

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.279 OF 2020**

**DISTRICT : PUNE**

Shri Shrikant Anant Shinde. )  
Age : 60 Yrs, Retired as Technical Officer, )  
[Class-I] from the office of Deputy )  
Commissioner [Supply], Pune – 1 and )  
Residing at Shriniwas Mahasul Society, )  
Nagar Road, Daund, District : Pune. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through Principal Secretary, )  
Food, Civil Supplies and Consumer )  
Protection Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondent**

**Mr. Bhushan A. Bandiwadekar, Advocate for Applicant.**  
**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 07.06.2021**

**JUDGMENT**

1. The Applicant sought direction to the Respondent for releasing his gratuity which has been withheld on account of D.E. initiated after his retirement, invoking Section 19 of Administrative Tribunals Act, 1985.

2. In nutshell, the facts giving rise to this O.A. are as under :-

The Applicant stands retired on 31.12.2017 from the post of Technical Officer (Class-I), Office of Deputy Commissioner [Supply], Pune. He stands retired on 31.12.2017 on attaining the age of superannuation. On the date of retirement, no departmental proceeding was in existence against him. It is only after about one year from retirement, he was served with charge-sheet on 05.10.2018 alleging that he has committed certain irregularities in updating data entries regarding distribution and maintenance of Ration Card. The Enquiry Officer was appointed on 08.02.2019. However, thereafter no further step was taken for completion of D.E. He made various representations to release gratuity, but in vain. Ultimately, he has filed the present O.A. seeking direction to the Respondent to release gratuity *inter-alia* contending that since there was no initiation of D.E. on the date of retirement, the gratuity cannot be withheld on the basis of Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity).

3. In O.A, notice was issued to the Respondent on 09.07.2020 and thereafter enough time was availed for filing Affidavit-in-reply, but the same is not filed. Ultimately, having noticed that Respondent does not want to file reply in the matter, by order dated 05.03.2021, the O.A. was proceeded without reply and kept for hearing at the stage of admission. It is on this background, the O.A. is being decided at the state of admission, since Respondent has failed to file Affidavit-in-reply despite enough chances.

4. Shri B.A. Bandiwadekar, learned Advocate for the Applicant submits that since there was no D.E. initiated against the Applicant till the date of retirement, now Respondent cannot withhold gratuity because of initiation of D.E. after one year from the date of retirement. According to him, it is only in case of initiation of D.E. during service period, it can be continued even after retirement and in that event only,

gratuity can be withheld in terms of Section 130(1)(c) of 'Rules of 1982'. In this behalf, he has pointed out that this issue is no more *res-integra* in view of decision by this Tribunal in **O.A.No.768/2018 (Kondiba R. Nannaware Vs. The Commissioner, Dairy Development, Mumbai) decided on 24.04.2019** arising from identical situation. He, therefore, submits that this O.A. also needs to be allowed on the line of decision rendered in O.A.No.768/2018.

5. Per contra, Mrs. K.S. Gaikwad, learned P.O. submits that in view of initiation of D.E, though after retirement, in view of Rule 130(1)(c) of 'Rules of 1982', the gratuity cannot be released till the conclusion of D.E. This is the only legal submission she advanced in O.A.

6. In view of submissions advanced at the Bar, the crux of the matter is whether subsequent initiation of D.E. after one year from retirement can be a ground to withhold gratuity of the Applicant. Indisputably, the Applicant stands retired on 31.12.2017 and till that date, no D.E. was initiated against him. It is only after one year from retirement, he was served with charge-sheet on 05.10.2018 for certain irregularities in updating the data entries. This aspect is of vital importance in the present matter to see whether Respondent is justified to withhold gratuity.

7. It cannot be disputed that, where the Government servant has been charged for misconduct and charge-sheet has been issued against him during his tenure, then such disciplinary enquiry could be continued even after retirement. Where any such D.E. is initiated during the tenure of service, it is necessary that an order is passed intimating the delinquent that the enquiry proceeding shall be continued after attaining the age of superannuation in view of Section 27(2)(a) of 'Rules of 1982'. As such, in the light of deeming provision contained in Rule 27(2)(a) of 'Rules of 1982', if D.E. is instituted while Government servant is in service, then it deemed to be continued even after his retirement.

However, in the present case, admittedly, no such D.E. was initiated against the Applicant till his retirement.

8. One need to consider the provisions and scope as well as applicability of Rules 27 and 130 of 'Pension Rules 1982' which are as under :-

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

- (1) [Appointing Authority may], by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- 2(a) The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.
- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -
- (i) shall not be instituted save with the sanction of (Appointing Authority),
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.
- (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.
- (5) Where Government decided not to withhold or withdrawn pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at the rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.
- (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
  - (b) judicial proceedings shall be deemed to be instituted –
    - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and
    - (ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

**“130. Provisional pension where departmental or judicial proceedings may be pending.**

- (1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.
- (b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional

pension shall be continued upto and including the date of which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

- (c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].

- (2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

9. Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of ‘Rules of 1982’. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement of the Applicant, so as to have bearing of Rule 27(2)(a) of ‘Rules of 1982’.

10. At this juncture, it would be apposite to refer the Judgment of Hon’ble High Court in **2013(6) Mh.L.J. 311 (Manohar B. Patil Vs. State of Maharashtra)**. In that case, the Petitioner was relieved from the employment on 30.04.2010 in view of voluntary retirement, but the charge-sheet in D.E. was issued on 07.09.2011. The Petitioner had challenged the institution of D.E. after retirement. This authority highlights the scope of Rule 27 in the situation where the charge-sheet has been filed after retirement and to that extent important in the

present mastter. The Hon'ble High Court dismissed the petition in view of provisions of Rule 27 of 'Rules of 1982'. The following passage from the Judgment highlights the scope and ambit of Rule 27, which is as follows :-

*“On a conjoint reading of sub-rule (1) with sub-rule (2) of Rule 27 of the said Pension Rules, we are of the view that the Pension Rules provide for initiation of departmental proceedings after retirement of a Government servant subject to constraints of sub-clauses (i) and (ii) of Clause (b) of sub-rule (2) of Rule 27 of the Pension Rules. The departmental proceedings can be instituted after retirement only for the purposes of sub-rule (1) of Rule 27 to enable the Government to recover from pension, the whole or part of any pecuniary loss caused to the Government if in the departmental proceedings, the Pensioner is found guilty of grave misconduct or negligence during the period of his service. On conjoint reading of sub-rules (1) and (2) of Rule 27 of the Pension Rules, it is obvious that in the departmental proceedings initiated after retirement, no penalty can be imposed on a Government servant in accordance with the Discipline and Appeal Rules. The departmental inquiry can be initiated after superannuation only for the purposes of withholding the whole or part of the pension.”*

11. It would be also useful to refer the decision of Hon'ble High Court in The Chairman/Secretary of Institute of **Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil : 2003 (3) Mah.L.J. 602**. In that case, the D.E. was initiated during the service but was continued after retirement of the Respondent. In this authority also, the Hon'ble High Court highlighted the scope, ambit as well as limitation of Rule 27 of 'Rules of 1982'. Para No.13 of the Judgment is important, which is as follows :-

**“13.** *All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub - rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re - employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted*

*specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.”*

12. 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.

13. As regard gratuity, the Rule 130(1)(c) says “no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.” Here, the legislature has not used the word “pensioner” and has specifically used the word “Government Servant”, which is significant in the present context. This leads to suggest that Rule 130(1)(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of ‘Rules of 1982’, in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, the right to receive pension and gratuity accrues to him and such right cannot be

kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.

14. The learned P.O. except Rule 130(c) could not point out any provision to substantiate that the gratuity can be withheld where charge-sheet in D.E. has been issued after retirement. Needless to mention, the pension as well as gratuity are the statutory rights of the Government servants, which cannot be taken away in absence of express provision to that effect.

15. Now turning to the facts of the present case, as stated earlier, the Applicant stands retired on 31.12.2017 and it is only after one year, D.E. was initiated against him. Even after initiation of D.E. in 2018, till date it is kept pending. Indeed, in terms of various Circulars and provisions of Departmental Enquiry Manual, the D.E. is required to be completed within six months. However, no steps were taken to complete the D.E. within reasonable time which clearly indicates lethargy and inaction on the part of Government to follow instructions and provisions contained in Departmental Enquiry Manual and the Applicant has been deprived of from getting gratuity despite period of more than three and half years is over. The Respondent, therefore, cannot be allowed to withhold gratuity.

16. Apart, the charges levelled in the D.E. pertain to certain irregularities in updating the data entries relating to distribution of Ration Card maintenance of record. As such, it is not a case of charge of

misappropriate of Government money or causing any monetary loss to the Government.

17. This O.A. also, therefore, deserves to be allowed on the line of decision rendered in O.A.No.768/2018 arising from identical situation. In that case, directions were issued to release gratuity within two months.

18. The necessary corollary of aforesaid discussion leads me to sum-up that the Applicant is entitled to gratuity and O.A. deserves to be allowed. Needless to mention, in case of positive finding in D.E, the Government is at liberty to pass appropriate orders of withholding pension in case of positive finding. As of now, in absence of any such statutory provision, the gratuity cannot be withheld. In so far as D.E. which has been initiated belatedly is concerned, it also needs to be completed within stipulate period. The O.A. is, therefore, deserves to be allowed. Hence the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The Respondent is directed to release gratuity within two months from today.
- (C) The Respondent is also directed to complete the D.E. within four months from today without fail.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 07.06.2021  
Dictation taken by :  
S.K. Wamanse.

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