 35 years, Occu. : Household, )  
R/o : 5, 2<sup>nd</sup> Floor, Municipal Staff )  
Quarters, Senapati Bapat Marg, Dadar )  
West, Mumbai. Mob. : 8779985747. )

A-5) Kiran s/o Arjun Pawar, )  
Age : 32 years, Occu. : , )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9595953188. )

) .... **APPLICANTS**

**V E R S U S**

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

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**APPEARANCE** : Ms. Preeti Wankhade, Advocate for the  
Applicants.

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

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

**DATE** : **31.03.2022.**  
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**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-11) 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. During pendency of the present Original Application, the original applicant i.e. Arjun s/o Rau Pawar died on 30.12.2021.

The present applicants being heirs and legal representatives have been brought on record, as the right to sue survives in them to continue the Original Application.

3. 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 Clerk in the Revenue Department on 28.11.1979 upon being so appointed by the Collector, Jalgaon. He was promoted as Awwal Karkoon on 12.01.1995 and worked as such till his superannuation on 31.05.2014.

(ii) In the year 2012, the respondent No. 2 i.e. the Collector, Jalgaon issued show cause notice to the applicant, which he received on 15.03.2012 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 2008-11. The applicant submitted his reply dated 07.04.2012 (Annexure A-1)) thereby pointing out as to how he was not responsible for the said loss.

(iii) Thereafter, the applicant stood retired on superannuation on 31.05.2014 and nothing happened thereafter for considerable period. The respondent No. 3 i.e. the District Supply Officer, Jalgaon issued show cause notice to the applicant dated 16.03.2017 (Annexure A-2) 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.

(iv) The applicant filed his reply dated 12.04.2017 (Annexure A-3) to the show cause notice dated 16.03.2017 (Annexure A-2) 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 specifically pointed out that he was given the additional charge of Jamner Godown and that one Mr. Kumbhar was given the charge of Shendurni Godown and therefore, he could not be held responsible for the loss caused at Jamner and Shendurni Godowns.

(v) It is further stated that in fact, the communication dated 21.05.2011 (Annexure A-4) 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 officers 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 responsibility 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-5) 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 responsibility of storage is of Godown Keeper and there was also need to fumigation along with other procedures prescribed under Godown Manual.

(vi) It is further stated that thereafter the respondent No. 3 by letters dated 29.12.2014 and 05.01.2015 (Annexure A-6 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.

(vii) It is further stated that the respondent No. 2 sent communication dated 22.04.2017 (Annexure A-7) 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. 45-G 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.

(viii) In the circumstances as above, it is submitted that the impugned order of recovery dated 24.08.2018 (Annexure A-11) 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-9) 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 2008-11. According to the applicant, parameters laid down in the Godown Manual as regards shortage (Annexure A-8) were not taken into consideration while fixing the responsibility on the applicant.

(ix) 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.

4. (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. 4,12,087/- against the applicant is justified contending that at the relevant time from 01.05.2010 to 09.06.2011, 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 07.04.2012. Thereafter, 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 for six months (01.06.2014 to 30.11.2014) is given to the applicant and also G.I.S. amount of Rs. 75,438/-, Gratuity amount of Rs. 3,27,030/-, G.P.F. amount of Rs. 11,45,474/- and leave encashment of Rs. 3,96,400/- are being paid to the applicant. Next six months provisional pension proposal dated 26.08.2019 is forwarded to the A.G. Nagpur by the Tahsildar, Jalgaon. The pensionary benefits of Rs. 8,00,344/- are withheld in view of objection certificate dated 04.01.2020 (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.

5. 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.

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

(i) The applicant was working as Godown Keeper from 01.05.2010 to 09.06.2011 at Jamner Godown.

(ii) The applicant retired from the service on superannuation on 31.05.2014.

(iii) The impugned order of recovery of Rs. 4,12,087/- is issued by the respondent No. 2 vide order dated 24.08.2018 (Annexure A-11)

(iv) The loss was caused to the Government during the duty period of the applicant at Jamner Godown from 01.05.2010 to 09.06.2011.

(v) The Certificate (Page No. 45-G 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-7) proposing recovery of an amount of Rs. 4,44,799/- against the applicant and seeking Government sanction for the same. The text of said certificate at page No. 45-G is relevant and hence, it is reproduced as under :-

“शासकीय गोदाम जामनेर

ता. जामनेर जि. जळगांव

धान्याचा 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-4) 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.

7. 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 ”*

8. 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 31.05.2014. 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. In this regard 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.

9. It appears that in respect of alleged irregularities, show cause notice was issued to the applicant in or about March 2012 and the applicant replied it by reply letter dated 07.04.2012 (Annexure A-1). Thereafter, show cause notice issued to the applicant on 16.03.2017 (Annexure A-2), to which the applicant sent reply dated 12.04.2017 (Annexure A-3). Thereafter, the impugned recovery order dated 22.04.2017 (Annexure A-7) 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. 45-G 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.

10. 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. 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 2010-11, 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.

11. 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-4), 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. 45-G of the paper book) stating that no any negligence or theft or misappropriation of fraud can be attributed to the officials concerned.

12. 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. 45-G 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-11) is not sustainable in the eyes of law and is liable to be quashed and set aside for paucity of evidence.

13. In the circumstances as above, once it is held that the impugned order of recovery dated 24.08.2018 (Annexure A-11) 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 original deceased 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 original deceased 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-11) 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-11), the respondents are directed to release withheld pensionary benefits, if any and further directed to process the case of the original deceased applicant for regular pension and pensionary benefits, which are due to the original deceased applicant in accordance with law and consequential family pension to the applicants 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)**

**KPB** S.B. O.A. No. 619 of 2019 VDD Recovery/ Pension and pensionary benefits