

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
AURANGABAD BENCH, AURANGABAD**

**ORIGINAL APPLICATION NO.220 OF 2016  
(Subject : Departmental Enquiry / Pay Fixation)**

**DISTRICT : AURANGABAD**

Shri Suresh Laxmikant Moholkar, )  
R/o. Plot No.29, Rachanakar Colony, )  
Deogiri College Road, )  
AURANGABAD ) **..APPLICANT**

**VERSUS**

The State of Maharashtra, )  
The Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai 32. )  
**....RESPONDENT**

Shri Kakasaheb B. Jadhav, learned Counsel for the Applicant.  
Shri I.S. Thorat, learned Presenting Officer (P.O.) for the  
Respondent.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN  
SHRI J.D. KULKARNI, MEMBER (J)  
DATE : 18.10.2016.  
PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

## **J U D G M E N T**

1. Heard Shri Kakasaheb B. Jadhav, learned Counsel for the Applicant and Shri I.S. Thorat, learned Presenting Officer for the Respondent.

2. This O.A. has been filed by the Applicant, who retired on 31.08.2001 and who is facing a departmental enquiry for which charge sheet was issued on 26.06.2002. The Applicant is seeking quashing of D.E. against him which has not progressed for last 14 years and also which is issued in violation of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

3. Learned Counsel of the Applicant argued that the Applicant retired from Government service on superannuation on 31.08.2001. Though on the date of retirement, no D.E. was pending against him, his retiral dues were not paid. On 26.06.2002, a charge sheet was issued to him, which was quite vague. Learned Counsel for the Applicant argued that under Rule 27(3) of the Maharashtra Civil Services (Pension) Rules, 1982, no departmental proceedings can be instituted after retirement in respect of a cause of action which arose and in respect of an event which took place more than four years before such institution. Charge-sheet in the D.E. against the Applicant is dated 26.06.2002. No D.E. could be started against the Applicant for an event before 26.06.1998. However, the Respondents have deliberately framed vague charges so that the action which was taken by the Applicant during his period of posting at Nanded-Waghala Municipal

Corporation between 12.05.1997 to 09.02.1999, has been mentioned, had been mentioned, though it was possible to give the exact date on which the Applicant had recommended grant of building permission to Smt. Gangadevi Jagannath Sharma which is regarding Charge No.1. As regards charge No.2, it is alleged that in respect of two building permissions granted to Shri Nagnath Gangadhar Paldevar, development charge recovered were less, causing loss of Rs.6,36,447/- and Rs.84,649/- respectively to the Municipal Corporation. These permissions were granted on 06.06.1998, which was more than four years prior to starting D.E. Learned Counsel for the Applicant argued that D.E. has not yet been started against the Applicant. The Applicant has been denied his gratuity and regular pension. On the ground of inordinate delay also, D.E. deserves to be quashed.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that a Departmental Enquiry can be started against a retired Government servant under Rule 27 (2) (b) of M.C.S. (Pension) Rules. Accordingly, the D.E. against the Applicant has been ordered. Enquiry Officer and Presenting Officers have been appointed by order dated 01.04.2015.

5. We find that the Applicant admittedly retired on superannuation on 31.08.2001. A charge-sheet in D.E. against him was issued to him on 26.06.2002. This is admitted by the Respondent in para 5 of the affidavit-in-reply dated 14.03.2016. On going through the charge-sheet, it is seen that there are two charges against the Applicant viz. (1)

that he recommended that building permission may be granted to Smt. Gangadevi Jagannath Sharma in City S.No.1857 to 1961 in violation of Development control Rules of the Nanded-Waghala Municipal Corporation when he was working as Town Planner there during the period 12.05.1997 to 09.02.1999. In Annexure-2 of charge-sheet, no details like when the proposal of received by the Applicant, when he gave his recommendation and when the competent authority accepted his recommendations are mentioned. In fact, the date on which he recommended grant of building permission would be relevant to determine, whether a D.E. can be stated against him. Rule 27(2)(b) of M.C.S. (Pension) Rules, 1982 reads :-

*“(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.”*

6. In para 8 of the affidavit-in-reply, the Respondent has stated that Rule 27(B) [he means Rules 27(2)(b)] permits institution of a D.E. against a retired Government servant. However, this right is not unrestricted. A departmental enquiry (D.E.) can be started only if the event is less than 4 years before the date on which D.E. is started after retirement of a Government servant. In this case, the Applicant retired on 31.08.2001, D.E. was started on 26.06.2002 and the date

of event in charge no.1 is not mentioned. This charge is vague and it cannot be said that the event happened on 26.06.1998 or thereafter. As regards, charge no.2, the date of permission nos.53 and 54 is 06.06.1998, i.e. more than four years before the date of starting a D.E. No D.E. could have been started against the Applicant on 26.06.2002 regarding an event which took place on 06.06.1998. The charge No.1 is vague, does not give the exact date of the event, and charge No.2 is clearly such that it cannot be subject matter of D.E. against the Applicant. Memorandum dated 26.06.2002 starting a D.E. against the Applicant has been issued in clear violation of Rule 27(2)(b) of the M.C.S. (Pension) Rules, 1982 and it is liable to be struck down on that ground alone.

7. The Respondent in the affidavit-in-reply dated 14.03.2016 has not explained as to why no steps were taken by the Respondent till Enquiry Officer and Presenting Officer were appointed by order dated 01.04.2015. On the date of filing affidavit-in-reply dated 14.03.2016, the D.E. was not completed. Hon'ble Supreme Court has held in the case of **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board (AIR 2006 SC 2007)** that if there is inordinate delay in conducting a D.E. against a retired Government servant, it can be quashed. On that basis also this O.A. deserves to be allowed.

8. Having regard to the aforesaid facts and circumstances of the case, memorandum dated 26.06.2002, starting a D.E. against the Applicant is quashed and set aside. The Respondents are directed to pay all retiral due of the

Applicant, not already paid to him within a period of 3 months from the date of this order. The Applicant's pension may be appropriately revised in accordance with the recommendation of the 6<sup>th</sup> Pay Commission.

9. As no D.E. was pending against the Applicant on the day of his retirement, he was eligible to get all his retrial benefits from the date of his retirement on 31.08.2001. It also transpires that D.E. was initiated against him in violation of Rule 27(2)(b) of M.C.S. (Pension) Rules, 1982. The Applicant is clearly eligible for interest on delayed payment of his retiral dues as per the relevant rules. These dues should also be paid to him within the period of 3 months from the date of this order. This O.A. is allowed accordingly with no order as to costs.

**(J.D. KULKARNI)**  
**MEMBER(J)**

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Mumbai**  
**Date : 18.10.2016**  
**Typed by : PRK**