

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**COMMON ORDER IN O.A. NOS. 935, 936 AND 937 ALL OF 2019****1) ORIGINAL APPLICATION NO. 935/2019**

DIST. : AURANGABAD

Toliram s/o Phulaji Rathod,)
 Age. 60 years, Occu. : Pensioner,)
 (Retired Executive Engineer),)
 R/o N-4, F-115, CIDCO, Aurangabad,)
 Dist. Aurangabad.)-- **APPLICANT**

VERSUS

The State of Maharashtra,)
 Through : the Secretary,)
 Public Works Department,)
 Madam Kama Road,)
 Hutatma Chowk, Mantralaya,)
 Mumbai - 32.) -- **RESPONDENT**

WITH**2) ORIGINAL APPLICATION NO. 936/2019**

DIST. : AURANGABAD

Toliram s/o Phulaji Rathod,)
 Age. 60 years, Occu. : Pensioner,)
 (Retired Executive Engineer),)
 R/o N-4, F-115, CIDCO, Aurangabad,)
 Dist. Aurangabad.)-- **APPLICANT**

VERSUS

The State of Maharashtra,)
 Through : the Secretary,)
 Public Works Department,)
 Madam Kama Road,)
 Hutatma Chowk, Mantralaya,)
 Mumbai - 32.) -- **RESPONDENT**

WITH**3) ORIGINAL APPLICATION NO. 937/2019**

DIST. : AURANGABAD

Toliram s/o Phulaji Rathod,)
Age. 60 years, Occu. : Pensioner,)
(Retired Executive Engineer),)
R/o N-4, F-115, CIDCO, Aurangabad,)
Dist. Aurangabad.)-- **APPLICANT**

VERSUS

The State of Maharashtra,)
Through : the Secretary,)
Public Works Department,)
Madam Kama Road,)
Hutatma Chowk, Mantralaya,)
Mumbai - 32.) -- **RESPONDENT**

APPEARANCE : Shri S.D. Joshi, learned Advocate for
applicant in all the three matters.

Shri M.S. Mahajan, learned Chief Presenting
Officer for respondent in all the three matters.

CORAM : Hon'ble Shri Justice P.R. Bora, Vice Chairman
AND
Hon'ble Shri Bijay Kumar, Member (A)

DATE : 4th May, 2022

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

1. In all these 03 Original Applications the issue involved is about the validity of the process of departmental enquiries initiated against the applicant, hence these applications are heard together and decided by the common judgment.

2. It is the grievance of the applicant that the charge-sheets in all 03 Departmental Enquiries (for short D.Es.), which are the subject matter

of the present O.As, have been served upon him after 02 years of his retirement and the charges framed against the applicant in the said D.Es. pertain to the period prior to 04 years of serving of the charge sheets upon him. In the circumstances, it is the contention of the applicant that all 03 enquiries initiated against him are liable to be quashed and set aside by virtue of the provisions under rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short 'the Pension Rules,1982').

3. Shri S.D. Joshi, learned counsel appearing for the applicant submitted that apart from the present 03 D.Es. initiated against the applicant, the applicant is facing more 07 D.Es. The learned counsel submitted that while working as Executive Engineer at Latur Municipal Council the applicant stood retired from the post of Executive Engineer on 31.5.2017. The learned counsel submitted that on the charge sheets though the date of issuance thereof is shown to be 28.4.2017, none of the said charge-sheets came to be served upon him before his retirement. The learned counsel submitted that after about 02 years of his retirement on 02.04.2019, the applicant was at a time served with 03 different charge-sheets alleging delinquencies in respect of different works allegedly carried out by the applicant in the capacity of Deputy Engineer.

4. The learned counsel further submitted that the applicant was surprised to know that in the letter addressed to the Commissioner of Police, Aurangabad for effecting service of the charge-sheets in the D.Es. it has been contended that the applicant did not accept the charge-sheets on the earlier occasion. The learned counsel submitted that in the Original Applications the applicant has candidly denied the aforesaid allegation that he avoided to accept the charge-sheets.

5. The learned counsel referring to and relying upon rule 27(2)(b)(ii) of the Pension Rules, 1982 submitted that none of the D.Es. can be proceeded against the applicant and all three charge-sheets deserve to be quashed in view of the fact that charges leveled in the D.Es. are in respect of the events, which had taken place more than four years before the institution of the D.Es. against the applicant and the departmental proceedings cannot be said to have been instituted while the applicant was in service i.e. before his retirement. The learned counsel thereafter invited our attention to rule 27(6) of the Pension Rules, 1982, which provides 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.

6. The learned counsel reiterated that the applicant stood retired on 31.5.2017 and the charge-sheets are served upon him after his retirement on 2.4.2019. The learned counsel relying on the judgment of

the Hon'ble Supreme Court in the case of **Banarsi Debi and Another Vs. Income Tax Officer, District IV, Calcutta and Others, AIR 1964 SC 1742** argued that the departmental proceedings though are shown to have been issued on 28.4.2017 by the respondents, the significant is the date of service of said charge-sheets on the applicant i.e. 2.4.2019. The learned counsel submitted that in the case of **Banarsi Debi** relied upon by him, the Hon'ble Supreme Court has distinguished the word "issued" and "served". According to the learned counsel, in the matters of the D.Es., the departmental proceedings shall be deemed to have been instituted on the date on which statement of charges is served upon the Government servant. It was, therefore, the contention of the learned counsel that the statement of charges in all 03 D.Es. must be held to have been served upon the applicant on 2.4.2019 i.e. 02 years after his retirement. The learned counsel further submitted that, for the purpose of clause 27(2)(b)(ii) of the Pension Rules, 1982, the period of four years has to be reckoned from the said date.

7. The learned counsel submitted that having regard to the provisions under Pension Rules, 1982 and the interpretation of the words "issued" and "served" made by the Hon'ble Supreme Court in the cited judgment, the O.As. deserve to be allowed and all 03 D.Es. initiated against the applicant deserve to be declared as illegal and vitiated by virtue of the provisions under rule 27(2)(b)(ii) of the Pension Rules, 1982. The learned counsel also prayed for setting aside the impugned charge sheets dated 28.4.2017 issued by the respondents

against the applicant. The applicant has also prayed for all consequential reliefs.

8. The respondents resisted the contentions raised in the Original Applications. We need not to refer to all the contentions raised in the affidavit in reply filed on behalf of the respondents. The sum and substance of the affidavits in reply submitted on behalf of the respondents is that the statement of charges in all 03 D.Es. was duly issued while the applicant was in the Government service and had not retired. It is further contended that since the applicant avoided the service of charge-sheets in the D.Es. initiated against him, the respondents were constrained to serve the charge sheets upon the applicant through the Commissioner of Police, Aurangabad.

9. The learned Chief Presenting Officer appearing for the respondents submitted that the charge-sheets in the D.Es. are to be held to have been served upon the applicant on the date on which the same were issued to the Government servant. The learned C.P.O. submitted that the judgment of the Hon'ble Supreme Court in the case of **Banarsi Debi** relied upon by the applicant is not supporting the case of the applicant; on the contrary it is supporting the contentions of the respondents. The learned C.P.O. submitted that the charge-sheets in all 03 D.Es. ought to be held to have been served on 28.4.2017 i.e. during the service period of the applicant. As such, according to him, rule 27(2)(b)(ii) of the Pension Rules, 1982 cannot be pressed into service.

10. The learned C.P.O. further submitted that P.I.L. No. 28/2010 was filed before the Nagpur Bench of the Hon'ble Bombay High Court regarding the illegalities occurred in the works carried out at Hyderabad House, Council Hall, Ravi Bhavan and Nagbhavan. Hon'ble High Court had issued directions in the said matter to conduct the enquiry against the errant officers. The learned C.P.O. submitted that the applicant is one of such officers who are alleged to be involved in the illegalities so committed. There are serious charges against the applicant and ample material is also in existence against the applicant, the learned C.P.O. added, and therefore prayed for rejecting all these applications.

11. After having considered the arguments advanced by the learned counsel appearing for the applicant and the learned Chief Presenting Officer appearing for the respondents and after having perused the documents filed on record, it appears to us that the entire controversy in these matters revolves around the issue whether the charge-sheet can be said to have been served upon the applicant during the period of his service or after his retirement ? As noted hereinabove it is the assertion of the applicant that the charge-sheets in all 03 D.Es. were served upon him after his retirement on 2.4.2019. As against it, it is the contention of the respondents that the charge-sheets must be held to have been served on 28.4.2017, the date on which the memorandum and the statement of charge was prepared and dispatched to the applicant. It is the contention of the respondents, as noted by us, that

material is the date of issuance of the charge-sheets and not the date of service of the charge-sheets.

12. Rule 27(2)(b)(ii) and rule 27(6)(a) of the Pension Rules,1982 are relevant for deciding the controversy arose in the present matters. We deem it appropriate to reproduce said rules hereinbelow, which read thus :-

“27. Right of Government to withhold or withdraw pension

(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: and”

13. Rule 27(2)(b) of the Pension Rules, 1982 provides that the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall not be in respect of any event which took place more than four years before such institution. Emphasizing on the aforesaid rule, the applicant has asserted that the charge-sheets being served upon him after his retirement, the departmental proceedings, which are in respect of the events which took place more than four years before institution of D.Es. against him, are liable to be set aside.

14. Question for our consideration therefore, is ‘on which date the D.E. shall be held to have been instituted?’ Rule 27(6) of the Pension Rules, 1982, which we have reproduced hereinabove, provides that the D.E. shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant. In rule 26(6) the word used is “issued” and nothing is further provided as about the service of the notices on the delinquent. Thus, according to the aforesaid clause, the date of issuance of the charge-sheet to the Government servant i.e. 28.4.2017 is to be held as the date of institution of the departmental proceedings against him.

15. It is however, strenuously argued by the learned counsel for the applicant that there is vast difference between the words “issued” and “served” and the word issued cannot be interpreted to mean “served”. The learned counsel submitted that the Hon’ble Supreme Court in the case of **Banarsi Debi** (cited supra) has clarified the said aspect. The learned counsel read out paragraph nos. 9 and 10 of the said judgment and submitted that as per the interpretation made by the Hon’ble Supreme Court in the said judgment, the requirement is of “date of service” and “date of issuance” will be insignificant.

16. We, however, find it difficult to agree with the submissions so made by the learned counsel for the applicant. We have read the entire text of the judgment of the Hon’ble Supreme Court in the case of **Banarsi Debi** (cited supra). We deem it appropriate to reproduce hereinbelow paragraph nos. 9 and 10 of the said judgment, which have been relied upon by the learned counsel for the applicant :-

“9. With this background let us give a closer look to the provisions of Section 4 of the Amending Act. The object of the section is to save the validity of a notice issued beyond the prescribed time. Though the time within which such notice should have been issued under section 34(1) of the Act, as it stood before its amendment by section 18 of the Finance Act of 1956, had expired, the said notice would be valid. Under section 34(1) of the Act, as we have already pointed out, the time prescribed was only for service of the notice. As the notice mentioned in section 4 of the Amending Act is linked with the time prescribed under the Act, the section becomes unworkable if the narrow meaning is given to the expression “issued”. On the other hand, if we give wider meaning to the word, the section would be consistent with the provisions of s. 34(1) of the Act. Moreover, the narrow meaning would introduce anomalies in the section : while the notice,

assessment or re-assessment were saved, the intermediate stage of service would be avoided. To put it in other words, if the proceedings were only at the stage of issue of notice, the notice could not be questioned, but if it was served, it could be questioned; though it was served beyond time, if the assessment was completed, its validity could not be questioned. The result would be that the validity of an assessment proceeding would depend upon the stage at which the assessee seeks to question it. That could not have been the intention of the Legislature. All these anomalies would disappear if the expression was given the wider meaning.

10. To summarize : the clear intention of the Legislature is to save the validity of the notice as well as the assessment from an attack on the ground that the notice was given beyond the prescribed period. That intention would be effectuated if the wider meaning is given to the expression "issued." The dictionary meaning of the expression "issued" takes in the entire process of sending the notice as well as the service thereof. The said word used in Section 34(1) of the Act itself was interpreted by courts to mean "served". The limited meaning, namely, "sent" will exclude from the operation of the provision a class of cases and introduce anomalies. In the circumstances, by interpretation, we accept the wider meaning the word "issued" bears. In this view, though the notices were served beyond the prescribed time, they were served under Section 4 of the Amending Act. No other point was raised before us."

After having read the discussion made by the Hon'ble Supreme Court in the aforesaid paragraphs, we are afraid any such inference can be drawn as has been canvassed by the learned counsel. On the contrary, the Hon'ble Supreme Court has given the wider meaning to the word "issued", which would take in its sweep the entire process of sending notice, as well as, service thereof.

17. Moreover, we may usefully refer to the judgment of the Hon'ble Supreme Court in the case of **Delhi Development Authority Vs. H.C.**

Khurana, 1993 (2) SLR 509 (SC), which has direct bearing on the controversy arisen in the present matters. It is the contention of Shri Joshi, learned counsel for the applicant that in the facts of the present case the judgment delivered by the Hon'ble Supreme Court in the case of **Delhi Development Authority** (cited supra) may not apply. The learned counsel submitted that in the case of **Delhi Development Authority** (cited supra) the employee very much stays in service and there is certain provision limiting his chances for promotion on the ground of issuance of the D.E. prior to or on the date of meeting of the D.P.C., whereas in the present matters there is statutory provision, which puts a limit on the power of the authority to enquire into a given delinquency taking place four years prior to date of charge-sheet. The learned counsel further submitted that applying the decision in the case of **Delhi Development Authority** (cited supra) would result in taking away the very right of the applicant from taking recourse to the provisions of rule 27(2)(b)(ii) of the Pension Rules, 1982 and to make it redundant. He further submitted that the interpretation to term "issued" would differ while interpreting one provision which is the nature of limiting the chances of government employee for promotion as against a beneficial / enabling provision which puts limit on the power of the Disciplinary Authority to enquire the charges.

18. We are however, not convinced with the arguments so advanced. The facts of two cases are never similar. The facts involved in the case of **Delhi Development Authority** (cited supra) and the present matters

may not be similar, however, in the said matter also the questions for determination of the Hon'ble Supreme Court were (a) what is the stage when it can be said that 'a decision has been taken to initiate the disciplinary proceedings?' and (b) 'what does it mean by issuance of charge-sheet.'

19. The specific issue was raised for consideration of the Hon'ble Supreme Court in the said matter '*as to what is the stage when it can be said that the decision has been taken to initiate disciplinary proceedings*'. The Hon'ble Supreme Court after having referred to its some of the earlier judgments has held that "*the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, any enquiry is held into the charges; if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision.*"

20. The learned counsel for the applicant has repeatedly asserted that the date of actual service of charge sheet on the delinquent is material and not the date of issuance of the charge-sheet. The contentions so raised by the learned counsel has to be rejected in view of the interpretation made and finding recorded by the Hon'ble Supreme Court in the case of **Delhi Development Authority** (cited supra). In the aforesaid case the Hon'ble Supreme Court has held that :-

“14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations.”

The Hon'ble Supreme Court has further clarified that :-

“15. Meanings of the 'word issued' given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; to give or send out authoritatively or officially; to send forth or deal out formally or publicly, to emit, put into circulation'. The issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purposes, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement.”

21. In the present matter the memorandum and statement of charge was prepared on 28.4.2017 and the same was forwarded to the applicant by post. The respondents have placed on record the relevant

entries of the dispatch register of the date 3.5.2017, which evinces the fact of dispatch of the charge-sheets to the applicant on the said date. It is the contention of the respondents that the applicant avoided the service of charge-sheets on him. As averred in paragraph no. 11 of the affidavit in reply filed on behalf of the respondents, at the relevant time applicant was working at Municipal Council, Latur as Executive Engineer. It is further contended that subsequent reminders dated 12.6.2017, 29.1.2018 and 14.8.2018 were issued by the Government to the Commissioner, Municipal Council, Latur, but in spite of that the representation in defense of the applicant was not received. It is further averred that memorandum was ultimately served on the applicant through the Commissioner of Police, Aurangabad. The respondents have placed on record the communications dated 12.6.2017, 29.1.2018 and 14.8.2018.

22. The applicant has filed the affidavit in rejoinder on 5.1.2022. In the rejoinder affidavit the applicant has not specifically denied or disputed the facts stated in para 10 of the affidavit in reply filed on behalf of the respondents to the effect that the charge-sheets were issued to the applicant vide memorandum dated 28.4.2017 and that the said memorandum was dispatched on 3.5.2017. Though the learned counsel for the applicant pointed out that the respondents were under an obligation to dispatch the charge-sheets by registered post, it is nowhere the case of the applicant that the charge-sheet with the memorandum was not dispatched by the respondents on 3.5.2017 and

that the respondents have falsely shown the charge-sheets to have been dispatched on 3.5.2017. It is also not the case of the applicant that the memorandums of charge are falsely shown to have been prepared on 28.4.2017 but in fact they were prepared on the date after his retirement. The un-rebutted evidence on record reveals that memorandum of charge was prepared on 28.4.2017 and was dispatched on 3.5.2017, before the date of retirement of the applicant. In the aforesaid circumstances, we are unable to accept the submission made on behalf of the applicant that the D.Es. initiated against him stand vitiated by virtue of rule 27(2)(b)(ii) of the Pension Rules, 1982. We reiterate that as held by the Hon'ble Supreme Court in the case of Delhi Development Authority (cited supra) the issue of charge-sheet means its dispatch to the Government servant, *and this act is complete the moment steps are taken for the purposes*, by framing the charge-sheet and dispatching it to the Government servant. The further fact of its actual service on the Government servant is not held necessary by the Hon'ble Supreme Court.

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

ORDER

All the three Original Applications stand dismissed without any order as to costs.

MEMBER (A)

VICE CHAIRMAN