MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 140 of 2015

Ashok S/o Rajaram Bhopale,
Aged about 68 years,
Occupation : Retired,
R/o Ramashraya Apartment,
Adarsha Colony, Akola.

Applicant.

Versus

1) The State of Maharashtra,
Through its Additional Chief Secretary,
Public Health Department (Service-4),
Mantralaya, Mumbai-32.

2) Director,
Public Health Services,
Arogya Bhawan, near CST, Mumbai.

3) Deputy Director,
Public Health Services,
Nagpur Division, Nagpur.

4) The Accountant General (A&E)-II,
Maharashtra having its office at Civil Lines,
Nagpur.

Respondents

Mr. S.P. Palshikar, N.S. Warulkar, Advs. for the applicant.

Shri M.I. Khan, ld. P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 15th day of May,2017)

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

2. The applicant Shri Ashok R. Bhopale was serving as a District Civil Surgeon. He was selected through MPSC as a Medical Officer, Group-2, Grade-A and joined the services on 5/1/1977. Thereafter he was selected as District Civil Surgeon, Group-A through MPSC and till the retirement worked as such. He got retired on superannuation on 31/7/2004.

3. The charges against the applicant and the conclusion drawn by the Inquiry Officer on such charges are as under :

"<u>दोषारोप बाब १</u> - स्वीय प्रपंचीमधून रुग्णलयाच्या जमा होणा-या फीच्या रकमेतून रु. ५,०६,४९१/- इतर रुग्णालयीन खर्चासाठी रु.६७,७९२/- वाहन दुरुस्तीवर रु. ४,९४,७६१/- कार्यालयीन बाबीसाठी मिळून एकूण रु. १०,६९,०४४/- इतका खर्च केला. मार्गदर्शक तत्वानूसार तो खर्च करण्यास ते सक्षम नाहीत तसेच वरील रक्कम स्वीय प्रपंची खात्यात जमा न करता परस्पर खर्च केलेला आहे.

<u>दोषारोप बाब २</u> - स्वीय प्रपंची खात्यामधून रु.१०,३९,०७०/- इतका खर्च गरीब रुग्ण संदर्भ सेवा/ रुग्णालयीन सेवा/ रुग्णालयीन सुविधा, आहार खर्च, विहीरीतील गाळ काढणे इ. साठी रु. ४,८८,०९३/- इतका व दिनांक २८/०६/२००१ रोजी रुग्णालयीन सुविधा, किरकोळ खर्च, औषधी खर्च यासाठी रु.२,२४,७३२/- इतका स्वीय प्रपंचीमधून मार्गदर्शक तत्वानूसार अनूज्ञेय नसणारा खर्च केला.

<u>दोषारोप बाब ३</u> - शासनाचा जमा झालेला महसूल कोणत्याही परिस्थितीत प्राप्त झालेल्या दिनांकापासून दोन दिवसात कोषागारात भरणा करणे अनिवार्य असतानाही कार्यालयातील महसूलाचा

दिनांक १/५/२००१ ते ३०/४/२००२ पर्यंत रु.७,७०,७०१/- इतक्या रकमेचा कोषागारामध्ये विलंबाने भरणा झाला. दिनांक १०/०७/२००२ ते दिनांक ३०/०९/२००२ या कालावधीत जमा झालेल्या रुग्णालयीन शुल्काची रक्कम रु. २,१४,४४८/- रोखपालाकडे वेळेत जमा न झाल्यामूळे सदर रकमेचा तात्पुरता अपहार झाल्याचे सकृत दर्शनी दिसून येते.

दोषारोप बाब ४ - रोकड रकमेतून तात्पुरते अग्रीम देण्याची नियमात तरतूद नसताना श्री. झासकर, क. लि. व इतर कर्मचारी यांना रु.५,२७,१०५/- इतकी रक्कम अग्रीम म्हणून दिली त्यापैकी श्री. झासकर, क.लि. यांना रु.३,२७,२७५/- इतक्या मोठया प्रमाणात अग्रीम म्हून दिली. तथापि, त्यांची देयके प्राप्त करुन घेतली नाहीत अथवा वेळोवेळी समायोजित करुन घेतली नाही व त्याचा हिशोब न घेता शासकीय रकमेचा अपहार केला आहे.

दोषारोप बाब ५ - शासन निर्णयानुसार दरपत्रकाच्या आधारे खरेदी रु.५०,०००/- च्या मर्यादिपर्यंत मान्यता आहे. तसेच रु.५०,०००/- चे खरेदीसाठी निविदा मागविणे आवश्यक असतांना त्यांनी ठराविक स्थानिक पुरवठादारांकडून दरपत्रके मागवून रु.२,६४,७६०/- इतक्या रकमेची औषधे खरेदी केली व दरपत्रके न मागविता रु. १०००/- चे आतील देयकाव्दारे रु.५,०४,५९२/- इतक्या रकमेची पृथकरित्या स्थानिक बाजारातून थेट खरेदी केल्यामुळे नियमाचे उल्लंघन झाले आहे.

दोषारोप बाब ६ - औषध खरेदीपोटी पुरवठादारांना जादा रक्कम अदा केल्यामुळे शासनाचे रु. ११,६१९/- इतके आर्थिक नुकसान झाले.

दोषारोप बाब ७ - रु. ७,६९,३५२/- इतक्या रकमेच्या औषधांची खरेदी स्थानिकरित्या केली. प्रस्तुत औषधे त्यांनी अनुदान उपलब्ध असतांनाही वेळीच दर संविदेवरील किंवा शासकीय संस्थांकडून न करता तसेच जीव रक्षक औषधे नसतांनाही त्यांची स्थानिकरित्या खरेदी केली.

दोषारोप बाब ८ - दिनांक २६/०७/२००२ या एकाच दिवसी रु.५,१५,४५०/- इतक्या रकमेची सर्जिकल उपकरणे वेगवेगळया आदेशान्वये दरपत्रके मागवून खरेदी केली. त्याचप्रमाणे दिनांक २२/०८/२००२ ते दिनांक २६/०८/२००२ या पाच दिवसांच्या कालावधीत रु. ६,७४,५३०/- इतक्या रकमेच्या सर्जिकल साहित्याची खरेदी केली. वास्तविक रु.५०,०००/- वरील खरेदी ही जाहीर निविदा मागवून करणे आवश्यक असतांना त्यांनी सदरहू खरेदी तुकडे पाडून दरपत्रकाव्दारे केली.

दोषारोप बाब ९ - दिनांक २५/७/२००२ रोजी रु. १३,५००/- इतक्या किंमतीच्या ३०० स्पिरीटच्या बाटल्या स्थानिकरित्या खरेदी केल्या. स्थानिक बाजारात स्पिरिटच्या बाटलीची किंमत रु.३५/- प्रती

बाटली असतांना रु.४५/- प्रती बाटलीप्रमाणे चढया भावाने खरेदी केल्यामुळे शासनाचे रु.३,०००/- एवढे नुकसान झाले आहे.

प्रस्तुत प्रकरणी संदर्भाधीन क्र.४ च्या आदेशान्वये श्री.ए.ए. खान, यांची चौकशी अधिकारी (कंत्राटी) म्हणून नेमणूक करण्यात आली. संदर्भाधीन क्र. ५ च्या आदेशान्वये चौकशी अधिकारी (कंत्राटी) यांनी त्यांचा चौकशी अहवाल शासनास सादर केला असून त्यामध्ये डॉ. भोपाळे यांच्याविरुध्दचे ८ दोषारोप सिध्द होत असून १ दोषारोप सिध्द होत नसल्याचा निष्कर्ष काढला आहे. चौकशी अधिका-यांच्या चौकशी अहवालातील निष्कर्ष विचारात घेवून डॉ. भोपाळे यांना त्यांच्या निवृत्तीवेतनातून कायम स्वरुपी २५ टक्के कपात करण्याची शिक्षा का देण्यात येवू नये याबाबत दुसरी कारणे दाखवा नोटीस संदर्भाधीन क्र. ६ च्या आदेशान्वये बजावण्यात आली. सदर नोटीसीच्या अनुषंगाने डॉ. भोपाळे यांनी त्यांचे अभिवेदन संदर्भाधीन क्र. ७ च्या पत्रान्वये सादर केले असून त्यामध्ये त्यांनी शासनाकडून अपुरे अनुदान प्राप्त झाल्याने स्वीयप्रपंची खात्यातून रुग्णसेवेकरीताच हा खर्च करण्यात आल ाआहे. हा प्रकार अपहार नसून आर्थिक अनियमितता आहे. संचालक, आरोग्य सेवा, मुंबई व विभागीय उपसंचालक, यांचे व्यवस्थित नियंत्रण व मार्गदर्शन नसल्याने अशी अनियमितता झाली असल्याचे नमूद केले आहे. डॉ. भोपाळे यांनी केलेले अभिवेदन स्विकाहार्य नसल्याने डॉ. भोपाळे यांना वरीलप्रमाणे प्रस्तावित केलेली शिक्षा करण्याची महाराष्ट्र लोकसेवा आयोगाचे अभिप्राय घेण्यात आले असता प्रस्तावित शिक्षेस सहमती दिली असून त्यानुसार डॉ. भोपाळे यांच्यावरील दोषारोपांबाबत चौकशी अधिका-यांचे निष्कर्ष, डॉ. भोपाळे यांचे त्वरील अभिवेदन व महाराष्ट्र लोकसेवा आयोगाची सहमती विचारात घेवून शासनाने खालीलप्रमाणे निर्णय घेता आहे.

<u>निर्णय</u> - महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम,१९७९ मधील नियम ६अन्वये प्रदान केलेल्या शक्तीचा वापर करुन डॉ. अशोक आर. भोपाळे, (सेवानिवृत्त) तत्कालीन जिल्हा शल्य चिकित्सक, सामान्य रुग्णालय, अकोला हे यांच्या विरुध्दच्या विभागीय चौकशीमध्ये दोषी आढळून आले असून महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम,१९८२ च्या नियम २७ (१) अन्वये त्यांच्या निवृत्तीवेतनातून कायम स्वरुपी २५ टक्के कपात करण्याची शिक्षा देण्यात येत आहे.

<u>दोषारोपासंबंधीत निष्कर्ष</u>

१) <u>दोषारोप बाब क्र.१</u> -

शासन निर्णय दिनांक ६/११/१९९९ अन्वये निर्गमीत करण्यात आलेल्या मार्गदर्शक तत्वानूसार प्रपंची खात्यातून खर्च करण्यात आला नसून त्यातील नमूद बाबींच्या व्यतिरिक्त खर्च करण्यात आला आहे. मार्गदर्शक तत्वांचे पालन केले नाही. फी च्या माध्यमातून आलेली रक्कम

संबंधीत खात्यात जमा न करता परस्पर खर्च केला आहे. त्यामुळे अपचारी यांचेकडून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ मधिल नियम ३ चे उल्लंघन झाल्याचे सिध्द होत असल्यामुळे सदर दोषारोप सिध्द होतो असा माझा निष्कर्ष आहे.

२) दोषारोप बाब क्र.२ -

शासन निर्णय दिनांक ६/११/१९९९ अन्वये ठरवून दिलेल्या मार्गदर्शक तत्वानुसार खर्च करण्यात आला नाही. त्या व्यतिरिक्त बाबींवर खर्च केल्याचे चौकशीत आढळून आले, तसेच साक्षीदारांनी सुध्दा याला पुष्टी दिली आहे. त्यामुळे अपचारी यांचेकडून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

३) दोषारोप बाब क्र.३ -

मुंबई वित्तीय नियम १९६८ व १९५९ कलम (१) नुसार शासनाचा जमा झालेला महसूल प्राप्त झालेल्या दिनांकापासून दोन दिवसात कोषागारात जमा करावा लागतो. अपचारी यांचेकडून वेळेच्या आंत भरणा करण्यात आला नाही. त्यामुळे तात्पुरत्या अपहार झाल्याचे दिसून येते. या कामात अपचारी यांचेकडून कसूर व दिरंगाई झालेली आहे. साक्षीदारांनी सुध्दा मान्य केले आहे. त्यामुळे अपचारी यांचेकडून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

४) दोषारोप बाब क्र.४ -

अपचारी अधिकारी यांनी उपलब्ध रोकड रकमेतून तात्पूरते अग्रीम दिले आहे. तात्पुरते अग्रीम देण्याची नियमात कोणतीही तरतूद नाही. नियमाला डावलून अग्रीम दिले आहे. त्यांनी या कामात कसूर व दुर्लक्ष केल्यामुळे रकमेचा अपहार झाला, असे सिध्द होते. त्यामुळे अपचारी यांचेकडून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम, १९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

५) दोषारोप बाब क्र.५ -

उघोग, उर्जा व कामगार विभाग यांचे शासन निर्णय भाखक १०८८/(२५१२)/उघोग-६, दिनांक २/१/१९९२ व दिनांक १६/८/१९९३ नुसार खरेदी रु. ५०,०००/- च्या मर्यादिपर्यत मान्यता आहे. नियमास डावलून वित्तीय अधिकारी कक्षेच्या बाहेर

जावून खरेदी करुन नियमांचा भंग केलेला आहे. अशाप्रकारे कसूर केल्यामूळे महाराष्ट्र आकस्मिक खर्च नियम,१९६५ च्या नियम १७४ चे उल्लंघन झाले असून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम,१९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

६) दोषारोप बाब क्र.६ -

अपचारी अधिकारी हे कार्यालय प्रमुख असून त्यांनी पर्यवेक्षकीय कामात कसूर केला आहे. त्यामूळे शासनाचे रु.११,६१९/- एवढया रकमेचे आर्थीक नुकसान झालेले आहे. त्यामुळे अपचारी यांचेकडून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम,१९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

(७) दोषारोप बाब क्र.७ -

अपचारी अधिकारी यांनी शासन निर्णय दिनांक २/१/१९९२ मधील सुचनांचे पालन केले नाही. त्यामुळे औषधे खरेदीमध्ये कसूर करुन अनियमितता झाली असल्याने महाराष्ट्र नागरी सेवा (वर्तणुक) नियम,१९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

८) दोषारोप बाब क्र.८ -

अपचारी अधिकारी यांनी शासन निर्णयानुसार निर्गमीत केलेल्या मार्गदर्शक तत्वानुसार खरेदी केली नाही. त्यामुळे खरेदीत अनियमितता झाल्याचे चौकशीत स्पष्ट झाले असल्याने अपचारी यांचेकडून महाराष्ट्र नागरी सेवा (वर्तणुक) नियम,१९७९ मधिल नियम ३ चा भंग झाला आहे, हे सिध्द होत असल्याने सदर दोषारोप सिध्द होतो, असा माझा निष्कर्ष आहे.

९) दोषारोप बाब क्र.९ -

या दोषारोपाच्या संदर्भात लेखी पुरावा नाही. अपचारी यांनी केलेला खुलासा योग्य वाटतो. माझ्या मते शासनाचे आर्थिक नुकसान झाले नाही व कोणत्याही नियमाचा भंग झाल्याचे दिसुन आले नाही. करीता सदर दोषारोप सिध्द होत नाही, असा माझा निष्कर्ष आहे. ''

4. During the service period of the applicant there was audit of the district in respect of purchase of medicines, medical equipments

and other financial matters. The audit was for the period from 13/1/2003 to 19/1/2003. The audit report was sent to the District Civil Surgeon and it was to be complied within one month. In the meantime the applicant was transferred from Akola. According to the applicant, one Dr. Vasant Bagadi and Salunkey with revengeful attitude initiated the departmental enquiry against the applicant and accordingly the charge sheet was served on the applicant on 6/7/2004 i.e. just some days prior to his retirement. It is material to note that no Enquiry Officer was appointed till 24/6/2008. The Enquiry Officer submitted his report on 30/8/2010. The said report was served on the applicant by way of first show cause notice on 26/9/2011 whereby the applicant was asked to explain as to why 10% of amount from his salary should not be deducted. The applicant gave detailed reply to said show cause notice. The copy of the reply is at P.B. page nos. 124 to 127 (both inclusive) Surprisingly, the applicant received second show cause notice on 11/10/2012 whereby he was asked to explain as to why 25% of the pension amount shall not be deducted from his pay. The applicant replied to the said notice and the copy of his reply is at P.B. page nos. 132 to 136 (both inclusive).

5. The respondents served the impugned notice to the applicant on 23/1/2013 whereby the following decision has been taken.

" **निर्णय** - महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम,१९७९ मधील नियम ६ अन्वये प्रदान केलेल्या शक्तीचा वापर करुन डॉ. अशोक आर. भोपाळे, (सेवानिवृत्त) तत्कालीन जिल्हा शल्य चिकित्सक, सामान्य रुग्णालय, अकोला हे यांच्याविरुध्दच्या विभागीय चौकशीमध्ये दोषी आढळून आले असून महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम,१९८२ च्या नियम २७ (१) अन्वये त्यांच्या निवृत्तीवेतनातून कायम स्वरुपी २५ टक्के कपात करण्याची शिक्षा देण्यात येत आहे."

6. According to applicant, the communication dated 23/1/2013 whereby 25% of the pension of the applicant has been deducted retrospectively is illegal and bad in law. The applicant is claiming the declaration that he is entitled to full pension from August,2004 till 23/1/2013 along with interest @ 18% p.a. and hence this O.A.

7. The respondents stated that the applicant while working as District Civil Surgeon at General Hospital, Akola during the period from 18/6/1996 to 27/6/2001 and 14/5/2002 to 31/3/2003 was the Head of the District Hospital. He spent certain Government amount for medicine, medical equipment, repairing of vehicle hospital, expenses on telephone etc. without instruction or without permission of the concerning authority and in blatant violation of mandatory rules and relevant norms. He illegally spent the amount for sundry expenses. He was placed under suspension vide order dated 4/4/2004 and was reinstated and due departmental enquiry was

initiated against the applicant and enquiry report dated 24/6/2006 is based on sufficient and reliable evidence, the charges of the applicant are proved and they are very serious and grave. The respondents therefore justified the order of punishment. .

8. The respondent no.4 also filed reply-affidavit and submitted that there was no need to implead respondent no.4 as it has nothing to do it enquiry conducted against the applicant.

9. The applicant filed rejoinder and placed on record some documents which he received under RTI Act. It is stated that perusal of those documents show that there was no financial loss to the State Exchequer and the show cause notices issued to the applicant are without application of mind. It is stated that retrospective deduction is also illegal.

10. The learned P.O. submits that the applicant has not challenged the enquiry report and therefore the applicant now cannot say that the inquiry was arbitrary or that no principles of natural justice have been followed. I have perused the inquiry report as well as the defence taken by the applicant in inquiry. There are no averments that an opportunity was not given to the applicant for defending him during departmental enquiry. It is to be noted that the applicant in this case was in service when the charge sheet was served on him on 6/7/2004 and immediately within few dates i.e. on 31/7/2004 the

applicant got retired on superannuation. The applicant was allowed to retire. The learned counsel for the applicant submits that no sanction of the Competent Authority was obtained for continuation of the enquiry as per Rule 27 of the Maharashtra Civil Services (Pension) Rules,1982 (hereinafter referred as "Pension Rules"). However in the present case it is material to note that the charge sheet was served on the applicant before his retirement. Rule 27 (1) to (3) of the Pension Rules states as under :-

> " **27. Right of Government to withhold or withdraw pension**
>
> (I) Government may, by order in writing, withhold or withdraw
> a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:
> Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview: Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.
>
> (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 re-employment, 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)No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution".

11. The aforesaid provisions clearly state that if the departmental proceedings are not instituted before retirement, the same shall not be instituted without the sanction of the Govt. Admittedly in the present case the charge sheet was served before retirement of the applicant.

12. The learned counsel for the applicant submits that even accepting the fact that the inquiry report was served on the applicant and an opportunity was given to the applicant by issuing show cause notice as to why the action should not be taken against the applicant, it is material to note that in both the show cause notices the

respondents straight way came to the conclusion that they have to inflict punishment on the applicant. I have perused the show cause notices given by the respondents to the applicant.

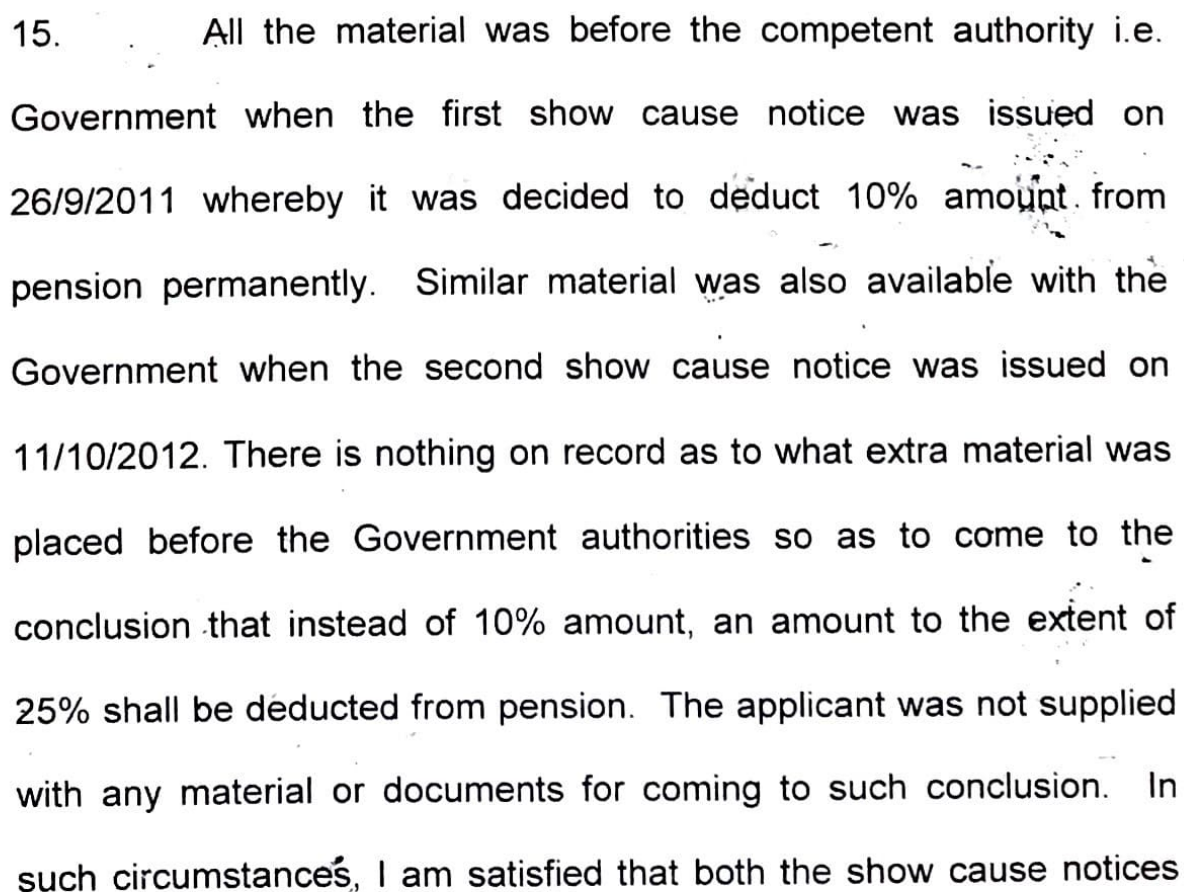
13. The first show cause notice is dated 26th September,2011 which is at P.B. page no. 123 (Annex- A-10). In the said show cause notice the respondent no.1 has stated that the Government has taken decision to deduct 10% of the pension amount permanently. It is stated that the Government has accepted the report and has decided to deduct 10% amount. The exact relevant words of the said notice are as under :-

'' चौकशी अधिका-याने डॉ. अशोक आर. भोपाळे, तत्कालीन जिल्हा शल्य चिकित्सक, सामान्य रुग्णालय, अकोला यांच्याविरुध्दच्या एकूण नऊ दोषारोपांपैकी दोषारोप क्र. एक ते आठ सिध्द होतात व दोषारोप क्र. नऊ सिध्द होत नाही असा निष्कर्ष काढला आहे. या बाबी विचारात घेता डॉ. अशोक आर. भोपाळे, तत्कालीन जिल्हा शक्य चिकित्सक, सांमान्य रुग्णालय, अकोला यांना महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम,१९८२ च्या नियम २७ (१)मधील तरतूदीनूसार त्यांच्या सेवानिवृत्ती वेतनातून कायम स्वरुपी १० टक्के कपात करण्याची शिक्षा देण्याबाबत कारणे दाखवा नोटीस देण्याचा शासनाने निर्णय घेतला आहे.

२. डॉ. अशोक आर. भोपाळे, तत्कालीन जिल्हा शक्य चिकित्सक, सामान्य रुग्णालय, अकोला यांनी त्यांना प्रस्तुत प्रकरणी त्यांच्या सेवानिवृत्ती वेतनातून कायम स्वरुपी १० टक्के कपात करण्याची शिक्षा कां देण्यात येवू नये, याची लेखी कारणे हे ज्ञापन मिळाल्यापासून १० दिवसांच्या आंत शासनास सादर करावीत, असे निवेदन विहित मुदतीत प्राप्त न झाल्यास पुढील कार्यवाही करण्यात येईल.''

14. It seems that the applicant has replied the said notice and given explanation in details. However instead of accepting said explanation or even considering said explanation to the show cause notice, the respondent no.1 has issued another show cause notice which is dated 11th October,2012 at P.B. page nos. 128 & 129 (Annex.A-12). It is material to note that there is no reference to the reply given by the applicant. On the contrary it is stated that the first notice dated 26th September,2011 has been cancelled and it is stated to the applicant that the Government has taken decision to deduct 25% of the pension permanently and therefore it was asked as to why such amount shall not be deducted from the applicant. On perusal of both the notices together it is material to note that Government has already taken decision to deduct the pension amount. Firstly it was decided to deduct 10% amount permanently from pension and thereafter it was decided to deduct 25% amount permanently. There is a reference of explanation given by the applicant on 9/11/2011 but except referring that reply/ explanation nothing has been discussed on the say of the applicant. Both the notices clearly show that the Government has already taken decision to deduct, may be 10% or 25% amount from the pension of the applicant. In fact the show cause notice should have been as to why the report of the enquiry officer shall not be accepted and in case of acceptance of such report why

penalty of deduction of amount from pension either permanently or for a specific period shall not be imposed on the applicant. In fact the first Show cause notice should have been to the effect as to why the report of the enquiry officer shall not be accepted and after receiving the explanation in that regard if the respondent authority was not satisfied with whatever explanation given by the applicant, it should have issued second show cause notice as to why the amount shall not be deducted permanently or for a specific period. Both the show cause notices clearly show that the Government had already taken decision to deduct the amount from pension of the applicant and therefore the issuance of the show cause notices was nothing but a farce.

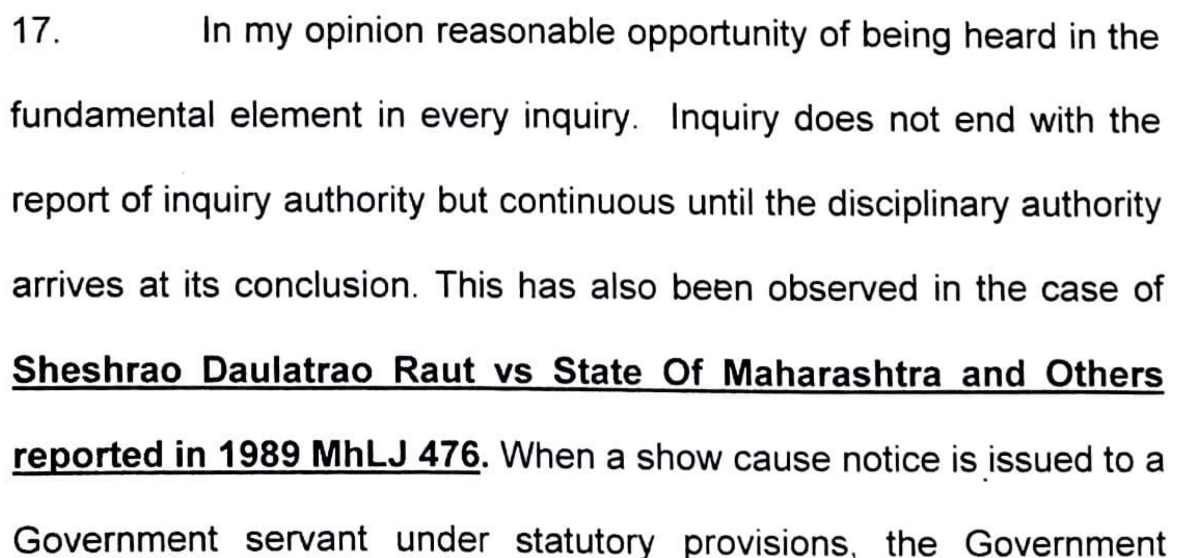


15. All the material was before the competent authority i.e. Government when the first show cause notice was issued on 26/9/2011 whereby it was decided to deduct 10% amount from pension permanently. Similar material was also available with the Government when the second show cause notice was issued on 11/10/2012. There is nothing on record as to what extra material was placed before the Government authorities so as to come to the conclusion that instead of 10% amount, an amount to the extent of 25% shall be deducted from pension. The applicant was not supplied with any material or documents for coming to such conclusion. In such circumstances, I am satisfied that both the show cause notices

have been served on the applicant after taking decision to punish the applicant and not with an intention to consider his possible explanation. In such circumstances it can be said that both the notices were nothing but formality. There is nothing on the record to show as to why respondent first came to conclusion to deduct 10 % of pension and then why it decided to deduct 15% of the pension.

16. Along with the rejoinder-affidavit the applicant submitted some office notes from which it seems that the competent authority found that there was no financial loss to the Exchequer, but thereafter there was confusion amongst the officers as to whether there was really a financial loss or not. These documents were not made available to the applicant so as to submit his explanation for enhanced punishment of 25% deduction in pensionary benefits as against the 10% which was earlier proposed. The mitigating circumstances also have not been considered by the competent authority.

17. In my opinion reasonable opportunity of being heard in the fundamental element in every inquiry. Inquiry does not end with the report of inquiry authority but continuous until the disciplinary authority arrives at its conclusion. This has also been observed in the case of **Sheshrao Daulatrao Raut vs State Of Maharashtra and Others reported in 1989 MhLJ 476**. When a show cause notice is issued to a Government servant under statutory provisions, the Government

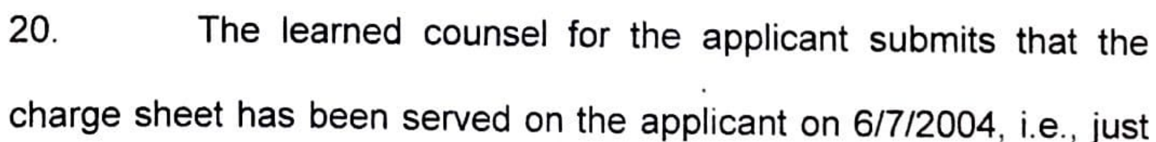


servant must place his case before the competent authority. The purpose of issuing show cause notice to the employee is to afford him opportunity of hearing.

18. The learned counsel for the applicant submits that in the present case the Inquiry Officer has come to the conclusion that there was no financial loss to the Government and even the Government has also considered this as will be seen from the documents filed along with rejoinder, that no financial loss has been caused. The learned counsel for the applicant therefore submits that the deduction cannot be retrospective as has been made in this case.

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".

22. The learned counsel for the applicant therefore submits that the continuation of inquiry itself was illegal and therefore the inquiry is required to be quashed and set aside.

23. The learned counsel for the applicant also submits that as per Rule 27 (1) of the Maharashtra Civil Services (Pension) Rules, the inquiry can be continued after retirement only if there is a financial loss to the Government and the allegations are grave in nature. The learned counsel for the applicant submits that Inquiry Officer observed that there was no financial loss to the Government.

24. Perusal of the inquiry report shows that most of the charges proved against the applicant are for technical illegalities. It has been held that the applicant has not misappropriated the Government amount and even if there is some misappropriation it was due to technicalities. So for as loss to the Government property is concerned, it seems that the financial loss as alleged by the Inquiry Officer is to be tune of Rs.11,619/- as seems from charge no.6 that amount is alleged to be over paid by the applicant. However, the Inquiry Officer seems to be confused as he ultimately came to the conclusion that this might be technical illegalities and he is not confident whether the financial loss has been caused as on some point he has not given his opinion about the alleged financial loss. In the impugned order however it has been specifically stated that the applicant has committed misappropriation of the Government amount and that he has caused financial loss to the Government. It seems that the respondents/ Government has not agreed with the findings to

some extent or otherwise there seems to be contradictory observations in the inquiry report and in the impugned order. In such circumstances, the competent authority should have stated that the reasons as to why it disagreed with the findings of the inquiry officer and then should have conveyed the reasons for such disagreement to the applicant.

25. Considering all the aspects as referred above, coupled with fact that the inquiry was initiated at the fag end of the retirement of the applicant and thereafter no Inquiry Officer was appointed from 6/7/2004 to 24/6/2008 and further that the Inquiry Officer submitted his report on 30/8/2010 and then final order is passed on 23/1/2013. It will not be proper to punish the applicant further more. The respondents did not pass any order for continuation of the departmental inquiry after retirement of the applicant and in view thereof, it can be presumed that the applicant was allowed to retire on superannuation automatically and honourable. Considering all these aspect, I am satisfied that the impugned order of punishment is illegal and deserved to be quashed and set aside. Hence, the following order :-

ORDER

The O.A. is allowed. It is hereby declared that the impugned order dated 23/1/2013 is illegal and bad in law. It is hereby declared that the applicant is entitled of the full pension from August, 2004 till 23/1/2013 and thereafter. No order as to costs.