IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.328 OF 2016

DISTRICT : SOLAPUR

Mr. Prabhakar Tukaram Sonkamble.)
Age : 61 Yrs, Occu.: Retired Awal Karkun,)
R/o. 32/33, Alankapuri Nagar, Laxmi)
Peth, Solapur 400 001.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)

2. The Collector, Solapur.)**...Respondents**

Mr. J.N Kamble, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 20.03.2017

JUDGMENT

1. This Original Application (OA) is brought by a retired Awal Karkun calling into question the orders based on two Departmental Enquiries (DEs) which were initiated after his retirement on superannuation and which orders pending this

OA came to be confirmed in appeal. By one order, the period of absence for a period much before the retirement of the Applicant was treated as *dies-non* and by another order, an amount of Rs.100/- p.m. was ordered to be withheld from the pension for a period of one year. These orders were made under the Rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (to be hereinafter called "Pension Rules"). These three orders are the subject matter hereof.

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2. It is an indisputable factual position that the Applicant retired on superannuation on 31.7.2013. The first memo of the DE was served on him on 13.12.2013. It would quite clearly mean, therefore, that no DE was started when the Applicant was a serving Government employee and the DE was stared only after his retirement. Broadly so speaking, the allegations were actionable absence from duty. For the reasons to be presently set out, the decision of this OA shall be based on elementary principles underlying Rule 27 of the Pension Rules, and therefore, a very detailed and closer examination of both the DEs would not be in fact necessary. It would be out of place as it were. It would be suffice to mention that, according to the Applicant, at the time relevant herefor, he had been suffering from mental stress and agony, and therefore, he had remained absent for which he claims to have submitted applications for leave.

3. Mr. J.R. Bankapure, a retired Under Secretary came to be appointed as Enquiry Officer (EO) by the orders dated 3.4.2014 and 13.12.2013, both of them being after the retirement of the Applicant.

4. The 1st Respondent is the State of Maharashtra in Revenue & Forest Department and the 2nd Respondent is the Collector, Solapur. By and large, all actions culminating into the impugned orders, at the first instance came to be made by the 2nd Respondent.

5. By an Enquiry Report of 15.1.2015, the EO held that the charges were proved partially (va'kr%). In the 19 page report, the EO ultimately concluded as above on the ground that the absence was in any case accepted by the Applicant. Ex-facie, I find it difficult to entirely agree with this conclusion because after-all, for the purposes hereof, the absence ought to have been actionable for which there does not appear to be satisfactory discussion, but as already indicated hereinabove, I need not delve into that aspect of the matter because the determination of the facts at issue is based on an entirely different principle underlying Rule 27 of the Pension Rules.

6. The 2nd Enquiry Report is dated 16.1.2015 for which under all the three heads of charges, the same EO held that none of them was proved.

7. As far as the Enquiry Report dated 15.1.2015 is concerned, the Respondent No.2 made an order dated 28.7.2015. He mentioned therein that the relevant memo was served on the Applicant on 13.12.2013. The Applicant responded thereto denying the allegations. The EO was appointed by the order of 30.5.2014. The EO found that the charges were only partially proved. The Respondent No.2 as a disciplinary authority accepted this conclusion of the EO and served a copy of the Enquiry Report to the Applicant asking him to respond thereto which the Applicant eventually did. A proposal was conveyed to him to treat his absence from duty from 6.3.2012 to 31.8.2012 and 10.10.2012 to 31.7.2013 as *dies-non* and after receiving the response from the Applicant, the Respondent No.2 concluded that his absence was unauthorized and under the relevant provisions of the Leave Rules quoted therein, he treated the said period as *dies-non*.

8. As far as the report submitted on 16.1.2015 was concerned, the order was made on 29th July, 2015 by the Respondent No.2 – disciplinary authority. The said authority disagreed with the conclusion of the EO and he sought the response of the Applicant. It was found that during 2009-2011, the Applicant was absent for a few days which fact was conveyed to him. The Applicant had himself accepted this position and that being the state of affairs, under the provisions of Rule 27 (1) of the Pension Rules, a punishment

was imposed on him to withhold an amount of Rs.100/- p.m. for one year from his pension.

9. At the time the OA was brought, these two orders held the ground. But in the meanwhile, the departmental appeal preferred by the Applicant came to be decided and the same was dismissed and the challenge thereto was also included by way of an amendment. The appeal was heard by the Hon'ble Minister of State for Revenue.

10. I have perused the record and proceedings and heard Mr. J.N. Kamble, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

11. There are two set of Rules which it will be relevant to consider herein. The first one is the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (D & A Rules). Rule 8 thereof prescribes the procedure for imposing major penalty on the delinquent Government employee. A very detailed discussion about that procedure may not be necessary and it would be suffice to mention that various safe-guards, etc. have been provided therein for the delinquent and a just balance is sought to be struck between, the need to have a clean administration and those trying to deviate from the path of rectitude to be punished, but at the same time for them also,

the safe-guards by way of the adherence to the principles of natural justice and fair-play is provided.

12. Another set of Rules is Rule 27 of the Pension Rules which provides that the Government would have the right to withheld or withdraw pension and that withdrawal can be for a specified period or permanently of the amount therein mentioned. Rule 27 (2) lays down that if the departmental proceedings had already commenced when the delinquent is in service, the said proceedings can be continued post retirement also. But sub-rule (b) which is relevant herefor, provides that if the departmental proceedings were not instituted when the Government servant was in service, they shall not be instituted save and except with the sanction of the Government. Now, by way of the amendment to the said Rule effected by the Notification of 19.1.2016, it is provided *inter-alia* that such an application would be from appointing authority and this is a retrospective amendment w.e.f. 2nd June, 2003. Let us assume, therefore, that the 2nd Respondent was competent to grant sanction for the said DE which got underway post retirement of the Applicant, but there is nothing on record to show that such a sanction was granted. I do not subscribe to the view that merely because the impugned orders were made by the 2nd Respondent that *ipso-facto* should be held as a sanction because the final order is the last step while such a sanction is a pre-condition to the very initiation of the DE and nothing can be inferred when there is a compulsory procedure

of sanction provided by the said Rule. I find from the record that no such sanction was given either by the Government or even by the 2nd Respondent, and therefore, this initial jolt to the case of the Respondents is so fatal as to make it completely unnecessary even to proceed further though I shall not rest there only and shall proceed further to complete the discussion.

13. Rule 27 (2)(b)(ii) lays down that no DE shall be instituted after the retirement in respect of any event which took place more than four years before such institution. Now, at least in one set of charge, the period covered is 2009 and 2010, and therefore, as far as the period of 2009-2010 is concerned, the DE could not have been started. I need not get drawn into the academic discussion of the period being segregatable or not because no such case is set up by the Respondents and I do not have to decide academic issues.

14. Rule 27(2)(b)(iii) lays down that the enquiry in the circumstances like the present one, would be conducted by such authority and at such place as the Government may direct. No such order is placed with regard to show that the Government gave any such direction. Quite pertinently, even the 2016 amendment takes care of the provisions of Rule 27(2)(b)(i) only and no other sub clauses. Therefore, this is another pitfall in the case of the Respondents.

15. I have already discussed above that there is no sanction to initiate the departmental enquiry granted by the 2nd Respondent and let us clearly understand that no such sanction from the Government is also there. The significance of this matter lies in the fact that the DEs post retirement could not be held in respect of any and every alleged infraction unless it was in respect of grave charges. I am aware, in this behalf of a Judgment of the Division Bench of the Hon'ble Bombay High Court in **Madanlal Sharma Vs. State of Maharashtra : 2004 (1) MLJ 581**. There the Hon'ble High Court was pleased to hold that even for continuation of the DE which came to be started when the delinquent was already in service before retirement, a specific order for continuation of the said proceedings would be necessary and in the absence of such an order, the normal presumption would be that on reaching the age of superannuation, the retirement was automatic. In that connection, useful reference could be made to the observations in Para 21 of **Madanlal Sharma** (supra). If that was the state of affairs when the DE was started when the delinquent was still in service, the position would be still more compelling when the enquiry was started for the first time post retirement and there must be sanction and that sanction must also provide the manifestation of a mind-set of the employer that the charge was grave and required to be enquired into. There is another Judgment in this field of the Hon'ble Supreme Court in **D.V. Kapoor Vs. Union of India : AIR 1990 SC 1923**.

16. Further, it becomes very clear from the perusal of the two impugned orders made by the Respondent No.2 that he had all along in his mind the DEs to be conducted as per Rule 8 of the D & A Rules. That is completely and totally fallacious and unsustainable. In this behalf, I do not think that it is necessary for me to say anything of my own. This aspect of the matter is fully governed by a Judgment of the Hon'ble Bombay High Court in **Chairman/Secretary of Institute of Shri Acharya Ratna Deshbushan Shikshan Prasarak Mandal, Kolhapur and another Vs. Bhujgonda B. Patil : 2003 (3) MLJ 602**. It was made clear that after retirement, the DE cannot be for the purpose of imposing punishment, but under Rule 27 of the Pension Rules, it would be only for the purpose of deciding the issue of pension. The consequences that the orders made under Rule 27 of the Pension Rules are almost quasi-penal, and therefore, such provisions are to be strictly construed. In my opinion, going by the above referred case law, the initiation of the DE against the present Applicant with Rule 8 of D & A Rules in mind was clearly unsustainable. In fact, in the Judgment cited above, His Lordship has been pleased to hold that even if the DE was started when the delinquent was still in service and if in the meanwhile, he stood retired on superannuation, the subsequent proceedings would be deemed to be only in relation to the pension.

17. The above discussion must make it quite clear that tested on the touchstone of the first principles, the impugned orders are unsustainable. Having held so, there are certain other aspects which may also be discussed. In the first place, there does not appear to be any justifiable reason as to why, there should have been such a great delay in initiation of the proceedings. The record shows that the Applicant had been claiming that he had valid and good reasons for having remained absent. They were by and large health related. Now, if he remained absent without any cause and unauthorizedly, then he deserved to be punished but the precise issue is why he was not punished in good time. To examine from the stand point of the Applicant, if he was proceeded against in good time, he could have adduced evidence in his defence, which opportunity has been clearly denied to him.

18. In so far as one of the two DEs is concerned, the EO held the Applicant not guilty on any charge. The disciplinary authority differed from him which he was well within his powers to do. Now, in view of the above discussion based on the binding case law, the governing provision would be Rule 27 of the Pension Rules and the provisions under D & A Rules would not be applicable at all. But even then, it needs to be mentioned that under Rule 9(2) as introduced by the amendment dated 10.6.2010, the disciplinary authority was in duty bound, in the event of his disagreement with the EO to forward a copy of the report together with his own tentative

reasoning for his disagreement, if any, and then to proceed further, which he really did not follow. It appears quite clearly that this amendment was influenced by the Judgment of the Hon'ble Supreme Court in the matter of **Yoginath D. Bagde V/s. State of Maharashtra & Anr. (1999) Supreme Court Cases (L & S) 1385 (D)** and the said procedure was not followed. Therefore also, for this additional reason, the impugned action becomes completely vulnerable beyond redemption.

19. The perusal of the record would show that even in respect of the matters that exclusively fall within the powers of the disciplinary authority, the issue was treated like any other official business and the official notings, etc. were there, I am clearly of the opinion that this course of action adopted by the Collector, Solapur – Respondent No.2 was clearly and legally unacceptable. These matters are of great moment and within the exclusive domain of the disciplinary authority, and therefore, no third party including any of its subordinates should even have access to it, much less should he give his own opinion about the course of action to be adopted. The high functionaries like the Collectors, have to discharge various functions. This function is such where he has to apply his own mind to the facts all by himself and he should not even share it with his subordinates much less should it be routed through them in the hierarchy.

20. For the foregoing, I am clearly of the view that the impugned orders are unsustainable. They are accordingly quashed and set aside. The two DEs started against the Applicant are quashed and set aside. It is directed that the period treated as *dies-non* be treated as period spent on duty and the amount, if any, of the recovery pursuant to the order of the Respondent No.2 (at the rate of Rs.100/- p.m. for one year) or otherwise be refunded to the Applicant. The consequential steps be also taken and whenever necessary, appropriate orders be passed in accordance herewith. Compliance within six weeks from today. The Original Application is accordingly allowed with no order as to costs.

(R.B. Malik)
Member-J
20.03.2017

Mumbai
Date : 20.03.2017
Dictation taken by :
S.K. Wamanse.
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