

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 821/2019 (D.B.)**

Dr. Bhimrao Karuji Meshram,  
aged 62 years, r/o 74, Gadge Nagar,  
Behind Jyoti Primary School,  
Ramna Maroti, Nagpur.

**Applicant.**

**Versus**

- 1) The Government of Maharashtra,  
through the Principal Secretary,  
Public Health Department,  
G.T. Hospital Complex Building,  
10<sup>th</sup> floor, "A" Wing, Mantralaya, Mumbai-400 001.
- 2) Shri Ramesh Arjun,  
Desk Officer, Seva 4 B,  
Public Health Department,  
G.T. Hospital Complex Building,  
10<sup>th</sup> floor, "B" Wing, Mantralaya, Mumbai-400 001.

**Respondents.**

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**The applicant in person.**

**Shri H.K. Pande, P.O. for the 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 : 6<sup>th</sup> March, 2020.**

**Date of Pronouncement of Judgment : 19<sup>th</sup> March, 2020.**

**JUDGMENT**

**Per : Member (J).**

**(Delivered on this 19<sup>th</sup> day of March, 2020)**

Heard the applicant in person and Shri A.M. Ghogre,  
learned P.O. for the respondents.

2. The applicant was in service of the respondent no.1 as District Health Officer, Z.P., Gondia. The applicant stood retired on attaining age on superannuation on 31/8/2013.

3. It is case of the applicant that first charge sheet was served on him 28/8/2013, three days before his retirement and inquiry was initiated. The Inquiry Officer has submitted the report which is at Page nos.88 to 120. It is submitted that the Inquiry Officer has exonerated the applicant from all the charges vide report dated 28/3/2018.

4. It is grievance of the applicant that he made correspondence with the respondent no.1 and requested to accept the report and exonerated him from the charges. It is submitted that the respondent no.1 instead of accepting the report of the Inquiry Officer, in Departmental Enquiry (D.E.) No.37/2014 informed the applicant that the respondent no.1 disagreed with the conclusions drawn by the Inquiry Officer and the respondent no.1 was of the view that the charges were proved. The applicant replied this show cause notice and gave justification how he was rightly exonerated by the Inquiry Officer, but it was in vain and ultimately the respondent no.1 issued notice dated 31/7/2019 and called upon the applicant to explain why 25% pension of the applicant should not be deducted for a period of 7 years. It is submitted that the applicant has given reply to this show

cause notice and again justified that the findings recorded by the Inquiry Officer were based on the evidence and therefore the misconduct of the applicant was not proved in D.E. No.37/2014.

5. It is submission of the applicant that second charge sheet was served on him on 2<sup>nd</sup> September,2014 and accordingly the D.E.No.47/2015 was initiated. The inquiry was completed and the Inquiry Officer submitted his report on 16/2/2018 and hold that both the Charges nos.1&2 levelled against the applicant were not proved. It is contention of the applicant that the inquiry report was received by the respondent no.1, but the respondent no.1 did not take any decision and therefore, prejudice is caused to the applicant.

6. It is submitted that the third Enquiry No.17/2016 was initiated against the applicant in pursuance of the charge sheet dated 5/10/2015. The inquiry was conducted as per the rules. The Inquiry Officer exonerated the applicant in D.E.No.17/2016. The respondent no.1 also accepted the report submitted by the Inquiry Officer and exonerated the applicant in D.E. No.17/2016.

7. Now two Departmental Enquiries are pending against the applicant in D.E. No.37/2014 final show cause notice was served on the applicant and he was called upon to give explanation on the point of reduction of pension. In D.E.No.47/2015 the report exonerating the

applicant was submitted by the Inquiry Officer, but the final order is not passed by the respondent no.1 either accepting the report of the Inquiry Officer or disclosing the disagreement.

8. In the above background, it is contention of the applicant that the action of the respondent no.1 and procedure followed by the respondent no.1 is contrary to the service rules, therefore, direction be given to the respondent no.1 to exonerate the applicant in D.E.Nos.37/2014 and 47/2015 and further direction be issued to release the pension and all retiral benefits.

9. It is contention of the applicant that in view of the Rule 27 of the Maharashtra Civil Services (Pension) Rules, the two Departmental Enquiries initiated after his superannuation were illegal and as the inquiry is not completed in D.E.No.37/2014 before his superannuation, therefore, that inquiry is also illegal. It is submitted that no specific order of the continuation of the D.E. after superannuation of the applicant is passed in D.E.No.37/2014, therefore, it is illegal.

10. It is specific contention of the applicant that as per the Rule 27 of the M.C.S. (Pension) Rules, the respondent no.1 has not right to initiate the D.E.No.47/2015 after superannuation of the applicant and the respondent no.1 has no right to continue with the

D.E.No.37/2014 after his superannuation as no permission is granted by the Government to continue the inquiry. The applicant has placed reliance on the Judgment in O.A.768/2018 delivered by the M.A.T., Mumbai on 24/4/2019. It is submitted by the applicant that in para-14 of the Judgment following observations are made by the Bench –

*“14. Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of ‘Rules of 1982’ and where on conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld”.*

11. On the basis of this, it is submission of the applicant that in the event if it is held that the misconduct is committed by the applicant, only in that event pension of the applicant can be withheld so also the other retiral benefits including the gratuity.

12. The applicant has also submitted that in D.E.No.37/2014 though the respondent no.1 has disagreed with the opinion of the Inquiry Officer and the conclusions, but it is contrary to the evidence before the Inquiry Officer. It is submitted that there was no responsibility on the applicant to purchase any item, but as per the Circular issued by the Government on 16/4/2010, it was duty of the Primary Health Centres and Rural Hospitals situated at the various

places in the District to purchase the respective material. The second submission is that said materials were purchased from the Co-Operative Society recommended by the Government of Maharashtra as per the G.R. dated 30/8/2010. In this G.R. it was specifically directed that the Authority may purchase the required items from the Maharashtra State Co-operative Consumer Federation Limited, Mumbai and therefore no misconduct was committed by the applicant and accordingly it was rightly held by the Inquiry Officer in D.E.No.37/2014. It is submitted that the respondent no.1 did not consider this evidence and straight way issued the final show cause notice of its intention to award punishment to the applicant by reducing his 25% pension for a period of 7 years. It is submitted that it is apprehension of the applicant that only for harassing the applicant this procedure is adopted by the respondent no.1, therefore, the respondent no.1 be restrained to act upon the final show cause notice and reducing pension of the applicant, therefore, direction be given to the respondent no.1 to exonerate the applicant in D.E.No.37/2014.

13. So far as the D.E. No.47/2015 is concerned, it is submitted that the inquiry is completed and the applicant is exonerated in this inquiry. The respondent no.1 did not consider the report of the Inquiry Officer and no action is taken. Due to this conduct of the respondent no.1, the applicant is deprived of his pension and other dues. It is

submitted that this course followed by the respondent no.1 is contrary to law and therefore direction be given to the respondent no.1 to exonerate the applicant in D.E.No.47/2015.

14. It is submission of the learned P.O. that there is no substance in the O.A. for the reason that the charge sheet in D.E.No.37/2014 was served on the applicant on 28/8/2013. Thus the disciplinary proceeding was initiated before the superannuation of the applicant and it is accordingly continued by the respondent no.1. The learned P.O. also submitted that as the respondent no.1 is the Principal Secretary of the Public Health Department, Maharashtra State and he is continuing the matter i.e. D.E.No.37/2014 even after retirement of the applicant. This implies that the D.E.No.37/2014 is proceeded as per the consent given by the Government.

15. The second submission of the learned P.O. is that the D.E.No. 37/2014 is completed though the applicant is exonerated by the Inquiry Officer, then also as per the Maharashtra Civil Services (Discipline & Appeal) Rules, the Disciplinary Authority is empowered to disagree with the reasons and the conclusions drawn by the Inquiry Officer. It is submitted that as per the Annex-A-6 notice was served on the applicant dated 11/09/2018 along with the tentative reasons for the disagreement and therefore the action followed by the respondent no.1 is within four corners of Rule 9 of the Maharashtra Civil Services

(Discipline & Appeal) Rules and there is no illegality. It is also submitted by the Id. P.O. that at a premature stage it is attempt of the applicant to shunt the inquiry and it is not permissible in law.

16. So far as the D.E.No.47/2015 is concerned, it is submission of the learned P.O. that on the basis of the facts on which charge sheet was served on the applicant, the criminal case is filed against the applicant by the Gondia Police and that case is pending. It is submitted that FIR was lodged against the applicant on 19/8/2013. It was alleged in the FIR that the present applicant (who was accused no.1 in that matter), received amount Rs.3,00,000/- from the son of the complainant, Rs.3,00,000/- from witness no.9 and Rs.6,00,000/- from witness no.16 from giving them employment and false appointment orders were issued by the applicant. It is submitted that the foundation of D.E.No.47/2015 was the same. According to the learned P.O. as the criminal case was pending against the applicant on the basis of same facts, consequently, as a prudence the final decision is not taken by the disciplinary authority in D.E.No.47/2015. It is submission of the learned P.O. that once the disciplinary proceeding is initiated against the applicant even after his superannuation the Government has right to exercise the powers under Rule 27 of the M.C.S. (Pension) Rules in relation to release of pension and gratuity and therefore no illegality is committed by the respondents.



17. In order to decide the controversy, it is necessary to read Rule 27 of the M.C.S. (Pension) Rules, 1982. The Rule 27 (1) empowers the Government to withhold part of the pension or entire pension on account of pecuniary loss caused to the Government if in any departmental or judicial proceeding, the pensioner is found guilty of the grave misconduct or negligence during the period of his service. The Rule 27 (2) (b) empowers the Government to initiate the disciplinary proceeding even after retirement of a Government servant subject to condition that the misconduct shall not be earlier than four years before such institution and it is authorised by the Government. We have gone through the Judgment in O.A.768/2018 on which reliance is placed by the applicant.

18. We have also gone through the Judgment in case of **Manohar B. Patil Vs. State of Maharashtra (2013) 6 Mh.L.J., 311.** This Judgment was considered in O.A.786/2018. In a case before the Hon'ble Division Bench of the High Court. The facts were that the petitioner stood retired on 30/4/2010 (voluntary retirement). Thereafter, on 19/3/2011 the Registrar of the University served notice on the petitioner and called his explanation as to why his retirement benefits and pension should not be withheld or reduced. The charge sheet was served on that petitioner on 8/9/2011. Thus admittedly the charge sheet was served on the petitioner after his retirement from the

service. In this background, the Hon'ble Division Bench of the High Court after examining the various provisions under Rule 27 (1) & (2) of the M.C.S. (Pension) Rules, 1982 recorded specific findings that the Rule 27 permits institution of departmental proceeding after superannuation of an employee only for the purposes of taking action contemplated by sub rule 1 of rule 27 in relation to pension and in the said proceeding no penalty can be imposed in accordance with the M.C.S. (Discipline & Appeal) Rules and only to this extent the decision given in case of **Shri Acharya Ratna, Deshbhushan Shikshan Prasarak Mandal, 2003 (3) Mh.L.J., 602** was approved. In the Writ Petition, the first was prayer of the petitioner was that charge sheet be quashed and second prayer was for issuing a writ of mandamus directing the respondents to release gratuity pension and other retiral dues. It is pertinent to note that the Hon'ble Division Bench only laid down that the scope of the disciplinary inquiry was limited as provided in Rule 27 (1) for withholding part of the pension or total pension, but in such disciplinary proceeding punishment cannot be awarded under the M.C.S. (Discipline & Appeal) Rules. Ultimately, the Hon'ble High Court dismissed the Writ Petition without issuing direction to release the pension and other retiral benefits of the petitioner.

19. After reading entire Judgment delivered by the Hon'ble Division Bench, it must be accepted that right is conferred on the

Government under Rule 27, Sub Rule 2 (b) to initiate the departmental proceeding against the Government servant even after his retirement subject to the limitations which are mentioned in the rule. Once this right is exercised by the Government to initiate the departmental inquiry even after retirement as provided under Rule 27 (2) (b) of the M.C.S. (Pension) Rules, then the Government has jurisdiction to take decision as per the Rule 27 (1) regarding withholding of pension or releasing of the pension in part or in entirety.

20. It is rightly submitted by the learned P.O. that the contention of the applicant that after superannuation of the Government servant the Government has no right to withheld the pension and gratuity is not correct, because in case of Shivgopal v state of U.P. AIR 2019 Allahabad 168 the Hon'ble Full Bench of Allahabad High Court has explained in para 112 that -

“The Division Bench in laying down the above principle distinguished the Supreme Court decision in the case of Jitendra Kumar Shrivastava by observing that it was a case from Jharkhand where the provisions of Rule 43(b) of the Pension Rules of Jharkhand were under consideration which were pari material to Rule 351-A of the Civil Service Regulations as applicable to the State of U.P. and the said decision is limited to the pension Rules of Jharkhand which had no provision similar to that as Regulation 919-A (3) of the Civil Service

Regulations as applicable in U.P. Therefore, in view of the Regulation 919-A (3) no death-cum-retirement would be admissible to a Government servant until the conclusion of the departmental or judicial proceedings or any enquiry by the Administrative Tribunal which includes the pendency of criminal case.”

21. In view of the above law only when, the rules are silent the Government cannot withhold the pension and gratuity after retirement of the Government servant. Thus impliedly it can be said that where the disciplinary proceeding is pending against the retired Government servant, the Government has right to withhold the pension till conclusion of the D.E. or till conclusion of a judicial proceeding. In our opinion, this very aspect of the matter is required to be examined and therefore, it is not possible to hold that till conclusion of the D.E. or a judicial proceeding, the Government has no right to withhold the pension or retiral benefits. In view of this discussion, we are unable to accept the submission of the applicant that he is entitled for the pension and retiral benefits irrespective of the pending criminal proceeding and the disciplinary proceedings.

22. So far as the D.E.No.37/2014 is concerned, we would like to point out that even after completion of the D.E. when the punishment is challenged, the scope of judicial review is very much limited. In the present case, the matter is pending before the

disciplinary authority and final decision is yet to be taken by the disciplinary authority. After perusing the final show cause notice issued by the disciplinary authority, it seems that it is view by the disciplinary authority that suitable penalty would be reduction of 25% pension of the applicant for a period of 7 years. The disciplinary authority is not going to award any punishment as per the M.C.S. (Discipline & Appeal) Rules for the misconduct and therefore this action is lawful. In our opinion at premature stage, this Bench cannot examine the merits of a case and cannot make any comment whether findings of the Inquiry Officer were based on entire evidence, whether the findings were correct or incorrect therefore we are unable to enter that aspect of the matter. In this situation, at the most direction can be given to the respondent no.1 to conclude the D.E. No.37/2014 within a stipulated period.

23. So far as the D.E. No. 47/2015 is concerned, though the applicant is exonerated by the Inquiry Officer, final decision is not taken by the respondent no.1 for the reasons that criminal case is pending against the applicant in Gondia Court and it is based on the same facts. If it is insistence of the applicant that this D.E. be decided expeditiously, such direction can be given. In case of **Stanzen Toyotetsu India (P) Ltd. Vs. Girish V. (2014),3 SCC,636**. The guidelines are issued by the Hon'ble Apex Court as to the procedure

to be followed where the D.E. and criminal case are pending against the applicant and based on the same facts. The Hon'ble Apex Court has laid down that if the charges are serious and involved serious issues of law and facts then it is suitable to stay the disciplinary proceeding till conclusion of the criminal trial as there is likelihood of causing grave prejudice to the accused. In the present case, it is submission of the learned P.O. the application for discharge was filed by the applicant before the criminal court and that application is rejected. Under these circumstances, at the most the applicant may request the Court to expedite the trial as prejudice is being caused to him, but in view of the Rule 130 (1) (c) of the M.C.S. (Pension) Rules, it is not possible to issue direction to the respondent no.1 to release gratuity to the applicant. Here it must be remembered that so long as departmental or judicial proceeding is pending, direction cannot be given to the Government to release the gratuity. In this regard, we would like to point out that the charge sheet in D.E.No.37/2014 was served on the applicant before his retirement and therefore when the applicant retired, departmental proceeding was pending against him. The Rule 27 (6) says that the departmental proceeding shall be deemed to be instituted on the date on which statement of charges is issued to the Government servant or pensioner. In the present matter, when the charge sheet was served on the applicant on 28/8/2013 he

was a Government servant and consequently as that inquiry is not concluded, similarly D.E.No.47/2015 is not concluded and in view of the pending criminal case, no such direction can be given.

24. In this regard, we would like to point out that solace can be given to the applicant considering the facts that the applicant has a retired person and now he is receiving the provisional pension. In these circumstances, the applicant may request the Trial Court to expedite the trial even after separating the trial from the other accused on the ground that the applicant is a senior citizen and retired public servant. The specific directions are issued by the Hon'ble Apex Court from time to time for the expeditious disposal of the cases in which senior citizens are involved and the cases which are more than five years old. Apparently, the criminal case against the applicant is more than five years old and the applicant is retired public servant and he is senior citizen, therefore, we do not see any reason for which the Court will not consider his request. In view of this, we pass the following order –

### **ORDER**

The O.A. is partly allowed. The respondent no.1 is directed to conclude the Departmental Inquiries Nos.37/2014 and 47/2015 within a period of two months from the date of this order. The

applicant is at liberty to move the Criminal Court for expeditious disposal of his trial. No order as to costs.

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

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

**Dated** :- 19/03/2020.

\*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 : 19/03/2020.

Uploaded on : 23/03/2020.