

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 318 of 2022 (D.B.)

Waman S/o Raghunath Kashikar,
aged 59 years, Occ. Retired,
R/o Basera Colony, Near H.P. Gas Godown,
Malkapur, Tq. & Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Its Principal Secretary,
Social Welfare Department, Mantralaya, Mumbai-32.
- 2) The Commissioner Social Welfare,
having its office 3, Church Road,
Maharashtra State, Pune-411001.
- 3) The Regional Deputy Commissioner,
Social Welfare Division, office at Samajik Nyay Bhavan,
Near Police Head Quarter, Amravati, Dist. Amravati.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri H.K. Pande, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 14th June,2023.

Date of Pronouncement of Judgment : 27th June,2023.

JUDGMENT

(Delivered on this 27th day of June,2023)

The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023,dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final

disposal, then regular matter pending before the Division Bench can be disposed off finally.

2. Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents. The learned counsel for both the parties have consented for final disposal and argued the matter finally.

3. The case of the applicant in short is as under –

The applicant was appointed as Senior Care Taker on 22/03/1982 and was posted at Amravati. The applicant was promoted as Junior Clerk in the year 1992. He was promoted as a Senior Clerk in the year, 2012. He was further promoted as a Social Welfare Inspector on 04/11/2018. The applicant is retired on attaining the age of superannuation on 30/11/2020, but till date the respondents have not paid the retiral benefits. He has only received the amount of G.P.F. and G.I.S. The respondents have withheld the pensionary benefits on the ground of departmental inquiry is going on against him which is absolutely incorrect. Since last more than 13 months, the applicant could not get his retiral benefits, therefore, he has approached to this Tribunal by filing O.A. No.1161/2016 which is pending. Respondent no.2 has now issued the charge sheet on 08/03/2022 initiating inquiry under Rule 8. The charge sheet

mentioned above does not state whether the permission of State Government has been sought, because, the applicant is retired on 30/11/2020. On the ground of delay and latches in issuing the charge sheet, the applicant has approached to this Tribunal. Hence, he prayed to quash and set aside the charge sheet.

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was working as a Senior Clerk in the Assistant Commissioner's office at Akola from 2009-2010 and 2012-2013. While working in the said office, the applicant illegally distributed the funds of ANM/JNM nursing course. Due to the said negligence, the applicant was placed under suspension vide order dated 16/07/2014. The charge sheet was issued to the applicant on 08/03/2022, wherein the first charge was earmarked for illegal distribution of Rs.81.85 lacs of scholarship. It is denied that the departmental inquiry was proceeded belatedly. The applicant was prosecuted for the offence punishable under sections 420,467,471,201,34,109 and 120B of the IPC. The applicant is facing departmental proceeding for aforementioned misconduct. There is no delay in issuing charge sheet initiating departmental inquiry. Hence, the O.A. is liable to be dismissed.

5. Heard Shri S.P. Palshikar, learned counsel for the applicant. As per his submission, the applicant was suspended. The

suspension was revoked and he was reinstated. The applicant is now retired on 30/11/2020. The respondents has issued charge sheet on 08/03/2022. He has pointed out the charges framed against the applicant, the charges are in respect of the misconduct of the year 2009-2010 and 2012- 2013. The learned counsel for the applicant has submitted that the applicant is retired in the year 2020. The charges are in respect of the year 2009-2010 and 2012- 2013. He has pointed out the Rule 27 (2)(B) of the Maharashtra Civil Services (Pension) Rules, 1982 which reads as under –

“(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.”

6. The incident of misconduct / charges is in respect of the year 2009-2010 and 2012- 2013. The applicant is retired in the year 2020. Therefore, it is not within four years before issuing the charge sheet. Moreover, nothing is on record to show that the respondents

have taken any sanction of the Government to initiate departmental inquiry, therefore, the charge sheet is liable to be quashed.

7. The learned counsel for the applicant Shri S.P. Palshikar has pointed out the decision of this Tribunal in O.A.No.638/2017. He has pointed out the interim order granted by the Hon'ble Bombay High Court, Bench at Nagpur bench in Writ Petition No.1362/2023, dated 03/03/2022. Para-3 of the order is reproduced as under –

“3. The contention is that the petitioner while working as Sub-Divisional Officer, Mouda discharged his duties diligently and honestly and yet, after about four years after his retirement, the petitioner was made to face a departmental enquiry on a charge which related to making of alleged excess payment by the petitioner to the project affected persons. The further contention is that the last payment was made by the petitioner to project affected persons on 25.3.2015 but the sanction for institution of departmental enquiry was granted by the appointing authority on 14.8.2019 which was after more than four years from the date on which last payment was made by the petitioner. According to the learned counsel for the petitioner, granting of such sanction for institution of departmental enquiry itself was in violation of rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982 which lays down that no departmental enquiry shall be instituted in respect of any event which took place more than four years before the institution of the departmental enquiry. Learned counsel for the petitioner also submits that even otherwise continuation of the departmental enquiry proceedings for the present is illegal as the extended time prescribed by the State Government for completion of the proceedings expired on 31.8.2021 and that thereafter no further extension of time has been granted by the State Government. Learned counsel for the petitioner submits that all these crucial aspects of the matter have been ignored by

the Maharashtra Administrative Tribunal resulting in injustice being caused to the petitioner.”

8. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Suchismita Misra Vs. High Court of Orissa & Ors.**, in the Writ Petition (Civil) No. 1042/2021, decided on 17/05/2023. The Hon'ble Supreme Court has held as under –

“ From the very scheme of Rule 7 of Rules, 1992, it needs no interpretation that in reference to the officer/employee, who stood retired from service, inquiry indeed can be initiated against him/her, provided sanction is obtained from the Government and must be during the period of 4 years before such institution and the Explanation added to the scheme of Rules makes it abundantly clear that proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant/pensioner, as the case may be.

Admittedly, in the instant case, the petitioner stood retired from service on 31.07.2021 and charge sheet was served on 11/16.10.2021 and this is for the period when the petitioner served as a Registrar from 28.06.2012 to 03.10.2015, and that it is indisputedly beyond the period of four years of such institution.

In the given facts and circumstances, in our considered view, the charge sheet served on the petitioner dated 11/16.10.2021 is in clear breach of the mandate of Rule 7 of Rules 1992.

Consequently, the writ petition succeeds and is allowed. The charge sheet dated 11/16.10.2021 and other consequential departmental proceedings initiated against the petitioner stand quashed.

The petitioner is entitled to all terminal/retiral benefits, if the same have been withheld because of pendency of the departmental inquiry, along

with interest at the rate of 9% per annum from the date it was withheld, until actually paid. No costs.”

9. The issuance of charge sheet by the respondents after about 13 years from the date of misconduct alleged is not as per the Rule 27 (2)(B) of the Maharashtra Civil Services (Pension) Rules, 1982 .

10. Hence, in view of the Rule 27 (2)(B) of the Maharashtra Civil Services (Pension) Rules, 1982, initiating the departmental inquiry while issuing charge sheet in the year 2022, when the applicant is already retired in the year 2020 and charges are in respect of the year 2009-2010 and 2012- 2013 are not legal and proper. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The charge sheet issued by the respondents dated 08/03/2022 is hereby quashed and set aside.

(iii) The respondents are directed to release all the retiral benefits to the applicant within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

Dated :- 27/06/2023.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 27/06/2023.