

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 425/2011

Dr. Arun Ramchandra Thosar
Aged 59 years, Occ : Retired
R/o : Ganesh Nagar, Dabki Road,
Akola.

Applicant

- **Versus** -

(1) The State of Maharashtra
Through its Principal Secretary,
Public Health Department,
Mantralaya, Mumbai - 32.

(2) The Director of Health Services,
State of Maharashtra,
Arogya Bhavan,
St. George Hospital Campus,
Mumbai.

(3) Deputy Director of Health Services,
Akola Circle, Akola.

Respondents

Shri M. V. Mohokar, Advocate for the applicant

Shri A. M. Ghogare, P. O. for the respondents

Coram : - The Hon'ble Shri B. Majumdar,
Member(A)

Dated :- 14-1-2013

ORDER

The applicant, a retired Civil Surgeon, has filed this O.A. as he is aggrieved that his regular pension along with retiral benefits have not been released on the ground that a Departmental Enquiry (D.E.) is pending against him. He has sought reliefs as follow.

- (i) To quash and set aside the order dated 12-11-2010 and 3-5-2011 issued by respondent nos. 2 and 3.
- (ii) Direct the respondent no. 1 to accept and pass the final order against the enquiry report dated 22-8-2008 and declare applicant exonerated from the said charges.
- (iii) Further, direct the respondents to sanction the final and regular pension from 1-9-2010 onward, regularize suspension period as duty period and pay regular pay scale with increment and other benefit and allowances of suspension period.
- (iv) Further, direct the respondents to sanction and pay the pension on regular basis with revised rates of pension, amount of gratuity, provident fund,

commutation and leave encashment with arrears and with interest.

2. The applicant's case in brief is that on 14-2-2006, a charge-sheet was served on him. The charge was that while he was posted as Civil Surgeon, Akola during the period 16-5-2003 to 2-7-2003, he connived with other employees to incur an excess expenditure of Rs. 1,14,719/-. He was placed under suspension on 13-12-2006. He filed the O.A. No. 649/2007 challenging the order of suspension and at the directions of this Tribunal, the suspension came to be revoked on 20-11-2008. The Enquiry Officer (E.O.) who conducted a common D.E. against seven employees including the applicant submitted his report to the Government on 22-8-2008. According to his report, the single charge levelled against the applicant was not proved in the enquiry. The applicant retired on superannuation on 31-8-2010. On 12-11-2010, the Director of Health Services (R-2) informed the Deputy Director of Health Services, Akola (R-3) that as there was a D.E. pending against the applicant, the final retiral pension, gratuity and commutation of pension cannot be released in his favour. On 3-5-2011, the respondent no. 3 requested Accountant General, Nagpur that pending a final decision by the Government with regard to the D.E. against the applicant, his

provisional pension may be sanctioned. These two orders have been challenged by the applicant in the present O.A.

3. In course of the hearing of the O.A., the Government in the Public Health Department issued a memo dated 8-10-2012 to the applicant which is by way of a show cause notice in supersession of the earlier one dated 31-3-2012, wherein the Government has communicated its disagreement with the findings of the E.O. and has asked the applicant to show cause as to why he should not be inflicted with the punishment of recovery of Rs. 1,14,719/- along with 25% reduction in his pension under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

4. The applicant's grievance is that he stood exonerated in the D.E. after the Enquiry Officer had taken into consideration various factors to conclude that he was not at all responsible for the excess expenditure. Thus, according to the applicant, no D.E. was pending against him when he was retired. His suspension has also not been revoked. Hence the respondents have no reasons for withholding his regular pension along with retiral benefits of commutation of pension and DCRG.

5. The respondents in their reply to the O.A. submit that the applicant cannot be paid the benefits of final pension,

gratuity, leave encashment and commutation of pension as a final decision with regard to the D.E. conducted against him is pending with the Government. According to the respondent no. 1, the findings recorded by the Enquiry Officer are perverse, arbitrary and capricious and are not supported by evidence on record. Hence the competent disciplinary authority has formed a tentative opinion to disagree with the findings of the E.O. He also submits that the reasons for disagreeing with the findings of the E.O. will be duly communicated to the applicant, who will also be given an opportunity to be heard before a final decision with regard to the D.E. is taken.

6. I have heard Shri. M. V. Mohokar, learned counsel for the applicant and Shri. A. M. Ghogare, learned P.O. for the respondents. I have also gone through the documents on record.

7. The learned counsel for the applicant submitted that the Enquiry Officer in his elaborate report after conducting the D.E. had come to the conclusion that the single charge of excess expenditure levelled against the applicant could not be proved. Thus, the applicant came to be exonerated in the D.E. prior to his retirement on superannuation. When the alleged irregularity took place, the applicant was Civil Surgeon at Akola and he did not have any administrative and financial control over the

Murtizapur Hospital where the alleged irregularity took place. Thus, the respondents have no reason to either disagree with the findings of the E.O. or to deny him the benefits of regular pension and other retiral benefits on the specious ground that a final decision with regard to the D.E. is yet to be taken at the Government level.

8. The learned P.O. opposed the O.A. by submitting that a final decision with regard to the report of the E.O. was pending with the Government ~~and~~^{as} the Government had tentatively decided not to agree with the same. A D.E. comes to the conclusion only after the final orders are issued by the disciplinary authority, which, in the case of the applicant, is the Government. Under Rules 26 and 27 of the Maharashtra Civil Services (Pension) Rules, 1982, the Government has authority to withhold or reduce pension and other retiral benefits if the concerned Government servant is found to be guilty of grave misconduct or negligence. The applicant while working as Civil Surgeon, Akola had failed to exercise proper control on expenditure of Government grants, as a result of which, the Government had to incur a loss of Rs. 1,14,719/-. The Government has finally communicated to the applicant through the memo dated 8-10-2012 the reasons why it did not agree with

the findings of the E.E. and have also granted an opportunity to the applicant to be heard before inflicting of punishment following the D.E. is ordered.

9. Having heard the arguments on both sides and after going through the documents placed before me, I find that the applicant's grievance is that he has been exonerated in the D.E. but his pension and retiral benefits have not been released. The factual situation is that the E.O. submitted his report after conducting D.E. to the Government in 2008. In his report, he has exonerated the applicant of the single charge levelled against him. The Government did not issue any final order in the D.E. till the present O.A. came to be filed in 2011. The applicant's regular pension and retiral benefits were not sanctioned by the Accountant General as a D.E. was pending against him. Under Rule 26 of the Pension Rules, payment of pension is subject to good conduct. Under Rule 27, the Government is empowered to withhold or withdraw pension of an employee if he is found in a D.E. to be guilty of grave misconduct or negligence. This Section also empowers the Government to continue with the D.E. even after the applicant has been retired. It is the clearly stated legal position that the enquiry proceedings come to an end only when the findings therein have been considered by the disciplinary authority and the charges are either held to be proved or not

proved [*Motilal s/o Raghudayal Srivastava Vs. State of Maharashtra 2004(2) Mh. L.J. 277*]. The Government vide its show cause notice (memo) dated 8-10-2012 has conveyed to the applicant its disagreement with the findings of the E.O. and its proposal to inflict a punishment of recovery of Rs. 1,14,719/- and a permanent deduction of 25% of the pension of the applicant under Rule 27 of the Pension Rules. Thus, the Government has taken a decision not to agree with the report of the E.O. and has also recorded the reasons therefor. Vide the above memo, the applicant has been given ten days time to convey in writing his defence. Till 21-12-2012 when the matter was last heard and closed for orders, it appears that the applicant had not submitted his reply to the said memo. Be that as it may, the proceedings in the D.E. have been brought to a final stage of deciding the question with regard to inflicting a punishment to the applicant, following which the Government will be required to take a final decision on the question of the applicant's entitlement to the retiral benefits. In view of this, the O.A. can be disposed of by giving directions to the respondent no. 1 to issue a final order of punishment, if any, under Rule 27 of the Pension Rules as also an order with regard to sanction of regular pension along with pending retiral benefits and treatment of the period of suspension. I therefore direct that,

- (a) the respondent no. 1 will issue a final order under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 with regard to the Departmental Enquiry conducted against the applicant as also orders with regard to treatment of the period of suspension, sanction of regular pension and pending retiral benefits to the applicant. This will be done within a period of four months of receipt of this order.
- (b) The applicant will be at the liberty to approach this Tribunal in case he is aggrieved with the orders passed by the respondent no. 1 as per (a) above.

The O.A. stands disposed of in terms of the above directions with no orders as to cost.

Sd/-
(B. Majumdar)
Member(A)

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