

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 199 of 2015

Bhaskar Marotrao Mandale,
Aged 65 years, Occ. Retd. Govt. Servant,
R/o Datta Colony, Dasturnagar,
MIDC Road, Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary (Roads),
Department of Public Works,
Mantralaya, Mumbai-32.
- 2) Chief Engineer,
Public Works Regional Office,
Amravati.
- 3) Special Enquiry Officer,
General Administration Department,
Mantralaya, Mumbai-32.

Respondents

**Shri A.C. Dharmadhikari, Ritu Jog, S.A. Lambat, Advocates for the
applicant.**

Shri A.M. Ghogre, Id. P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 8th day of September,2017)

Heard Shri A.C. Dharmadhikari, Id. Counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents. The O.A. is heard finally with consent of Id. counsel for parties.

2. The applicant was initially appointed as Junior Engineer on 23/8/1971. He was promoted to various posts from time to time and finally as Executive Engineer in the year 1996. Till his retirement on superannuation on 31/3/2008 he was serving as Executive Engineer with respondents.

3. During his service the applicant was required to face Criminal Trial under Prevention of Corruption Act. He was honourably acquitted in the said case and his acquittal was confirmed even by the Hon'ble High Court vide order dated 21/2/2012. The applicant was earlier falsely implicated in departmental enquiry also was exonerated from the inquiry on 31/5/2010.

4. As already stated the applicant got retired on superannuation on 31/3/2008. However, he was granted provisional pension only. On 2/9/2011 the applicant was intimated that and the departmental enquiry as per the provisions of rules 8 & 9 of The Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 has been initiated against him. In the said inquiry the applicant has

submitted his reply. Initially he asked for documents which were not supplied to him. The Inquiry Officer was appointed on 5/10/2012. Certain corrections were made in the charge sheet on 23/4/2013. The documents were supplied on 19/11/2013.

5. In the departmental enquiry the Inquiry Officer examined witness by name Shri S.M. Bagde and he was cross examined by the applicant. On 6/9/2014 second witness Shri S.M. Kesarkar was supposed to be examined, but he did not appear. Thereafter, the matter was fixed on 17/10/2014 on which date also Shri Kesarkar remained absent. There is no progress in the departmental enquiry since then.

6. The applicant made representation on 21/4/2015 pointing out the fact that injustice has been caused to him on account of non payment of retiral benefits in respect of lapsed of seven years after retirement. Till today no decision has been taken in the departmental enquiry. The applicant has therefore prayed that the departmental enquiry initiated against him vide memorandum dated 2/9/2011 be quashed and set aside and the respondent nos. 1&2 be directed to release all his pensionary benefits along with regular pension w.e.f. 1/4/2008 along with interest.

7. Most of the facts are admitted by the respondents in their reply-affidavit. It is stated that the Government of Maharashtra P.W.D., Mantralaya, Mumbai has initiated departmental enquiry against the applicant in The Maharashtra Civil Services (Pension) Rules, 1982, i.e., as per rule 27 (2) (b) (1) and the procedure to be followed for such inquiry is under rules 8 & 9 of The Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The respondents justified the inquiry.

8. The applicant filed counter affidavit and submitted that mere proposal of initiating inquiry has not sufficient and rule 27 of The Maharashtra Civil Services (Pension) Rules, 1982 cannot allow the respondents to be withheld pension.

9. The learned counsel for the applicant Shri A.C. Dharmahdikari submitted that the inquiry has been initiated as per the provisions of rules 8 & 9 of The Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and such inquiry is not permissible after retirement. He placed the reliance on the Judgment reported in **2012 (3) Mh.L.J., 886 Shankar Shivling Swami versus State of Maharashtra & Ors.** In the said case it has been held that the departmental enquiry against the Municipal employee after retirement is not permissible. He further placed reliance on the Judgment reported in **2009 (2) Mh.L.J. Ratnakar Bhagwanrao Mahajan versus**

District and Sessions Judge, Jalna & Another. In the said case it has been held that the proceedings against the retired employee can be initiated as set out in rule 27 (2) (b) of The Maharashtra Civil Services (Pension) Rules, 1982 if those predicates are satisfied and one of the predicates is that departmental proceedings cannot be initiated without sanction of the Government.

10. Perusal of the documents regarding departmental enquiry shows that the letter initiating departmental enquiry has been issued by the Awwar Secretary, Government of Maharashtra. The said letter is dated 2/9/2011 at P.B. Page 46 & 47. The said letter is signed in the name of Governor which in other word means that the Governor has initiated departmental enquiry against the applicant. The very opening sentence of the said letter reads as under :-

^ 'kkI ukusegkjk"V³ukxjh I dk ½fuorRhoru½ fu; e 1982 e/khy fu; e 27 ½2½
 ¼c½ ¼, d½ vuq kj Jh- ch-, e-eMkyj I dkfuorR dk; Bkjh vfHk; ark ; kR; kfo#/n
 egkjk"V³ukxjh I dk ½f' kLr o vihy½ fu; e 1979 e/khy fu; e 8 o 9 e/; s?kkyuu
 fnyš; k i /nrhuu# kj foHkkxh; pl&d'kh dj.; kps; kft ysvkgs**

11. The aforesaid letter clearly shows that the inquiry is initiated as per the provisions of rule 27 (2) (b) (1) The Maharashtra Civil Services (Pension) Rules, 1982 and the procedure to be followed for such inquiry is under rules 8 & 9 of The Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

12. Rule 27 of the MCS (Pension) Rules clearly shows that a departmental enquiry can be initiated against the pensioner if it comes within the ambit of Rule 27. However misconduct shall be grave and the period of inquiry shall be within four years before such institution of the inquiry. Rule 27 of the MCS (Pension) Rules reads as under :-

“27. Right of Government to withhold or withdraw pension

(1) 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.

(4) In the case of a Government servant who has retired on attaining the age of Superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

(5) Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date: and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance in made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

13. Perusal of the documents on record shows that the applicant has retired on superannuation on 31/3/2008 and the charge sheet was served on him on 2/9/2011. The period of inquiry as regards misconduct is between 16/5/2006 to 31/3/2008 and the order of initiation of departmental enquiry has been issued in the name of Governor. Prima facie all the incredible seems to have been inexistence. The charge against the applicant is that he was

responsible for financial loss to the Government to the tune of Rs.44,27,705/-. The charges seem to be, therefore grave in nature.

14. The learned P.O. has placed reliance on the Judgment reported in **2007 (2) SC L&S,304 Union of India & Another Vs. Kunisetty Satyanarayana** wherein the scope of interference by the Tribunal or Court in the departmental enquiry has been considered. It is stated that in some very rare and exceptional cases the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or otherwise wholly illegal. Considering this aspect, I do not find it necessary to interfere in the proceeding of departmental enquiry initiated against the applicant.

15. The learned counsel for the applicant submits that the applicant has retired in the year 2008, i.e., on 31/3/2008. Charge sheet was served on him on 2/9/2011. The Inquiry Officer was appointed in the year 2012, i.e., on 5/10/2012 and till today the inquiry is not completed. This statement of the learned counsel is worth to be considered. As per rules the departmental enquiry is expected to be completed within six months and here is a case where it was initiated after three years after retirement and even till today i.e. for more than six years after initiation of the inquiry, the same has not been completed. The respondents cannot withhold the retiral benefits of the pensioners for such a long period and therefore I feel that the

respondents are required to be given some necessary directions.

Hence, the following order :-

ORDER

The O.A. is partly allowed. The respondents are directed to complete the departmental enquiry against the applicant as early as possible and in any case within three months from the date of this order. If the inquiry is not completed within three months, the respondents shall grant regular pension and all consequential financial benefits to the applicant immediately within further two months on the date of completion of time limit granted for completion of departmental enquiry. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.