

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.45/2014.

Vasant Bakaramji Tonde,
Aged about 59 years,
Occ- Retired A.P.P.,
R/o 688, Sudampuri,
Umrer Road, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home Affairs,
Mantralaya, Mumbai-32.
2. The Director of Prosecution,
(M.S.), Barrack No.6, Free Press Journal Marg,
Near Manora Amdar Niwas, Nariman Point,
Mumbai-400 021.

Respondents.

Shri G.G. Bade, the Ld. Advocate for the applicant.
Mrs. S.V. Kolhe, the Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 22nd August, 2014.

Order

Per: Member (J)

This O.A. is directed against the order dated 30th July 2013 (Annexure A-6) passed by the respondent No.1 directing holding of departmental proceedings against the applicant in exercise of the power vested in it under rule 27 (2) (b) (i) of the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules). The applicant who was in service as Assistant Public Prosecutor on the

establishment of the respondent Nos.1 and 2, reached the age of superannuation on 28.2.2013 and thus retired. After no due and no enquiry certificates were issued in his favour, he started getting regular pension w.e.f. May 2013. Only on 20.6.2013, he learnt that same enquiry was proposed against him. The respondent No.1, vide order dated 30.7.2013 accorded approval for holding departmental proceedings against the applicant on the alleged act of misconduct. Mainly the applicant has been charged for showing dereliction of duty while conducting prosecution in Criminal Case Nos. 544, 545 and 546 of 2004 in the court of the Chief Judicial Magistrate, Wardha. It is the case of the applicant that, allegations levelled against him are utterly baseless and without any foundation. According to him, continuation of such baseless enquiry amounts to abuse of process of law and it has caused great injustice and hardship to him. Second ground of objection is, he having retired w.e.f. 28.2.2013, no departmental proceedings can be initiated against him. It is also stated that the sanction purported to have been granted by the respondent No.1 to initiate enquiry against the applicant, is without application of mind.

2. Rule 27 (2) (b) (i) of the Pension Rules reads thus:

“27.Right of Government to withhold or withdraw pension.

(2) (a)

(b) The departmental proceedings, if not instituted

while the Government servant was in service, whether before his retirement or during his reemployment,--

- (i) shall not be instituted save with the sanction of the Government”.

3. Import of aforesaid provision is, departmental proceedings can be initiated against the Government servant even after his retirement, provided it is done with the sanction of the Government. Undoubtedly, the departmental proceedings after retirement cannot be to impose any penalty as prescribed under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. However, it can only be aimed at to withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order recovery from such pension, the whole or part of any pecuniary loss caused to the Government, provided the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the order impugned, it is clearly spelt out that impugned enquiry has been ordered in exercise of the power conferred on the respondent No.1 by virtue of provisions of rule 27 (2) (b) (i) of the Pension Rules. Thus, in our view, this discussion takes care of the very first objection raised by the learned counsel for the applicant.

4. We have perused the decisions rendered by the Chief Judicial Magistrate, Wardha in all the three Regular Criminal

Case Nos. 544, 545 and 546 of 2004. It would be suffice to quote the observations made in para NO. 32 in R.C.C. No. 544/2004. They are as under:

“Even on the date of final argument, the learned prosecutor wound up his argument in a single sentence by saying that the accused cheated Nagar Parishad Deoli by preparing false bills. He neither bothered to refer at least what are the allegations and what is the evidence relevant to prove those allegations nor even bothered to read the contents of at least F.I.R. Thus, the case was allowed to sail automatically to any destination without any effort from the prosecution. Therefore, a copy of this judgment needs to be sent to the Superintendent of Police as per para 49 Chapter VI of the Criminal Manual so also the District Magistrate, Wardha under section 365 of Cr.P.C.”.

5. In view of the above, it cannot be said that continuation of an enquiry against the applicant will be an abuse of process of law.

6. The last point raised by the learned counsel for the applicant is non application of mind by the sanctioning authority while passing the order impugned. The ground for initiating enquiry is the observations made by the learned C.J.M., Wardha while delivering the judgment in Criminal Case Nos. 544, 545 and 546 of 2004. From the judgment, it appears that the applicant represented the State, may be at the fag end. Besides casting aspersions on the entire prosecuting

agency, the learned C.J.M., Wardha expressed displeasure about the way and manner of conducting the cases by the applicant. It appears from the order that the respondent No.1 took cognizance of the alleged misconduct and then passed the order. We, therefore, find no substance in this O.A. Accordingly, the O.A. is dismissed with no order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

pdg

