MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 123 of 2017

Dr. Hanumant Madhavrao Haralkar,
Aged about 70 years, Occ. Retired Government Servant
r/o Plot no.18 Saket, Dattatraya Nagar near Datta Temple,
Nagpur.

Applicant.

Versus

1) The State of Maharashtra,
through its Additional Chief Secretary
Public Health Department having its office at
Mantralaya, Mumbai-400 032.

2) Director of Health Services,
Arogya Bhawan St. George Hospital Compound
near CST, Mumbai.

Respondents

Shri S.P. Palshikar, Advocate for the applicant.

Shri A.M. Khadatkar, learned P.O. for the respondents.

Coram :- **Hon'ble Shri J.D. Kulkarni,**
Vice-Chairman (J).

JUDGEMENT

(Delivered on this 17th day of November,2017)

Heard Shri S.P. Palshikar, ld. Counsel for the applicant and Shri A.M. Khadatkar, ld. P.O. for the respondents.

2. The applicant Dr. Hanumant Madhavrao Haralkar entered the Government service as Medical Officer on 1/1/1971. He completed his MS Degree (ENT) in 1986 and was promoted as

Medical Superintendent Class-I and was posted at Rural Hospital, Satana, District Nashik in 1989. He was serving as Medical Superintendent, Rural Hospital, District Nashik from 14/09/1994 to 9/10/1996 and got retired on superannuation on 31/8/2005.

3. The incident is dated 4/10/1996 when at about 8.15 p.m. one Shri Anil Khandu Bhoi, who met an accident, was admitted for treatment in the hospital. He was seriously injured and succumbed to the injuries at about 9.15 a.m. It is stated that the said patient was treated by one Dr. Patekar and the applicant was having no concerned with the said treatment.

4. Nothing has happened from 04/10/1996 to 30/08/2005. The applicant was to retire on superannuation on 31/08/2005 and at the time of retirement he received a communication dated 30/08/2005 whereby a charge sheet was served upon the applicant. The applicant was served with only one charge and the said charge was as under :-

''उक्त डॉ. श्री. हनुमंतराव माधवराव हराळकर, तत्कालीन वैघकीय अधिक्षक, ग्रामीण रुग्णालय, सटाणा, हे दिनांक १४/९/१९९४ ते ९/१०/१९९६ या कालावधीत ग्रामीण रुग्णालय, सटाणा येथे कार्यरत असतांना त्यांनी दिनांक ४/१०/१९९६ रोजी दाखल झालेल्या श्री. अनिल खंडू भोई या अपघातग्रस्त रुग्णास वैघकीय उपचार करण्यास टाळाटाळ व निष्काळजीपणा केला. सदर रुग्णावर वेळीच औषधोपचार न केल्यामूळे रुग्णाचा मृत्यु झाला. अशाप्रकारे एक जबाबदार अधिकारी या नात्याने कर्तव्यात कसूर

करुन त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ मधील नियम ३ चे उल्लंघन केले आहे. ''

5. The applicant was surprised to receive the charge as no action was taken against him from 4/10/1996 till the date of retirement.

6. As already stated that the applicant was served with a charge sheet dated 30/8/2005. The applicant filed his reply thereon on 8/9/2005. On 19/12/2011 the Inquiry Officer submitted his report stating that no charge was proved against the applicant. On 15/4/2013 a Disciplinary Authority disagreed with the report of Inquiry Officer and a show cause notice was served on the applicant on 26/9/2013. The applicant submitted his explanation on 3/12/2013. Vide order dated 13/4/2015 the Competent Authority was pleased to take following decision :-

*''**शासन निर्णय** - महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ मधील नियम ६ अन्वये प्रदान केलेल्या शक्तीचा वापर करुन डॉ. एच.एम.हराळकर, तत्कालीन वैद्यकीय अधिक्षक यांना ग्रामीण रुग्णालय, सटाणा, जि. नाशिक यांच्या सेवानिवृत्ती वेतनातून १००% (शंभर टक्के) इतकी रक्कम कायम स्वरुपी कपात करण्यात येत आहे.*

'' या आदेशाविरुध्द अपिल करावयाचे असल्यास आदेशाची प्रत प्राप्त झाल्यापासून ४५ दिवसांच्या आत मा. राज्यपाल महोदय यांच्याकडे अपील दाखल करता येईल, असा अपिल अर्ज दाखल करतांना महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम २१ मधील उपनियम (१) व उपनियम (२)मधील कार्यपध्दती अवलंबविण्यात यावी''.

7. Being aggrieved by the order passed by the Appellate Authority as above, the applicant preferred an appeal before the

Hon'ble Governor and the Hon'ble Minister was pleased to dismiss the appeal filed by the applicant and the order of punishment of deduction of 100% pension was maintained. Being aggrieved by said order the applicant preferred this O.A. In the O.A. the applicant has prayed that the order dated 14/9/2016 passed by the Hon'ble Minister be quashed and set aside and it be declared that the applicant is entitled to get full pension from April,2006 till date.

8. During the pendency of the application, the Competent Authority issued one communication (Annex-A-12) thereby releasing the gratuity amount to the tune of Rs.2,50,000/- in favour of the applicant. However vide communication dated 31/10/2005 it was informed to the applicant that since the departmental enquiry was under process, he was not entitled to receive gratuity amount. The applicant therefore challenged the said order and has prayed for a declaration that he is entitled to get gratuity amount of Rs.2,50,000/- with interest.

9. The learned counsel for the applicant assailed the order passed by the Appellate Authority in the departmental enquiry on various aspects. He submitted that the Appellate Authority has not applied mind properly and has passed the mechanical order, maintaining the order of punishment passed by the Disciplinary Authority. It is submitted that there was tremendous delay in

conducting the inquiry which has caused great prejudice to the applicant and the applicant was harassed because of the undue delay for completion of the inquiry. The learned counsel for the applicant further submits that there is no reasonable explanation given for the delay caused in concluding the departmental enquiry. In fact no explanation has been given for such delay. The learned counsel for the applicant further submits that the applicant was allowed to retire honourably and no order was passed for continuation of the inquiry even after retirement and in any case the inquiry against the applicant does not fall within the ambit of Section 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and no financial loss has been caused by the applicant and therefore the inquiry should not have been conducted.

10. It seems from the record that the alleged incident for which the applicant has been charged with misconduct had taken place on 4/10/1996. It seems that the patient Shri Anil K. Bhoi was admitted in the Hospital on that day at about 8.15 p.m. Said Anil sustained grievous injuries in the Motor accident and he expired on the very day at 9.15 p.m., i.e., within one hour. The applicant has placed on record the documents to show that when Shri Anil Bhoi was admitted, he was grievously injured and his condition was serious and that seems to be the reason that Shr Bhoi has died within one hour of admission. But

the charge against the applicant is that when Shri Bhoi was admitted in the Hospital and a person who admitted him requested time and again to the applicant to look towards the patient, the applicant neglected to attend the patient on the ground that he was not on duty or by giving some sundry reasons for not attending the patient. It is true that not attending the patient by the applicant may not be the cause for patient's death, but it seems to be definitely negligence on the part of the applicant who was Superintendent of the Hospital to avoid attending the patient who was serious. That seems to the reasons as to why the Disciplinary Authority did not agree with the report of the Inquiry Officer. The Inquiry Officer came to the conclusion in the departmental inquiry as under :-

*'' **दोषारोप क्र.१** - या संदर्भात नमूद करण्यात येते की, साक्षीदार श्री. भास्कर जगन्नाथ सोनवणे वगळता अन्य साक्षीदारांनी अपचारी अधिकारी हे दोषी असल्याचे म्हटलेले नाही. सादरकर्ता अधिकारी यांनीही त्यांच्या निवेदनात रुग्णाची परिस्थिती लक्षात घेता डॉ.श्री. हराळकर व डॉ.श्री. पाटेकर यांचा दोष होवू शकत नाही असे नमूद केलेले आहे. एकंदरीत प्रकरणातील पुरावे, सादरकर्ता अधिकारी यांचे निवेदन व अपचारी अधिकरी यांचे अंतिम बचावाचे निवेदन विचारात घेता अपचारी अधिकारी यांचे विरुध्द निर्धारित केलेला दोषारोप क्र. १ सिध्द होत नाही.*

***दोषारोप क्र.२** - वरील अनुक्रमांक १ मध्ये नमूद केल्याप्रमाणे उपलब्ध पुरावे व सर्व संबंधीतांचे निवेदन विचारात घेता दोषारोप क्र. २ सिध्द होत नाही.''*

11. From the aforesaid findings, it is clear that one Bhaskar J. Sonwane blamed the applicant that he neglected the patient, but no other witnesses supported the allegations against the applicant.

12. The Competent Authority passed the order on 15/04/2013 and observed in the order that the applicant stated that he was not on duty and that he has not concerned with the patient and therefore he will not look after the patient. Not only that the applicant left the Hospital. If the attitude of the applicant as such is admitted, then definitely it is a negligence on the part of Superintendent of the Hospital. Whether the patient would have been survived or not, is not the question to be considered, but the fact remains that the applicant seems to have been negligent in attending the patient. However that itself will not mean that the Disciplinary Authority and Appellate Authority should have deducted 100% pension amount of the applicant. Thus considering all these aspects on merits, I feel that the order passed by the Disciplinary Authority as well as Appellate Authority in deducting 100% pension of the applicant for the charge, as already stated, is definitely not proportionate or in other terms can be said to be absolutely disproportionate. However, this cannot be the only aspect to be considered in this case. The other facts are to be considered while considering the punishment given to the applicant in the departmental inquiry.

13. As already stated the incident for which the negligence has been attributed to the applicant is dated 4/10/1996. In spite such incident the applicant continued to work as Superintendent in the

Rural Hospital till the date of retirement on 31/8/2005. The respondent authorities did not take any action against the applicant from 4/10/1996 to 30/8/2005, i.e., almost for 9 years and thereafter all of a sudden served the charge sheet on the applicant on the last date of his retirement i.e. on 30/8/2005. The said inquiry continued from August, 2005 till the applicant was punished on 13/4/2015. Thus even after initiation of departmental enquiry, the inquiry continued for about almost 10 years. Thus for incident which alleged to have taken placed on 4/10/1996, punishment is inflicted for the first time on 13/4/2015, i.e., after about 19 years.

14. The learned counsel for the applicant has invited my attention to the Judgment delivered by the Hon'ble Apex Court in the case of **P.V. Mahadevan Vs. MD, T.N. Housing Board in (2005) 6 SCC,636**. In the said case there was delay for initiation of departmental inquiry. Inordinate delay was of 10 years and no convincing explanation was given by the respondent employer in respect of such delay. It was observed by the Hon'ble Apex Court that in the circumstances of the case, allowing respondent to proceed further with departmental proceedings at this distance of time would be very prejudicial to appellant. It was also observed that the appellant has already suffered enough and more on account of the disciplinary proceedings and hence charge memo issued against him

was quashed and departmental enquiry was put to an end. It was also observed that appellant was entitled to all retiral benefits.

15. The learned counsel for the applicant also placed reliance on the case of **State of A.P. Vs. N. Radhakishan reported in (1998) 4 SCC,154**. In the said case it was held that unexplained delay in conclusion of the proceeding itself is an indication of prejudice caused to the employee and therefore the departmental proceedings were quashed.

16. The learned counsel for the applicant submits that the respondents have nowhere explained that the delay caused in initiating departmental inquiry against the applicant. I have perused the reply-affidavit filed by the respondents and it is material to note that the respondents even did not try to explain as to why there was tremendous delay of 9 years in serving the charge sheet on the applicant and thereafter concluding the proceedings in further 10 years. In view of these circumstances the appellant was required to face departmental inquiry for a period of about 19 years and particularly when no action was taken against him for about 9 years from the date of alleged incident and all of a sudden a charge sheet was served on him on the last date of retirement, it must be held that the applicant must have caused tremendous prejudice and agony for such departmental trial and this circumstance ought to have been

considered by the Disciplinary Authority as well as Appellate Authority while inflicting the punishment of deduction of 100% pension of the applicant.

17. The learned counsel for the applicant submits that the applicant was allowed to retire honourably and no order has been passed by the competent authority for continuation of the departmental inquiry against the applicant and therefore departmental proceedings should have been quashed on this point only. In support of his claim the learned counsel for the applicant placed reliance on the Judgment reported in O.A.No.140/2015 in the case of **Ashok R. Bhopale Vs. State of Maharashtra & Ors.,** decided on 15/05/2017 by this Tribunal at its Nagpur Bench. In the said case this Tribunal has observed in para nos. 19, 20 & 21 as under by giving a reference to the case decided by the Hon'ble High Court in **Madanlal Sharma Vs. State of Maharashtra and Ors. reported in 2004 (1) Mh.L.J.,581**. The said observations are as under :-

"19. The impugned order whereby the punishment of 25% pension amount has been deducted permanently is dated 23/1/2013. It is stated that the said pension has been deducted with retrospective effect. However the question is whether any peculiar loss has been caused to the Govt. or not. As per Rule 27 (1) of the Pension Rules, as cited supra, the recovery from pension can be for whole or part of any peculiar loss caused to the Government and therefore it is

necessary to first consider as to whether there was peculiar loss to the Government and if it was there what was the exact loss caused and only that loss can be recovered.

20. The learned counsel for the applicant submits that the charge sheet has been served on the applicant on 6/7/2004, i.e., just some days prior to his retirement. The Inquiry Officer was appointed on 24/6/2008 and the inquiry report was submitted on 30/8/2010 and vide impugned order, it has been directed that his 25% pension amount will be deducted. The said order is dated 23/1/2013. In the meantime, the applicant was allowed to retire on superannuation on 31/7/2004. The respondents did not pass any order whereby the inquiry was to be continued even after retirement and such order is necessary.

21. The learned counsel for the applicant has placed reliance on the Judgment delivered by the Hon'ble High Court of Bombay in the case of **Madanlal Sharma Vs. State of Maharashtra and ors**., reported in **2004 (1) Mh.L.J.,581**. In the said case the Hon'ble Bombay High Court has held that in case of an inquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the inquiry proceeding shall be continued even after he had attended the age on superannuation, lest it shall be presumed that the inquiry came to an end and the delinquent was allowed to retire honourably. On reaching the age on superannuation, the retirement is automatic unless the competent authority passes an order otherwise. In Para-21 of the Judgment, the Hon'ble High Court has observed as under :-

> " (21) As per the provisions of Rule 10(1) of the Pension Rules. the petitioner attained the age of superannuation on 11th

October, 1984 and he stood retired on superannuation on 31st October, 1984 (on attaining the age of 58 years). This retirement on reaching the age of superannuation is automatic unless an order of extension is passed by the competent authority. The retention of the petitioner in the Government service was never ordered by the competent authority by invoking the powers under Rule 12 of the Pension Rules. It is also well known that, in case, the Government servant has been charged of causing loss to the exchequer, misappropriation of funds, falsification of record or any such serious misconduct, the disciplinary enquiry could be continued or initiated even after reaching the age of superannuation. In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the enquiry proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably. On reaching the age of superannuation, the retirement is automatic unless the competent authority passes an order otherwise. This is one more reason of the order of dismissal dated 6-1-1987 being illegal and void ab initio".

18. Thus from the discussion in forgoing paras, it will be crystal clear that the competent authority conducted the departmental inquiry under presumption as if that the applicant was responsible for the death of patient Mr. Anil K. Bhoi. The respondent authorities have not taken any action against the applicant for about 9 years and thereafter initiated the departmental inquiry on the last day of

retirement. The respondent did not pass any order for continuation of the inquiry and allowed the applicant to retire on superannuation honourably and thereafter the trial continued for about 10 years. All these aspects have not been considered and therefore the order passed by the Disciplinary Authority dated 13/4/2015 and the order passed by the Appellate Authority on 14/9/2016 cannot be said to be legal and proper and hence those orders stands quashed and set aside and hence the following order :-

ORDER

(i) The application is allowed in terms of prayer clause 8 (i) and 8 (ii) and amended prayer clause no. 8 (i) (a).

(ii) The respondents are directed to refund the amount of gratuity to the applicant within three months from the date of this order, failing which the applicant will be entitled to claim interest as per Maharashtra Civil Services (Pension) Rules, 1982 by filing representation to that effect. No order as to costs.