

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.667 OF 2022

DISTRICT: AURANGABAD

Dr. Pradip Narendra Vaishnav,
Age: 60 years, Occu: Retired as
District Malaria Officer,
R/o. House No. 25, Mhada Colony,
Champa Masjid Chowk, Shah Bazaar,
Roshan Gate, Aurangabad,
Tq. & Dist. Aurangabad.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Through its Principal Secretary,
Public Health Department,
G.T. Hospital Campus,
Complex Building, 10th Floor,
B-Wing, Fort, Mumbai-400001.

2) The Director of Health Services,
Aarogya Bhawan, Saint Georges Hospital Campus,
Opp. C.S.T. Fort, Mumbai-400001.

3) The Joint Director for Health Services
(Malaria, Filariasis and Water Borne Diseases),
Aarogya Bhavan, Opp. Vishrantwadi Police Station,
Alandi Road, Yerwada, Pune - 6.

4) The Assistant Director of Health Services
(Malaria), Aarogya Bhavan, Opp. Baba Petrol Pump,
Mahaveer Chowk, Aurangabad,
District Aurangabad.

...RESPONDENTS

APPEARANCE : Shri V.B.Wagh, Counsel for
Applicant.

: Shri D.R.Patil, Presenting Officer
for the respondent authorities.

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 30.03.2023.

ORAL ORDER:

1. Heard Shri V.B.Wagh, learned Counsel for the applicant and Shri D.R.Patil, learned P.O. appearing for the State authorities.

2. Applicant was working as District Malaria Officer and retired on attaining the age of superannuation on 30-09-2019. It is the grievance of the applicant that though the period of about 3 years has lapsed, his pension proposal is not processed for regular pension and the retiral benefits are not released in full, the applicant has approached this Tribunal by filing the present O.A. Shri Wagh, learned Counsel for the applicant submitted that the applicant is getting provisional pension from October, 2022 that too after the order was passed by this Tribunal. Other retiral benefits are not yet paid to the applicant and he is also not getting the regular pension since proposal in that regard has not been forwarded by the respondents. Learned Counsel submitted that on the date of retirement neither departmental proceedings were pending nor criminal prosecution was there against the applicant.

3. Learned Counsel submitted that after retirement of the applicant a notice has been served upon him dated 26-11-2019 communicating the applicant that departmental enquiry is contemplated against him as per the provisions under section 27 of the Maharashtra Civil Services (Pension) Rules, 1982 ("the Pension Rules" for short). Learned Counsel submitted that though the period of about 4 years has elapsed, the applicant has not yet been served with the statement of charge. Learned Counsel submitted that even if it is assumed that the enquiry under section 27(1) of the Pension Rules is permissible and is conducted against the applicant and going ahead even if it is presumed that the applicant is held guilty for the charges levelled against him in the said departmental enquiry, that cannot be a ground for not releasing regular pension in favour of the applicant though he has retired prior to about 4 years. Learned Counsel submitted that in the event of the applicant being held guilty in the departmental enquiry, it may be very well within the authority of the respondents to pass any order either of withholding pension or reducing the pension etc. However, respondents cannot keep the matter pending for indefinite period and deprive the applicant from the retiral

benefits. Learned Counsel in the circumstances has prayed for allowing the application thereby directing the respondents to remit all retiral benefits to the applicant and also to start paying him regular pension.

4. The contentions raised in the O.A. and the prayers made therein are opposed by the respondents in their affidavit in reply. A common affidavit in reply has been filed on behalf of respondents wherein it has been contended that the departmental enquiry is proposed against the applicant and that the statement of charge etc. are forwarded to the competent authority for approval and after getting the approval, further proceedings will be initiated against the applicant. It is alleged that while in service the applicant has unauthorisedly made certain statements in court proceedings which resulted in monetary losses to the Government. Learned P.O. reiterated contentions raised in the affidavit in reply and prayed for dismissal of the O.A.

5. I have duly considered the submissions advanced by the learned Counsel for the applicant and the learned P.O. I have also gone through the documents filed on record. The factual matrix is not in dispute. Admittedly, on the

date of retirement on attaining the age of superannuation i.e. on 30-09-2019, neither any departmental enquiry was pending against the applicant nor any criminal prosecution was initiated against the applicant. After his retirement, in November, 2019 for the first time, the applicant was served with notice communicating him that the departmental enquiry is contemplated against him. It is the further matter of record that till today the statement of charge has also not been served upon the applicant. As is revealing from the documents filed on record and the contentions raised by the respondents in their affidavit in reply, the only misconduct which is alleged against the applicant is that he had issued an order of appointment unauthorisedly in favour of one Shri Kathar and he has appeared in the proceedings filed by Shri Kathar before the Maharashtra Administrative Tribunal and made certain statement on behalf of the Government though he was not authorized therefor.

6. The right and authority of the respondents to conduct an enquiry even against the retired Government employee under section 27 of the Pension Rules is undisputed, however, certain norms are required to be

followed while conducting such an enquiry. As noted hereinabove, the fact of contemplated departmental enquiry was communicated to the applicant sometime in November, 2019 and till this date no progress is seen in the matter of the said contemplated enquiry. The question arises whether the Government employee can be deprived of his retiral benefits for an indefinite period on such a ground ? The answer can only be in negative.

7. In the present matter, having regard to the facts which have come on record, it does not appear to me that there is any impediment in releasing the retiral benefits in favour of the applicant as well as regular pension in his favour subject to the outcome of the departmental enquiry. After conclusion of the departmental enquiry, it is within the power and authority of the Government what punishment is to be imposed and that power can be exercised by the Government. It would be, of course, open for the applicant if he is aggrieved by such order to challenge the said order also. However, for the aforesaid reasons, it is quite unjust and unfair to deprive the applicant from his retiral benefits though he has retired in the year 2019. In the circumstances, the application

deserves to be allowed and is accordingly allowed with the following order:

ORDER

[i] Respondents shall release the retiral benefits payable to the applicant and forward his proposal for regular pension within 8 weeks from the date this order subject to outcome of the departmental enquiry contemplated against the applicant.

[ii] It is clarified that the applicant is not precluded from challenging the departmental enquiry contemplated against him.

[iii] There shall be no order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 30.03.2023.