

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.332 OF 2017**

Mr. Baban Nivrutti Jadhav )  
Retired as Co-operative Officer/ )  
Head Clerk from office of Deputy )  
Registrar, Co-operative Societies, )  
Pune City having at Market Yard, )  
Gultekdi, Pune 37 )  
R/o. 154, Rajas, C.H.S. Ltd. )  
Katraj, Pune 46 )

**....APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through Principal Secretary) )  
Co-operation, Marketing and) )  
Textile Department, having )  
Office at Mantralaya, )  
Mumbai 400 032 )
  
2. The Hon'ble Minister of State) )  
for Energy, Tourism, Food & )  
Drugs Administration, Public) )  
Works, (Public Undertaking) )  
General Administration, )  
Government of Maharashtra, )  
Having at Mantralaya, )  
Mumbai 400 032 )

**...RESPONDENTS.**

Mr. Bhushan A. Bandiwadekar, learned Counsel for the Applicant.

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

**CORAM** : **Justice Mridula Bhatkar (Chairperson)**  
**Ms. Medha Gadgil, Member (A)**

**RESERVED ON** : **12.03.2024.**

**PRONOUNCED ON** : **01.04.2024**

### **J U D G M E N T**

1. Applicant was working as Head Clerk/ Co-operative Officer of Deputy Registrar, Co-operative Societies, Pune City. He retired on 30.06.2006. He was subjected to Departmental Enquiry and he was held guilty in the enquiry and by order dated 11.11.2014 passed by Respondent No.1 10% pension was reduced per month permanently. The said order was confirmed in appeal by order dated 09.01.2017. Applicant prays that these two orders be set aside.

2. Learned Counsel for the Applicant has submitted that the Respondent No.1 served the applicant with charge-sheet on 10.07.2006 in respect of the incidence of the year 2005/2006. As per Respondent the charge-sheet dated 29.06.2006 was served on the applicant on 10.07.2006. Hence, it is to be necessarily said that the enquiry was initiated after the retirement of the Applicant. Learned Counsel has submitted that the Applicant who was working as Sub Registrar, Grade II was given the additional charge as Administrator of the Rajas Sahakari Grahachana Sanatha, Katraj, Pune during the period from 16.08.2005 to 08.03.2006.

Applicant has submitted that the charge-sheet was initiated in the year 2006 for delay and protected till 2014.

3. The Appeal was decided on 19.01.2017 by the Hon'ble Minister of State for Energy, Tourism, Food & Drugs Administration. In the charge-sheet the Applicant was held guilty under Rule 3(1) and 3(2) of the Maharashtra Civil Service (Conduct) Rules, 1979. The Applicant prays for quashing the order of the Enquiry Officer and the Disciplinary Authority on the ground that there is no finding about grave misconduct as contemplated under Rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982. Learned Counsel has submitted that there is no reference of the finding of the grave misconduct which is required. Learned Counsel has relied on the judgment of Hon'ble Supreme Court in the case of ***D.V. Kapoor Vs. Union of India & Ors. reported in AIR 1990 SCC 1923.*** Learned Counsel has submitted that for initiation of Departmental Enquiry after retirement it is binding on the Respondent to follow proper procedure i.e. to take approval of the Government and learned Counsel has further relied on Rule 9(21) of the Maharashtra Civil Services (Pension) Rules, 1982 wherein Government is defined as follows:

*“9(21) “Government” unless there is anything repugnant in the subject or context, as respect anything done or to be done after the commencement of the Constitution, shall mean the Governor of Maharashtra.”*

Learned Counsel has submitted that the Applicant in the show cause notice it was necessary to mention the reasons on conclusion of holding the Applicant guilty. Enquiry Officer's report is perverse. She has submitted that the orders are cryptic and without reasons.

4. Learned Counsel Mr. Bandiwadekar has submitted that when the enquiry was initiated after retirement of the applicant the Government has to follow the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 while conducting the enquiry. He has argued that unless there is grave misconduct the Applicant cannot be held guilty and given punishment. Neither the Enquiry Officer nor the Disciplinary Authority in its order has given finding that it is grave misconduct but it is also mentioned that it is misconduct which is not sufficient to hold him guilty and punished him by saddling 10% reduction in his pension. On this point he has relied on the judgment. Much is argued by learned Counsel in respect of finding even by the Disciplinary Authority for grave misconduct. However, it is necessary to reproduce the relevant rule which is as follows :

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

*(1) Government 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.”*

After plain reading of the said Rule it is transpired that it does not say only 'grave misconduct, but it also says 'or negligence'. In the report of the Disciplinary Authority which is in marathi the Disciplinary Authority has observed misconduct as serious (grave) and there is also negligence on the part of the Applicant thus it cannot be said that findings given by the Disciplinary Authority is erroneous.

5. Learned Presenting Officer for the Respondents has relied on the affidavit-in-reply dated 29.07.2017 filed on behalf of Respondents No.1 & 2 through Dr. Sudin Gaikwad, Deputy Secretary in the office of the Co-operation, Marketing and Textile Department, Mantralaya. She has relied on paragraph 24 of the said affidavit which reads as below :

*“24. With reference to Ground 6.24, I say as follows : As per the enquiry report submitted by the Enquiry Officer, the charges framed against the Applicant were completely proved. In this report it is proved that the Applicant, during his tenure as the Administrator of the said housing society spent the amount of Rs.33,27,530/- for construction of the compound wall and repair of the Sanskrutik Bhavan (Cultural Hall) without following any procedure and usual practices as well as necessary sanction and permission of the General Body of the society. The Applicant used the amount of the fixed deposits prior to maturity dates. Hence, it is not true to say that the two charges framed against the Applicant were not of the grave nature.”*

She has submitted that during that period the Applicant was found irresponsible and violative of Rule 3(2) of the Maharashtra Civil Service (Conduct) Rules, 1979.

6. Considered submissions. The main point raised before us by learned Counsel is that the Respondents-State has committed procedural breach by not following Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned Counsel has submitted that the pension can be withheld or it can be recovered if the pensioner is found guilty of grave misconduct of negligence. We clarify that it is not only grave misconduct, but the rule states that if the public servant is found negligence during the period of service, then such punishment under Rule 27 can be saddled. We straight way refer to the enquiry report dated 20.03.2010 submitted by the Enquiry Officer Mr. S.P. Chavan which is marked as Exhibit-G. The Applicant faced two charges. As per charges he was facing misappropriation of the amounts when he was appointed and working as the Administrator of the Corporative Housing Society. The Enquiry Officer while holding him guilty has observed and stated that the service rendered and work done disclosed the grave (serious) misconduct and negligence. The report was accepted by the Disciplinary Authority and it passed the impugned order dated 11.11.2014 based on the same findings.

7. The Hon'ble Supreme Court in the case of **D.V. Kapoor (supra)** has held the pension as a retirement benefit is in

consonance with and furtherance of the goals of the Constitution or a Welfare State and therefore action taken against him, if depriving him of pensionary benefit is in accordance with law. Thus in the present case, we hold that no illegality or procedural flaw is pointed out or and so also the enquiry conducted and the order passed by the Disciplinary Authority are in consonance with Rule 9(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and so also Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

8. Nothing much is brought on record from the side of the Applicant so that the order passed by the Disciplinary Authority or the Appellate Authority can be said as illegal, bad in law and therefore to be turned out.

9. Hence, we maintain both the orders and dispose of the O.A. O.A. stands dismissed.

SD/-  
**(Medha Gadgil)**  
**Member(A)**

SD/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**

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