

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.307 OF 2015
(Subject : Quashing of D.E.)**

DISTRICT : THANE

Shri Bidhichand Rangiluram Jamle,)
R/o. Heritage, New Panvel,)
Dist. Raigad, with last posting in I.T.I.,)
Tal. Wada, Dist. Thane.)

Address for Service of Notice :

Shri A.V. Bandiwadekar, Advocate,)
Having office at 9, "Ram-Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)

...APPLICANT

VERSUS

The State of Maharashtra,)
Through Principal Secretary,)
Higher and Technical Education)
Department, having office at Mantralaya,)
Mumbai 400 032.)

....RESPONDENT.

Shri A.V. Bandiwadekar, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 18.01.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicant challenging initiation of Departmental Enquiry (D.E.) against him by order dated 30.03.2015 of the Respondent after his retirement.

3. Learned Counsel for the Applicant argued that the Applicant retired from Government service on 31.03.2011 as a Store Keeper, Industrial Training Institute, Wada, District Thane. Before his retirement, the Applicant was placed under suspension with effect from 16.03.2011 and he retired while under suspension. Now by order dated 30.03.2015, a Departmental Enquiry has been started against the Applicant. Learned Counsel for the Applicant argued that no Departmental Enquiry can be started against a retired Government servant regarding any event which happened four years prior to the date of issuance of the charge-sheet under Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982. The Applicant was under suspension from 16.03.2011. Any event which happened before 30.03.2011, cannot be a ground to start a D.E. against the Applicant by

issuing charge-sheet dated 30.03.2015. The D.E. is void ab-initio and the memorandum dated 30.03.2015 may be quashed and set aside.

4. We find that the Applicant in para 6.16 of the O.A. has stated as under :-

“6.16] That as stated above the Petitioner retired from the Government service on 31.3.2011, whereas the Departmental Enquiry Charge Sheet came to be issued to him after retirement on 30.3.2015. That, however, this is in respect of the alleged misconduct of the Petitioner between 5.9.2005 to 18.3.2011. This is contrary to the provisions of Rule 27[b][2]. That in as much as the alleged misconduct of the Petitioner mentioned in the Departmental Enquiry Charge Sheet is of the period which is more than 4 years before the issuance of the Departmental Enquiry Charge Sheet. That in view of this no Departmental Enquiry can be initiated against the Petitioner.

In the affidavit-in-reply dated 21.10.2015, the Respondent has stated that the Applicant, was suspended vide order dated 16.03.2011 with effect from 19.03.2011. As per Rule 27[b][a] of Maharashtra Civil Services (Pension) Rules, 1982, Government is empowered to initiate Departmental Enquiry against the Applicant. In this case the Applicant was admittedly placed under suspension by order dated 16.03.2011. Under Rule 27[6][a], the departmental proceedings are deemed to be instituted from the date of suspension. Rule 27[2][b][ii] is not applicable in this case.

5. The Applicant has argued that the Governor of Maharashtra is the only the Competent Authority to order a Departmental enquiry against a Government servant after his

retirement. He is relying on Rule 27[2][b][i] of Pension rules. Rule 27(2)(b)(i) read with Rule 9(21) of these rules, states that the Departmental Proceedings, if not instituted while the Government servant was in service, shall not be instituted save with the sanction of the Government. It is noted that the words 'Departmental Proceedings', are used in this Rule. Rule 27[6][a] makes it clear that the 'Departmental Proceedings' shall be deemed to be instituted, if the Government servant has been placed under suspension from a date earlier than date of issuance of charge sheet from the date of suspension which would be the date on which 'Departmental Proceedings' are instituted. In the present case, the Applicant was placed under suspension by order dated 16.03.2011 and therefore 'Departmental Proceedings' were initiated before his retirement. Sanction of the Government under Rule 27[2][b][i] is, therefore, not necessary. We, therefore, need not go into the question whether sanction of the Government would mean sanction of the Governor.

6. Learned Counsel for the Applicant argued that the charge-sheet dated 30.03.2015 does not state that the Applicant was guilty of 'grave misconduct' and as such, it is not valid against the Applicant who is retired and can be punished only on charges of grave misconduct or negligence. Learned Counsel for the Applicant argued that on this ground also the charge-sheet is unsustainable. In our view a peculiar feature of this O.A. is that the Applicant was already placed under suspension pre-retirement and therefore, the as a fact, gravity of charge will have to be examined

7. We note that the Applicant retired on 31.03.2011 and charge-sheet has been issued after four years on 30.03.2015. This itself is highly irregular. Till date, we do not know what is progress in D.E. proceedings. Hon'ble Supreme Court has held that D.E. against Government employees should be completed in 6 months, and at the most within a year. In the present case, considering that the Applicant retired almost 6 years back on 31.03.2011, the Respondents are directed to complete the D.E. against him within a period of 6 months from the date of this order, in all respects, including the final order, failing which the D.E. will stand quashed with no further reference to this Tribunal. This O.A. is disposed of accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER(J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 18.01.2017.
Typed by : PRK