

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 870 OF 2019

DISTRICT : HINGOLI

Dr. Devrao s/o Satwaji Dakhure,)
Age : 66 years, Occu. : Pensioner,)
(Retd. Addl. Director Health Services and)
I/c Director of Health Services,)
R/o "Lalit Mahal", Nanded Road,)
Tq. Kalamnuri, Dist. Hingoli.)

.. **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through: The Secretary,)
Public Health Department, Mantralaya,)
Mumbai-32.)
2. **The Secretary,**)
General Administration Department,)
Mantralaya, Mumbai-32.)
3. **The Secretary,**)
Finance Department, Mantralaya,)
Mumbai-32.)
4. **The Director of Health Services,**)
Office of Directorate Health Services,)
Maharashtra State, "Arogya Bhavan")
St. Georges Hospital Compound,)
P.D. Mello Road, Mumbai-400 001.)

.. **RESPONDENTS**

APPEARANCE : Shri S.D. Joshi, Advocate for the
Applicant.

: Shri V.R. Bhumkar, P.O. for the Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)
Reserved on : **06.12.2022**
Pronounced on : **13.01.2023**

O R D E R

(Per : Shri V.D. Dongre, Member (J))

1. Challenge in this Original Application is made to initiation of Department Enquiry held against the applicant by issuing charge-sheet bearing outward No. विभाचौ १११२/प्र.क.३६/ सेवा-४अ, सार्वजनिक आरोग्य विभाग, मुंबई, dated 15.01.2014 (part of Annexure A-1 collectively) issued by the respondent No. 1 and seeking to drop the said Departmental Enquiry and to release the amount of regular pension, DCRG and commutation of pension with interest, which was withheld and further seeking compensation towards causing mental and physical harassment.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant belongs to Andh community, which falls under Scheduled Tribe category. He came to be appointed on 27.07.1979 under the respondent No. 1 Department in the capacity of District T.B. Officer. He

served at various places throughout the Maharashtra in that capacity. Since before his retirement, he was holding charge of the post of In-charge Director of Health Services w.e.f. 04.05.2009 as per the order dated 04.02.2009 (part of Annexure A-2 collectively) till his retirement on superannuation vide retirement notice dated 31.10.2011 (part of Annexure A-2 collectively).

(b) The applicant served about 32 years with unblemished service record. Pursuant to his retirement, the applicant was entitled to receive regular pension, DCRG, CPF, GIS, Leave Encashment and commutation of pension, as no Departmental Enquiry was initiated against him till then. Only amount of GPF, leave encashment and GIS were released to the applicant in between January, 2012 to March, 2012. He is being paid only provisional pension. Regular pension, DCRG and commutation of pension are being withheld. He continued to receive only provisional pension from November, 2011 till date.

(c) It is further submitted that when the applicant was on provisional pension, by communication dated 15.01.2014 (part of Annexure A-1 collectively) the applicant

came to be served with memorandum in respect of initiation of D.E. in respect of charges for the period from 2002 to 2011. The applicant latter on came to know that the orders of D.E. have also been initiated against one Dr. Pandit Chavan, Dr. B.C. Bagadi and Dr. Ashok Potdar, who were working in the capacity of Deputy Director and Assistant Directors respectively at the time of their respective retirement as can be seen from the communication dated 18.06.2015 (Annexure A-3).

(d) It is further submitted that the memorandum of charge-sheet dated 15.01.2014 along with substance of mutation of misconduct and submission of commutation of misconduct, list of witnesses and documents annexed at Annexure A-1 collectively were served upon the applicant. Before that the applicant was served with communication dated 17.04.2012 calling upon him to submit explanation in respect of irregularities alleged to have been committed by him and as were noticed in the report submitted by Shri Milind Mhaisekar. On receipt of the said communication on 01.05.2012, the applicant submitted his detailed reply dated 28.05.2012 (Annexure A-4) denying alleged irregularities.

(e) It is further submitted that the Enquiry Officer by letter dated 30.10.2015 (part of Annexure A-5 collectively) called upon the applicant and three others to remain present for hearing of D.E. held on 18.11.2015. The applicant made application dated 18.11.2015 (part of Annexure A-5 collectively) seeking permission to appoint one Shri Deepak Madhavrao Jagtap as Defense Assistant and seeking certain documents. Thereafter, the enquiry proceedings did not proceed with the expected speed and having regard to the provisions of Rule 3.19 of the Manual of Departmental Enquiry. When the enquiry was not proceeding ahead, the applicant addressed one communication dated 25.10.2017 (Annexure A-6) to the respondent No. 1 stating therein that he has retired on 31.10.2011 and his gratuity and regular pension have still not been released and requested to release the same by referring case law of the Hon'ble Apex Court in case No. 6770/2013 dated 14.08.2013 and also decision of this Tribunal at Aurangabad Bench dated 30.11.2016 in O.A. No. 302/2016.

(f) It is further submitted that the charges are alleged against the applicant relate to the period from 14.02.2002

to 31.10.2011. The charge sheet was served upon the applicant on 15.01.2014. As per the Rule 27(2)(b)(ii), the Department is empowered to enquire into the charges, which fall within a period of four years from the date of institution of such proceeding. In view of the same, department could have initiated D.E. in respect of charges up to 31.01.2010 and not earlier to that. In view of the same, initiation of D.E. against the applicant is not legal and proper. Moreover, the applicant has been deprived from his legal dues for more than 8 years, as the proposed D.E. is to be completed within one year. Initiation of D.E. is *void-ab-initio*. In similar case, this Tribunal granted interim stay to the implementation of imposition of punishment of recovery as per the order dated 06.08.2019 passed in O.A. No. 685/2019 (Annexure A-7).

(g) It is further submitted that two other delinquents viz. Dr. Bagdi and Dr. Chavan are receiving their regular pension. Moreover, none of their pensionary benefits including that of gratuity is withheld. The applicant cannot be subjected to discriminatory treatment in the matter of releasing of pension and pensionary benefits.

(h) It is further submitted that the applicant has added the Secretary, General Administration Department as respondent No. 2 and the Secretary, Finance Department as respondent No. 3 deliberately, as the Circulars and G.Rs. are having binding effect on other departments. In that respect, the applicant has placed on record a copy of two G.Rs. dated 18.08.2001 and 28.12.1995 issued by the Finance Department and one Circular dated 24.02.1997 issued by the General Administration Department (Annexure A-8 collectively).

(i) During pendency of the present Original Application, the applicant amended the O.A. thereby placing on record the copies of documents in respect of Departmental Enquiry initiated against other delinquents being dropped and hence, continuation of D.E. against the applicant is discriminatory. Main prayers for final relief prayed for by the applicant are as follows :-

“8. RELIEF SOUGHT :-

B) By issuing of an appropriate order or direction, the charge-sheet bearing Outward No. DE 1112/CN 36/Service-4A, dated 15th January, 2014, issued by the respondent No. 1, thereby initiating the Departmental Enquiry under the provisions of Rule 27(2)(b)(1) of the Maharashtra Civil Services

(Pension) Rules, 1982, may kindly be declared as illegal, void-ab-initio by virtue of the provisions of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982 and may kindly be quashed and set aside accordingly.

- C) *By issue of an appropriate order or direction, the respondents No. 1 and 4 may kindly be directed to release the amount of Regular Pension, DCRG and Commutation of Pension with such rate of interest as may be permissible according to the Rules, Resolutions and Circulars, issued by the Respondents No. 2 and 3 Departments within such period as may be deems fit by this Hon'ble Tribunal.*
- D) *By issue of an appropriate order or direction, the respondents No. 1 and 4 may kindly be directed to pay the amount of Rs. 1,00,000/- as compensation towards causing mental and physical harassment of the retirement and making the applicant to face the Department Enquiry unnecessarily.*

9. INTERIM RELIEF SOUGHT :-

- a) *Pending hearing and final disposal of this Original Application, the further proceedings of Departmental Enquiry initiated under the charge-sheet dated 15.01.2014 may kindly be stayed to the extent of applicant.*
- b) *Pending the hearing and final disposal of this Original Application, the respondent No. 1 may kindly be directed to release the amount of Regular*

Pension, Gratuity and Commutation in favour of the applicant forthwith.”

3. The affidavit in reply is filed on behalf of respondent Nos. 1 and 4 by one Karuna Bhikaji Surwade, working as Chief Administrative Officer in the office of respondent No. 4 (page Nos. 57 to 81 of the paper book), thereby she denied all the adverse contentions raised in the O.A. It is specifically contended that perusal of the O.A. itself and annexures thereof itself would show that the enquiry proceedings were started against the applicant in the year 2012 itself and not in the year 2014 more particularly as can be seen from reply dated 28.05.2012 (Annexure A-4) given by the applicant to the communication dated 17.04.2012 (Annexure R-1) issued by the respondent No. 1. In view of the same, charges leveled against the applicant were of the period beyond four years of the date of retirement. Normally the memorandum of charges was served upon the applicant on 15.01.2014, the applicant has been paid requisite amounts payable to him towards GPF, leave encashment and GIS and arrears of provisional pension as reflected in letter dated 30.12.2019 (Annexure R-2). Steps have been taken for completing D.E. initiated against the applicant expeditiously. During pendency of the present O.A., the enquiry is completed

and the final order is awaited. Hence, there is no merit in the present Original Application and the same is liable to be dismissed.

4. Record shows that during pendency of the present Original Application, interim relief is granted by this Tribunal as per the order dated 17.11.2021, which is as follows :-

“4. S.O. to 29.11.2021. Till then concerned authority shall not take final decision in the departmental enquiry held against the present applicant.”

5. Record further shows that the learned Advocate for the applicant during the course of hearing has placed on record copies of documents received by the applicant under Right to Information Act including the copy of enquiry report.

6. We have heard the arguments advanced at length by Shri S.D. Joshi, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer for respondents on the other hand.

7. The applicant is seeking reliefs, which revolve around Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982. For the purpose of appreciating the contention of the

applicant, Rule 27 of the said Rules, 1982 in its entirety is reproduced as follows :-

“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) *No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.*
- (4) *In the case of a Government servant who has retired on attaining the age of Superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.*
- (5) *Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.*
- (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: and*
- (b) *judicial proceedings shall be deemed to be instituted-*
- (i) *in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance in made, and*

(ii) *in the case of civil proceedings, on the date of presenting the plaint in the Court.”*

8. Undisputedly, the applicant retired on superannuation w.e.f. 31.10.2011 from the post of In-charge Director of Health Services as reflected in notice of retirement dated 31.10.2011 (part of Annexure A-2 collectively at page No. 31 of paper book). Further admittedly, the irregularities attributed to the applicant are of the period from 14.02.2002 to 17.07.2003, 18.07.2003 to 31.05.2003, 01.06.2007 to 30.05.2009 and 04.05.2009 to 31.10.2011 as being reflected in memorandum of charge sheet dated 15.01.2014 (Annexure A-1).

9. Plain reading of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982 reproduced as above, would show that the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his-reemployment, shall not be in respect of any event which took place more than four years before such institution. Further reading of Rule 27(6) of the Maharashtra Civil Services (Pension) Rules, 1982 would show that the 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. In view of this date of institution of D.E. is the date on which the statement of charges is issued to the Government servant. In the case in hand, statement of charges is issued to the applicant on 15.01.2014 as reflected in charge-sheet dated 15.01.2014 (part of Annexure A-1 collectively). It is the contention of the respondents that initiation of D.E. is to be considered from the date of issuance of show cause notice, which is in this case is issued on 17.04.2012 as reflected in reply dated 28.05.2012 (Annexure A-4) given by the applicant. However, this contention is not sustainable in the eyes of law for the discussions made hereinabove in terms of sub Rule (2)(b)(ii) and sub-rule (6) of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

10. Considering the above, charges levelled against the applicant pertaining to the period prior to 15.01.2010 are not sustainable in the eyes of law. In this regard, perusal of the enquiry report placed on record by the applicant would show that though the alleged irregularities levelled against the applicant are up-to 31.10.2011, there is nothing on record to show that anything such irregularities took place during the period from 15.01.2010 to 31.10.2011. Alleged irregularities are prior to

15.01.2010. This is hit by the provisions of Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982.

11. As far as discrimination is concerned, no clear-cut document/s of dropping Departmental Enquiry against other delinquents is produced on record. It is true that the D.E. was initiated against four delinquents including the applicant i.e. Dr. Devrao S. Dakhure (applicant), Dr. Pandit Chavan, Dr. B.C. Bagadi and Dr. Ashok Potdar. In the enquiry report, names of other three delinquents do not appear. However, in what circumstances their names do not appear in the enquiry report is not clear. In view of the same, ground of discrimination as contended by the applicant cannot be considered in favour of the applicant. However, in view of the provisions of Rule 27(2)(b)(ii) and 27 (6) of the Maharashtra Civil Services (Pension) Rules, 1982, we have already held that the enquiry initiated against the applicant is not sustainable in the eyes of law, the same is liable to be quashed and set aside. Consequently the applicant shall be entitled for the consequential benefits of release of pensionary benefits including the regular pension, arrears of regular pension, DCRG and commutation of pension together with interest as per the Rule 129A and Rule 129B of the Maharashtra

Civil Services (Pension) Rules, 1982. We therefore, proceed to pass the following order :-

ORDER

The Original Application No. 870 of 2019 is partly allowed in following terms :-

- (A) The impugned order of initiation of D.E. by issuing charge-sheet bearing outward No. विभावौ १११२/प्र.क.३६/सेवा-४अ, सार्वजनिक आरोग्य विभाग, मुंबई, dated 15.01.2014 (part of Annexure A-1 collectively) issued by the respondent No. 1 is hereby quashed and set aside.
- (B) The respondent Nos. 1 and 4 are directed to release amount of regular pension, arrears of regular pension, DCRG and commutation of pension with interest as per the Rule 129A and Rule 129B of the Maharashtra Civil Services (Pension) Rules, 1982 within a period of three months from the date of this order.
- (C) The interim order dated 17.11.2021 stands merged into final order.
- (D) Accordingly, O.A. stands disposed of with no order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 870/2019 VDD & BK 2023 DE and Regular pension