

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.649/2013.

Dr. Ashok Kesharao Barapatre,
Aged about 59 years,
Occ-Retired Govt. servant,
R/o "Tarangan", Khandare layout,
Near Vidya Vihar Convent,
Chhatrapati Nagar, Tukum, Chandrapur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. Department of Public Health,
Gokuldas Tejpal Hospital,
Through its Secretary/Administrator,
Sankul Building, 10th floor,
'B' Wing, Mumbai.
3. The Deputy Director of Health Services,
Mata Kacheri, Shraddhanand Peth,
Nagpur.
4. The Civil Surgeon,
General Hospital,
Chandrapur.
5. The Divisional Enquiry Officer,
Office of Divisional Commissioner,
Nagpur.

Respondents

None appeared for the applicant.

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

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

Dated:- 18th March, 2014.

Order**Per: Member (J)**

None for the applicant. Heard Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant entered in the service of the respondents as Medical Officer and on attaining the age of superannuation retired from service w.e.f. 30.11.2012. On 4.12.2012, he was served with the chargesheet in an enquiry No. 24/2013. This very order of initiating departmental enquiry against him is questioned in this O.A.

3. It is the case of the applicant that two charges have been levelled against him and they pertain to the period between 1.4.2002 and 1.11.2004. This is in violation of Rule 27 (2) (b) (ii) of the Maharashtra Civil Services (Pension) Rules, 1982 (in short "Pension Rules").

He has, therefore, prayed for quashing of the order in departmental enquiry No. 24/2013 and further prayed for consequential benefits of granting him regular pension.

4. Respondent No.1 filed reply justifying initiation of departmental enquiry against the applicant. It is not disputed that the applicant retired from service on 30.11.2012. It is also not disputed that the enquiry in question is in respect of an act of misfeasance and

nonfeasance allegedly committed by the applicant during the period from 1.4.2002 to 1.11.2004. However, dispute raised is in respect of date of service of the chargesheet. It is submitted that the applicant was served with the memorandum and to that he submitted written statement of his defence on 11.12.2012. It is categorically denied that the action of respondent No.1 is against the provisions of Pension Rules.

5. A very short question that needs to be addressed in this O.A. is: on which date the applicant was served with the chargesheet and is it in violation of the provisions of the Pension Rules ?

6. The respondents' contention that the applicant was served with the chargesheet on 30.11.2012 is not borne out from the material placed on record. On 29.1.2012 (Annexure A-1), respondent No.4 issued an order declaring that the applicant shall be retiring w.e.f. 30.11.2012. (Annexure A-2) is the acknowledgment of receipt of chargesheet by the applicant. It is dated 4.12.2012. To counter this, the respondents did not file any document. Communication dated 1.12.2012 (P.22) is from the Director of Health Services, Mumbai. In that, it is mentioned that the memorandum and the chargesheet dated 30.11.2012 is to be served on the applicant. Below the signature, the date is mentioned as 1.12.2012. In turn, the respondent No.3 vide his

letter dated 1.12.2012 and addressed to the applicant, forwarded the copies of the chargesheet, statement of imputation of misconduct etc. As has been pointed out earlier, these documents were received by the applicant on 4.12.2012 which is evident from the acknowledgement (Annexure A-2). It is pertinent to note that in both the communications, the applicant's designation is mentioned as former /erstwhile Medical Superintendent. It is, therefore, obvious that the chargesheet was served on the applicant after he retired from service.

7. The learned P.O. brought to the notice of this Tribunal the provision of Rule 27 (6) of the Pension Rules, it reads thus:

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

(1).....

(2).....

(3).....

(4).....

(5).....

(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 judicial proceedings shall be deemed to be instituted”. (emphasis mine).

8. From the above, what appears relevant is the date of service on the Government servant or pensioner. In this context, it is

immaterial as to on which date chargesheet was signed. What is material is date of service on such Government servant or pensioner, as the case may be. Material placed on record clearly points out that the service of the chargesheet and other accompaniments was effected on 4.12.2012 i.e. four days after the applicant retired from service. That being so, Rule 27 (2) (b) (ii) of the Pension Rules is attracted to the case in hand. It reads thus:

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

(1).....

(2) (a)

(b) The departmental proceedings, if not instituted whiel the Government servant was in service, whether before his retirement or during his re-employment,--

(ii) shall not be in respect of any event which took place more than four years before such institution”.

9. Admittedly and on perusal of copy of chargesheet and its accompaniments from page 23 to 37 point out that the alleged act of misconduct pertains to the period between 1.4.2002 to 1.11.2004. Even this is not disputed by the respondents. In that view of the matter, service of the chargesheet on the applicant is in clear violation of Rule 27 (2) (b) (ii) of the Pension Rules. This follows that the departmental enquiry bearing No. 24/2013 is liable to be quashed and set aside. Consequently, the respondents will have to be directed to finalize the pension case of the applicant and release retiral and

terminal benefits in favour of the applicant as expeditiously as possible and in any event within six months from the date of passing of this order.

10. As regards issue of interest, strictly speaking, this will only arise after the applicant receives the retiral dues and other terminal benefits. For that, he shall be at liberty to make representation and claim interest in accordance with law. In the event he is aggrieved by any adverse decision on this issue, he shall have liberty to approach this Tribunal.

11. O.A. stands allowed in the following terms:

Enquiry No. 24/2013 is quashed and set aside. The respondents shall finalize regular pension case of the applicant and shall ensure payment of retiral as well as terminal benefits to him as expeditiously as possible and in any event within six months from the date of this order.

There shall be no order as to costs.

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

(B. Majumdar)
Vice-Chairman

