

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 400/2018 (D.B.)**

Dadarao Shriramji Kale,  
Aged about 58 years, Occ. Retired,  
R/o Pushpagandha Colony, Kathra Road,  
Amravati-444 604 (Maharashtra).

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Principal Secretary,  
Revenue & Forest Department, Govt. of Maharashtra,  
4<sup>th</sup> floor, Mantralaya,  
Mumbai-400 032 (Maharashtra).
- 2) Chief Conservator of Forest,  
near Zilla Parishad, Opposite District Court,  
Amravati-444 602 (Maharashtra)
- 3) Deputy Chief Conservator of Forest,  
near Govt. Girls High School,  
Amravati -444 602 (Maharashtra)

**Respondents.**

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**S/Shri D.N. Mathur, P.N. Singh, Advocates for the applicant.**

**Shri S.A. Sainis, P.O. for respondents.**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 22<sup>nd</sup> June,2020.**

**Date of Pronouncement of Judgment : 3<sup>rd</sup> August, 2020.**

**JUDGMENT**

**(Delivered on this 3<sup>rd</sup> day of August, 2020)**

**Per : Anand Karanjkar : Member (J).**

Heard Shri D.N. Mathur, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The applicant was in service as Range Forest Officer, the applicant retired on superannuation as Range Forest Officer, Warud, Dist. Amravati on 30/4/2018. In this proceeding, the applicant is challenging the charge sheet dated 24/4/2018 which is at Annex-A-1, mainly on the ground that though the charge sheet is issued by the respondent no.2 on 24/8/2018, but the actual service of the charge sheet was done on 7/5/2018 after retirement of the applicant. It is submitted that the applicant was called on 7/5/2018 at the residence of the respondent no.3 and the respondent no.3 personally served the charge sheet.

3. The second submission of the applicant is that as the charge sheet was not served till the retirement of the applicant, therefore, the proceeding initiated by the respondents after retirement of the applicant is bad in law. It is contention of the applicant that there cannot be any proceeding under the Maharashtra Civil Services (Discipline & Appeal) Rules after retirement of the Government servant, therefore, the service of the charge sheet is illegal and proceeding is liable to be quashed. According to the applicant, the respondents did not seek permission of the Government to proceed

with the inquiry against the applicant and in absence of such permission, the departmental proceeding is untenable. The learned counsel for the applicant submitted that the pension case of the applicant was forwarded in the month of February, 2018 and office of the Accountant General sanctioned the pension and issued pension payment order on 8/3/2018 and in view of this only for taking revengeful action, the charge sheet was served on the applicant after his retirement.

4. The charge sheet is also attacked on the ground that the description of the charges is vague and no misconduct is made out and therefore the proceeding based on the vague charges is not sustainable. The learned counsel for the applicant has placed reliance on the Judgments in case of **Prabhakar S/o Ambadasrao Dongre Vs. State of Maharashtra & Ors. (Writ Petition No.9099/2014, decided on 01/08/2016), Mohan Krishna Antrolkar Vs. the Commissioner, Prohibition & State Excise, Mumbai & Ano., (2001) 2 BCR, 693, Dattatraya Jamkar Vs. State of Maharashtra & Ors. (1991) 2, Mh.L.J.950.**

5. It is contention of the respondents that there is no substance in the case that the charge sheet was served on the applicant on 7/5/2018. It is submitted that the charge sheet was issued on 24/4/2018 and therefore in view of the provisions under

Rule 27 (6) of the Maharashtra Civil Services (Pension) Rules, 1982, the disciplinary proceeding shall be deemed to be instituted on 24/4/2018.

6. In order to verify correctness of the submissions, we have perused the Rule 27 (6) of the Maharashtra Civil Services (Pension) Rules, 1982. The Clause (a) of the Rules is as under -

*“Clause (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”.*

7. After reading the Clause (a), we are of the view that the statutory presumption arises that the 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. We have gone through the Para-5.1 of the O.A. The relevant portion is as under-

*“(5.1) It is respectfully pointed out that the impugned charge sheet has been issued on 24/4/2018 under the signature of respondent no.2. At that time, the applicant was very much in service. He superannuated one week thereafter, on 30/4/2018. Till the applicant remained in employment, the said charge sheet was not served on him for the reasons best known to the respondents. One week after his*

*retirement, i.e. on 7/5/2018, the charge sheet was served on the applicant, that too personally by respondent no.3, Deputy Chief Conservator of Forest, Amravati at his residence by calling the applicant there and an acknowledgement was obtained from him”.*

8. After reading Para-5.1, it is crystal cleared that admittedly the charge sheet was issued by the respondent no.2 on 24/4/2018 before retirement of the applicant and therefore as per mandatory presumption under Rule 27 (6) of the Maharashtra Civil Services (Pension) Rules, 1982, the departmental proceedings shall be deemed to have been instituted on 24/4/2018. In view of this, the proceeding cannot be quashed on the contention raised by the applicant.

9. So far as second contention of the applicant that after retirement of the Government servant there cannot be disciplinary proceeding against a Government servant without permission of the Government is concerned, we accept that after retirement a Government servant cannot be punished for the misconduct under the provisions of the Maharashtra Civil Services (Discipline & Appeal) Rules. Now material question is whether Government has right to proceed under Rule 27 of the M.C.S. (Pension) Rules, 1982. In this regard, we would like to consider the law laid down by the Division Bench of the Bombay High Court in case of **Manohar B. Patil Vs.**

**State of Maharashtra & Ors. 2013 (6) Mh.L.J.,311.** After considering the provisions under Rule 27 (1) of the Rules, the Hon'ble Bombay High Court has laid down that after superannuation of the Government servant, the proceeding can be initiated only for the limited purpose of taking action contemplated by Sub rule (1) of the Rule 27 of the rules in relation to pension and in such proceeding no penalty can be imposed in accordance with the Maharashtra Civil Services (Discipline & Appeal) Rules. The Hon'ble Division Bench in Para-8 of the Judgment discussed the law laid down in case of **Dhairyasheel A. Jadhav** and observed that in case of **Dhairyasheel A. Jadhav** it was held that "It is thus clear that in the event departmental proceedings was instituted it can be continued and concluded "as if the Government servant has continued in service". Thus, by a deemed fiction though *relationship of employer and employee has ceased, the rules continue the relationship pursuant to which the departmental proceedings can be proceeded with. There is no provision in the Maharashtra Civil Services ( Discipline and Appeal) Rules, which provide for continuation of enquiry for major misconduct by issuing of charge sheet. The penalties are set out under section 5. If a Government servant is not in service then none of those penalties can be imposed. Thus, any enquiry initiated and in which there is no provision for continuing enquiry must cease on the employee being*

allowed to superannuate, in the absence of the provisions like Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.” (underlines added)”.

10. In case of **Manohar B. Patil Vs. State of Maharashtra** (*cited supra*) the facts were that the Petitioner was in employment of the Maharashtra Animal & Fisheries Sciences University. When the Petitioner was Head of the Department, he applied for the voluntary retirement, consequently, the Petitioner was relieved from the employment on 30/4/2010. Thereafter, the Registrar of the University issued notice dated 19/3/2011 and called upon the Petitioner to show cause as to why an action should not be initiated against him for the purposes of withholding or reducing retirement benefits or pension. In this background, the Hon'ble Bombay High Court in Para-15 of the Judgment observed that the Rule 27(1) of the M.C.S. (Pension) Rules empowers the Government to reduce or withhold the pension. It also confers power to recover from pension, the amount of financial loss caused to the Government due to misconduct on the part of retired employee and ultimately it was held that the proceedings against the Petitioners was legal and the Hon'ble High Court dismissed the Writ Petition.

11. In the present case also the charge sheet was issued when the applicant was in service. As the applicant was in service,

the charge sheet was issued under the Provisions of the M.C.S. (Discipline & Appeal) Rules, 1979. The applicant retired from the service on 30/4/2018. Mere retirement of the applicant will not take away the power of the State Government to proceed against the applicant under the Provisions of the Rule 27 (1) of the M.C.S. (Pension) Rules, 1982, therefore, we are of the view that the charge sheet issued and served on the applicant cannot be quashed for this reason. So far as the Rule 27 (1) of the Rules is concerned, the State Government has right to proceed against the applicant, therefore, we do not see any merit in the contention that after retirement of the applicant, the charge sheet is required to be quashed.

12. Now we would like to deal with submission of the applicant regarding the vague nature of the charges. In this regard, the law is that the Tribunal cannot go into the merit of the allegation. After reading the Schedule-2 annexed to the charge sheet, we have no hesitation in holding that there is no substance in the contention that the nature of the allegations were vague and the allegations do not constitute any misconduct. It appears that without following the statutory provisions and without seeking permission of the higher Competent Authority, the various acts were done by the applicant. Thus, the applicant exceeded his authority and implemented the work by-passing the Competent Authority and Superiors. The notes of the

measurement of work were also defective and excess work was shown to be done. Under these circumstances, it is not possible to accept that the allegations in the charge sheet do not constitute the misconduct.

13. It appears from the facts and circumstances of the case that this O.A. was filed by the applicant in the month of June,2018. This application was disposed of. Thereafter the applicant filed the Review Application. The Review Application was allowed and matter was again heard. It appears that the applicant prolonged the disciplinary proceeding and therefore it does not lie in the mouth of the applicant that the inquiry is not completed within a stipulated period, but considering the guidelines issued by the Hon'ble Apex Court in case of **Prem Nath Bali Vs. Registrar, High Court of Delhi & Ano., AIR 2016 SCC,101,** relief cannot be granted to the applicant. However in the interest of justice, we are of the view that direction be given to the respondents to conclude the departmental inquiry within stipulated period to safe guard the interest of the applicant. In the result, we pass the following order –

### **ORDER**

The O.A. stands dismissed. The respondents are directed to conclude the disciplinary proceeding within a period of six months from the date of this order and if the disciplinary inquiry is not

completed within 6 months then the applicant would stand exonerated.

No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**Dated** :- 03/08/2020.

\*dnk.

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 V.C. and Member (J).

Judgment signed on : 03/08/2020.

Uploaded on : 03/08/2020.

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