

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 773 OF 2019

DISTRICT : SATARA

Shri Chandrakant M. Rupanwar)
Occ – Retd Auditor, Grade-I,)
R/o: Shabari Apartment, Flat no. 1)
Sanjeev Rajeev Nagar, Phaltan,)
Satara 415 523.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Cooperation Department,)
Mantralaya, Mumbai 400 032.)
2. Shri Tushar M Kakade,)
Divisional Jt. Registrar of)
Cooperative Society,)
Plot No. M-4, Shri Shahu Market)
Yard, Behind Post Office,)
Kolhapur 416 005.)
Registrar of Cooperative Society,)
M.S., Central Building,)
Kolhapur.)
3. Shri D.B Patil,)
Enquiry Officer,)
District Special Auditor, Class-I,)
Cooperative Society,)

Central Administrative Bldg,)
Raman Mala, Kasba Bawada Rd,)
Kolhapur 416203.)...**Respondents**

Shri R.M Kolge, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **03.03.2023**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant was appointed as Sub Auditor on 8.5.1996 and came to be promoted as Auditor Grade-II. Thereafter he was promoted as Auditor Grade-I (Class-III) on 8.8.2008 and retired on superannuation on 30.6.2018 as Auditor Grade-I. He challenged the departmental enquiry against him in this Original Application.

2. Ld. Advocate for the applicant has submitted that when the applicant was in service a charge sheet dated 22.8.2017 was served on him on account of 3 charges of misconduct viz.

(i) He has not completed and kept pending the audit of society, namely, Malojiraje Cooperative Society Ltd., Phaltan for the period 1.4.2005 to 31.3.2014 till June, 2017 and hence he is held liable under Rule 3(1)(iii) of MCS (Conduct) Rules, 1979.

(ii) He intentionally avoided to complete the audit of the said society of the period 1.4.2005 to 31.3.2014.

(iii) Though he has taken help of other auditors the time spent for this work was more than stipulated time and he did not complete the audit within stipulated period.

3. Learned Advocate has stated that the applicant filed his written statement dated 7.9.2017 to the charge sheet and submitted the report on 30.8.2017. Mr D.B. Patil was appointed as enquiry officer on 14.11.2017. Learned Advocate has submitted that there was no progress in the Departmental Enquiry (DE) for two years and therefore the applicant has filed the present OA on 7.8.2019. Learned Advocate has submitted that 3 witnesses are examined till today.

4. Learned Advocate for the applicant relies on the judgment and order dated 3.2.2022 passed by the Aurangabad Bench of this Tribunal in **OA No.352 of 2021, Shri Krishna Gulab Jadhav Vs. The State of Maharashtra & Ors.** Learned advocate Mr Kolge has submitted that the M.A.T, Aurangabad Bench has allowed the said Original Application on account of inordinate delay. Learned advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in the case of **Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr., AIR 2016 SCC 101.** Learned advocate for the applicant has argued that in **Prem Nath Bali's** case (supra), the Hon'ble Supreme Court has held that the enquiry shall not go beyond one year. Learned advocate for the applicant further relied on the G.R dated 19.4.1979, issued by General Administration Department. In the said G.R the Government has mentioned that the stipulated period for completing the departmental enquiry should be considered as six months.

5. Per contra, Ld. CPO has submitted that till February, 2020 the matter was placed on 7 dates for hearing and though witnesses were present, the enquiry was adjourned on account of absence of the delinquent officer.

6. In the case of **Shri Krishna Gulab Jadhavm** (supra), on 30.5.2014 enquiry was instituted by issuing charge sheet and the enquiry officer submitted his report on 31.12.2016 and the applicant has submitted his say and thereafter there was no progress. So, there was delay of more than 7 years in concluding the enquiry. In the said case Division Bench has relied on the judgment of the Hon'ble Supreme Court in the case of **Prem Nath Bali's case** (supra) wherein Hon'ble Supreme Court held that enquiry shall be completed within stipulated period as prescribed in the rules and if it was not completed then for due reasons the time is to be extended for completion of the enquiry. However, the said period shall not be extended beyond one year thereafter.

7. We have perused the G.R dated 19.4.1979. In the said G.R, it is mentioned that if the departmental enquiry is not completed beyond a period of one year, then for extension of time the proposal should be submitted by the Enquiry Officer and Disciplinary Authority concerned in the Proforma contained in Appendix-II to this Circular to the competent authority and the authorities competent grant extension of time limit should carefully examine the proposal and grant extension of the minimum period required. It is not disputed that the departmental enquiry shall be conducted within a span preferably within six months and not beyond the period of one year as held in **Prem Nath Bali's case** (supra). The G.R dated 19.4.1979 facilitates the extension of time beyond one year. However, in the said G.R, in Appendix-II a specific procedure for getting time extended is laid down. It is a sorry state of affair that till today in the matters we have dealt with in any matter of Departmental Enquiry, we have not come across any department in the State of Maharashtra, following the G.R dated 19.4.1979. It is necessary for all the Departments to follow their own G.Rs issued by the General

Administration Department. We are constrained to state that there are serious offences, grave misconduct, which is required to be inquired into within the stipulated period of one year to maintain discipline and transparency in the administration. So also, if there are minor charges or the enquiry is initiated either on account of ignorance of law, procedure and facts or due to malice, then a person who is innocent should not suffer for years together because of lethargy, negligence and inert attitude. In both the situations, if the enquiry is delayed, then it has serious repercussion on the morale of the civil servants, which is the key factor of administration.

8. In the present case, we have considered the chronology of events. The charge sheet was issued on 22.8.2017. The applicant is facing the charge of not doing his duty of audit of the Society well within time. We don't agree with the submissions of the learned advocate for the applicant that the charges are minor. We do not want to comment on it at this stage. However, we say that Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, cannot be relied in the present case, as the departmental enquiry has been instituted in the year 2017, i.e., before the applicant retired. Similarly, it submitted that the applicant is not getting pension. The applicant is entitled to get provisional pension during the pendency of departmental enquiry after his retirement. However, as per submissions at the Bar, we are informed that the applicant himself has refused to accept the provisional pension. Under Rule 27(4) (4), the Government has power to withhold portion of the Pension pending departmental enquiry. On account of Covid-19 Pandemic from March, 2020, as the departmental enquiry was not conducted, the said period is to be curtailed. We are informed that all witnesses are examined and the Enquiry Officer has to submit the report.

9. We have considered the contentions raised by Mr Kolge, learned advocate for the applicant. We are in agreement with the learned advocate Mr Kolge that there is a delay in conducting the enquiry, especially when Respondent no. 3, the Enquiry Officer has requested Respondent no. 2 to give him time to complete the enquiry and Respondent no. 2 has directed him to complete it immediately.

10. However, we have gone through the affidavit in reply dated 11.12.2019 filed by Respondents no 1 to 3 through D.B Patil, District Special Auditor, Class-I, Cooperative Societies, Kolhapur. In para 11, it is mentioned that the matter was fixed for preliminary enquiry on 18.11.2019. However, the applicant did not remain present on that day. Thereafter, on 27.11.2019 also he remained absent and the next date of enquiry was fixed on 5.12.2019. The applicant remained present. However, the witnesses were not present before the Enquiry Officer and therefore, it was adjourned and fixed on 17.12.2019. The Rojnamas and copies of departmental enquiry notice was annexed with the affidavit in reply. Now, we are informed that all the witnesses are examined.

11. We are of the opinion that the Chief Secretary and the Principal Secretary, G.A.D, shall look into the implementation of the G.R dated 19.4.1979 in letter and spirit.

12. In view of the above, we pass the following order:-

- (i) O.A is dismissed. The Respondents are directed to complete the complete the Departmental Enquiry within three months, i.e., by 7.6.2023 including issuance of final order by the Disciplinary Authority.

- (ii) The delinquent officer to submit his final submissions on or before 10.3.2023. Thereafter, the Enquiry Officer is directed to submit his report on or before 22.3.2023. Copy of the report is to be handed over to the applicant on or before 25.3.2023. The disciplinary authority to complete all the formalities and submit his report on or before 6.6.2023.
- (iii) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 03.03.2023
Dictation taken by : A.K. Nair.