

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 438 OF 2017 (S.B.)**

Shri Dnyaneshwar Maroti Kumare,  
Aged 62 years, Occupation – Retired,  
R/o Ambika Nagar, Tapovan Parisar,  
Mardi Road, Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Revenue & Forest Department,  
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,  
Amravati.
- 3) The Collector at Yavatmal,  
Dist. Yavatmal.
- 4) The Sub Divisional Officer, Yavatmal,  
Dist. Yavatmal.

**Respondents**

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**Shri A.S.Chakotkar, Id. Advocate for the applicant.**

**Shri V.A.Kulkarni, Id. P.O. for the respondents.**

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

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**JUDGMENT**

**(Delivered on this 19<sup>th</sup> day of December, 2017)**

Heard Shri A.S.Chakotkar, learned counsel for the applicant and Shri V.A.Kulkarni, learned P.O. for the respondents.

2. The applicant was serving as Tahsildar with the respondents and came to be retired on superannuation on 31/12/2013. Before retirement, the respondents issued an order on 07/12/2013, whereby the applicant has been kept under suspension on the allegation that while working as Tahasildar, the applicant had recorded wrong entries in records like stock of grains and wrong entries were submitted. The grains like Wheat, Rice, Palm Oil and Tur dal was found less, whereas the Jowar was found more than the stock. Number of irregularities and illegality were found by the District Supply Officer during inspection, for which the applicant was responsible. It was also alleged that during April 2012 to March 2013, the applicant has collected money from Shopkeepers, but did not deposit the same in the Govt. account. The applicant was, therefore, found to have committed misappropriation and falsified the account. The applicant was, therefore, kept under suspension in contemplation of departmental enquiry.

3. According to the applicant show cause notices were issued to him as regards misappropriation of the Govt. fund by the Collector Yavatmal on 28/05/2013 and 18/06/2013 and the applicant has replied those notices. The applicant denied all the allegations and submitted that

the permits were prepared and signed by inspection officers and in absence of inspection officer these responsibilities were given to Naib Tahsildar and, therefore, the applicant has not signed nor given any permit to ration shopkeeper.

4. According to the applicant, the 11 shopkeepers in whose names forged challans were submitted, have already deposited the amount for the grain. The said amount is Rs. 2,38,415 for 312 quintals of Rice, Rs. 2,54,335 for 361.50 quintals of Wheat and Rs. 11,000 as security deposit. Thus in all, the amount of Rs. 5,03,750 has been credited to the Govt. Treasury.

5. It is the case of the applicant that the applicant was allowed to retire on superannuation and no departmental enquiry was initiated against the applicant by respondents and not only that, the applicant was allowed to retire on superannuation. In such circumstances, no relationship of employer and employee exists between respondents and the applicant. The applicant has, therefore, prayed that the order of suspension dated 07/12/2013 issued against him be quashed and the respondents be directed to release his regular pension and all the retirement benefits, which are not paid and the salary arrears for the suspension period shall also be paid to him alongwith interest.

6. The respondent no. 3 has filed affidavit-in-reply. It is stated that the applicant was allowed to retire on superannuation. It is further

submitted that as per the provision of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, proposal for grant of sanction for conducting departmental enquiry against the applicant and other persons involved in the misappropriation was sent to the Govt. by Divisional Commissioner, Amravati on 26/02/2014. Accordingly, the Govt. has also prepared a chargesheet in the form 1 to 4 and has submitted for necessary approval and sanction and after getting sanction from the Govt., the respondent no. 2 conducted enquiry. It is stated that the provisional pension has already been granted to the applicant since 01/09/2014 and the amount of Rs. 1,06,193 is paid towards G.I.S. and amount of Rs. 13,54,382 towards G.P.F. has been paid to the applicant. The amount of gratuity and leave encashment is withhold as per rules.

7. The Id. P.O. has also placed on record one order dated 09/10/2017 issued by the Govt. where from it seems that the enquiry officer has already been appointed in the matter.

8. The Id. counsel for the applicant submits that the applicant was allowed to retire on superannuation and till the date of retirement, no enquiry was pending against the applicant. He has also placed on record the order in this regard. The copy of the said order is at Annexure-A-8, dated 31/12/2013. It seems from the said order that the applicant was allowed to retire on superannuation w.e.f. 31/12/2013, subject to the decision of the departmental enquiry and he was relieved

from the services. In view of this, it is clear that, though the applicant was allowed to retire on superannuation and was relieved from the services, the said retirement and reliving order is subject to the decision of the enquiry. Since the applicant has been relieved from his work and allowed to retire on superannuation on 31/12/2013, he cannot be said to be under suspension at least w.e.f. from the date of his retirement i.e. from 31/12/2013 and the question as to whether the suspension period of the applicant from the date of suspension i.e. 07/12/2013 till the date of his retirement i.e. 31/12/2013, shall be treated as duty period or suspension as such will have to be considered by the competent authorities, depending upon the result of the departmental enquiry. In view of this, there is no need to quash and set aside the suspension order dated 07/12/2013.

9. The Id. counsel for the applicant submits that once the applicant has been allowed to retire on superannuation, his pension cannot be withheld. It is submitted that, in fact, the departmental enquiry against the applicant cannot be initiated, as the applicant has retired and there is no relationship of employee and employer between applicant and respondents. It is true that the enquiry as per the provisions of Maharashtra Civil Services (Discipline and Appeal), Rules 1979 may not be initiated against the applicant after retirement, but such proceedings can be continued, if chargesheet is already served to the employee before

retirement and sanction has been taken to such enquiry even after retirement.

10. Even though, the enquiry under Discipline and Appeal Rule may not be admissible after retirement, such enquiry can be initiated as per the provisions of Rule 27 of the Maharashtra Civil Services (Pension), Rules 1982. Whether such enquiry was initiated or not or whether such enquiry is legal or not, is not the subject matter of this O.A. If such enquiry is initiated, the applicant may be at liberty to challenge the same legally by filing separate O.A. to that effect. In view thereof, the judgment relied upon by the Id. counsel for the applicant which is passed by this bench in **O.A.762/2016, Shri Ashok Charandas Nimsarkar Vs. State of Maharashtra & 4 Ors. & in O.A.763/2016, Shri Ramkrishna Raybhan Awtare Vs. State of Maharashtra & 4 Ors. common judgment delivered on 15/06/2017,** may not be applicable to the present set of facts.

11. As per the provisions of Maharashtra Civil Services (Pension) Rules, 1979, during the pendency of the departmental enquiry, the department, however, has a right to withhold the amount, to be paid to the employee pertaining to his gratuity and leave encashment and, therefore, the applicant cannot, in this O.A., claim regular pension or gratuity amount or arrears thereof. Similarly, he cannot claim retirement

benefits or salary arrears amounts for suspension periods in this O.A., as all these benefits will be subject to outcome of departmental enquiry.

12. The Id. counsel for the applicant submits that in the similar circumstances in O.A.762 & 763/2016, this Tribunal has quashed and set aside the suspension order and directed to release the regular pension and other retirement benefits and to consider the regularization of suspension period. It is true that in that case, such a relief was granted, but the difference in the said cases and the present case is that, in those cases, no departmental enquiry was at all initiated against the delinquent and only show cause notice was issued as to why departmental enquiry shall not be initiated against them. In the present case however, it seems that charge sheet has already been issued against the applicant and not only that the enquiry officer has already been appointed. The Divisional Enquiry Officer, Amravati Division, Amravati has been appointed as enquiry officer. As already stated, whether the said enquiry is permissible under Rule 27 of the Maharashtra Civil Services (Pension) Rules or whether it has been initiated under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and whether the same is legal or not is a point in dispute in the O.A. The superannuation of the applicant is also subject to the outcome of the departmental enquiry. Considering these aspects, I feel that withholding of gratuity cannot be said to be illegal.

13. In view of the discussion in foregoing paras, I therefore, pass the following order:-

**ORDER**

1. O.A. stands dismissed.
2. The applicant will however, be at liberty to challenge illegality of the departmental enquiry initiated against him by filling separate O.A.
3. No order as to costs.

**Dated :- 19/12/2017**

aps

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