IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.385 OF 2018

DISTRICT : NASHIK

Shri Shivaji Shankar Rawle.)
Age : 70 Yrs, Occu.: Retired Govt. Servant,)
R/o. "Shivneri", Bankar Mala, Nasardi)
Bridge (E), Pune Road, Nashik – 422 011.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)

2. State Minister.)
Agriculture, Horticulture & Marketing)
M.S, Mantralaya, Mumbai – 400 032.)

3. Settlement Commissioner & Director)
of Land Record, M.S, Pune.)

4. Deputy Director of Land Records.)
Pune Division, New Administrative)
Building, Council Hall Compound,)
Pune – 411 001.)**...Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 18.11.2021

JUDGMENT

1. The Applicant has invoked jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985 for challenging punishment order dated 26.11.2015 issued by Government thereby imposing punishment of 6% deduction of pension for one year under Rule 27 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) and confirmed by Appellate Authority by order dated 17.01.2017.

2. In the year 1998, the Applicant was serving as Taluka Inspector, Land Record, Mulshi, District Pune. On 19.03.1998, in discharge of his official duties, he measured land Survey No.6/11/12 and 6/11/1/3. It is known as Nimtana measurement in common parlance. In measurement, the Applicant has shown some area of Survey No.6/11/1 as a part of Public Road and fixed boundaries. Being aggrieved by it, the owner of the land applied for Super-nimtana measurement which was carried out by Shri Bansode, Superintendent, Land Record and found that the measurement done by the Applicant was incorrect. He, therefore, cancelled the said measurement. While carrying out the measurement, the Applicant allegedly did not sign Test Table (TT) papers and also not shown baseline in the TT. The Applicant therefore allegedly committed negligence while measuring the land and was guilty of lack of devotion in duty. He was due to retire on 28.02.2016 and one day before retirement, he was served with charge-sheet on 27.02.2016 alleging that he has committed misconduct in terms of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules of 1979' for brevity). The Applicant denied the charges. Enquiry Officer was appointed. He examined the Applicant in the very beginning of an enquiry and thereafter proceeded to examine three witnesses. After enquiry, he submitted report dated 15.03.2008 to the disciplinary authority. Since Applicant stands retired on 28.02.2006, the matter was referred to Government and in turn, the Government after issuing Show

Cause Notice to the Applicant imposed punishment by order dated 26.11.2015 accepting Enquiry Report holding the Applicant guilty of charges levelled against him and imposed punishment of deduction of 6% pension for one year invoking Rule 27 of 'Pension Rules of 1982'. The appeal preferred against it came to be dismissed by Government by order dated 17.01.2017.

3. Now let us see the charges levelled against the Applicant which are as under :-

> **"बाब एक**
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> श्री. एस.एस. रावळे हे तालुका निरीक्षक, भूमी अभिलेख, मुळशी (पौड) या पदावर दिनांक १२/११/१९९७ ते १५/७/२००२ पर्यंत कार्यरत होते. सदर पदावर कार्यरत असताना त्यांनी अर्जदार श्रीमती शोभा काशिनाथ गायकवाड यांचे अर्जावरून मौजे बावधन खुर्द येथील स.नं. ६/११/१२ व ६/११/१३ चे मो.र.नं. ७४०/९७ चे मोजणी वर निमताना मोजणी करून दिनांक १९/३/९८ रोजी हद्दी दाखविल्या आहेत. प्रस्तुत निमताना मोजणी नकाशाच्या अभिलेखामध्ये स.नं.६/११/१ पै. क्षेत्र हे रस्त्यांपैकी म्हणून दर्शवले आहे. म्हणजेच स.नं. ६/११/१ च्या पश्चिमेकडील हद्दीच्या खुणा ह्या रस्त्यामध्ये दर्शविल्या आहेत. श्री. रावळे यांचे सदोष निमताना मोजणीमुळे श्रीमती कलाबाई शेलार व इ. २ यांचेतर्फे कु.मु. आनंदराम दगडुराम मुथा यांचे अर्जास अनुसरून सुपन निमताना मो.र.नं. २८/२००० अन्वये सुपन निमताना मोजणी काम तत्कालीन अधीक्षक, भूमि अभिलेख, पुणे यांनी केले असून मो.र.नं.७/९८ अन्वये करण्यात आलेली निमताना मोजणी रद्द केली आहे. श्री. रावळे यांनी सदोष निमताना मोजणी काम करून शासकीय कामात कुचराई करून कर्तव्यपरायणता ठेवलेली नाही. सबब त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ चा भंग केला आहे.
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> **बाब दोन**
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> श्री. एस.एस. रावळे यांनी निमताना मोजणी नकाशावर तपासणी केलेबाबत तपासणी टेबल दर्शवण्यात आले असून स्वाक्षरी केलेली नाही. तसेच कोणत्या बेस लाईनवर तपासणी टेबल केले आहे ती बेसलाईन नकाशावर दर्शवण्यात आलेली नाही. श्री. रावळे यांनी सदोष निमताना मोजणी काम करून शासकीय कामात कुचराई करून कर्तव्यपरायणता ठेवलेली नाही. सबब त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ चा भंग केला आहे."

4. Shri C.T. Chandratre, learned Advocate for the Applicant sought to assail the legality and sustainability of the impugned order on following grounds :-

(i) Failure to show baseline in Test Table and mere omission to observe some process in the measurement of the land *per se* do not constitute negligence or failure to maintain devotion to duty, so as to form foundation for misconduct within the meaning of Rule 3 of 'Conduct Rules of 1979'.

(ii) There are no allegations of dishonesty of wrongful gain or loss to Government due to measurement carried by the Applicant.

(iii) Alleged misconduct was of 1998 but charge-sheet was served quite belatedly one day before retirement intentionally, so as to withhold retiral benefits of the Applicant which has caused severe hardship and mental agony to the Applicant.

(iv) The Enquiry Officer submitted report in 2008 but final order of punishment was passed after 7 years on 26.11.2015 and there is no explanation for such an inordinate delay in completion of D.E.

(v) The enquiry ought to have been completed maximum within one year as instructed by G.R. dated 07.04.2008. But in the present case, it took 9 years from the date of issuance of charge-sheet for which no explanation much less reasonable explanation is forthcoming.

vi) In enquiry, the proper procedure as required under Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) is not followed, since in the very beginning of the enquiry, the Presenting Officer examined the Applicant and Enquiry Officer cross-examined the delinquent, which is totally unknown to law, and therefore, serious prejudice is caused to the Applicant.

(vii) Even Super-Nimtana carried out by Shri Bansode, Superintendent, Land Record has not attained finality, since it is under challenge in review and at one point of time, D.E. was also proposed against him but it was dropped in view of his demise.

(viii) When enquiry is completed after retirement, the punishment can be inflicted only in a case where misconduct is grave or

serious, as specifically stipulated in Rule 27 of 'Pension Rules of 1982'. In the present case, there is no such grave or serious misconduct so as to impose punishment of deduction of 6% pension for one year.

5. Shri C.T. Chandratre, learned Advocate for the Applicant in this behalf placed reliance on ***AIR 1979 SC 1022 [Union of India and Ors. Vs. J. Ahmed]*** and ***AIR 1999 SC 2881 [Zunjarrao B. Nagarkar Vs. Union of India & Ors.]***.

6. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer submits that Applicant has not carried out the measurement correctly in observance of instructions of measurement and there is no perversity in the finding recorded by Enquiry Officer. She has further pointed out that the Applicant in his statement recorded by Enquiry Officer admits that he has not shown baseline in Test Table and this admission is enough to sustain the charge of negligence in measurement. She further submits that the Tribunal cannot act as an Appellate Court and to re-assess evidence laid in the enquiry. Thus, according to her, the Tribunal should not interfere with the findings of facts recorded in D.E. except where such findings were based on no evidence and where they are clearly perverse. In this behalf, she placed reliance on the decision of Hon'ble Supreme Court in ***Civil Appeal No.10942/2014 [G.M. (Operations) S.B.I. & Anr. Vs. R. Periyasamy) decided on 10.12.2014*** in which reference was made to the decision in ***State Bank of Bikaner and Jaipur Vs. Nimi Chand Nalwaya [AIR 1963 SC 1723]***. In Para No.8, it has been held as under :-

> "***8.*** *In State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya [2], this Court observed as follows:-*
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> > *"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of*

adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C. Chaturvedi v. Union of India : (1995) 6 SCC 749, Union of India v. G. Ganayutham : (1997) 7 SCC 463, Bank of India v. Degala Suryanarayana : (1999) 5 SCC 76 and High Court of Judicature at Bombay v. ShashiKant S Patil (2000) 1 SCC 416).

It is not necessary to multiply authorities on this point. Suffice it to say that the law is well settled in this regard."

7. There could be no dispute about the settled legal position that the Tribunal should not interfere with the findings of fact recorded in DEs except where such findings based on no evidence or where they are clearly perverse. As held by Hon'ble Supreme Court in aforesaid case, the test to find out perversity is to see where a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The interference is also inevitable where enquiry is not conducted in accordance to Rules.

8. In the present case, the matter pertain to allegation of mistakes/discrepancies allegedly committed by the Applicant while carrying out the measurement of the land. Here material to note that admittedly, initially, the measurement was carried out by one Shri Agawane Nimtandar in the year 1997, but since it was acceptable, it was challenged before the Applicant in his capacity as Taluka Inspector of Land Record and in that capacity, he again measured the said land. Notably, his measurement was verified by Shri P.D. Patil, Superintendent of Land Record who by his letter dated 16.08.1999 (Page No.114 of P.B.) certified that the measurement done by the Applicant is correct. In the said measurement, the Applicant has shown encroachment of adjoining

land on Government road. Therefore, the owner of the land again challenged the same by applying for super nimtana measurement, which was carried out by Shri Bansode, Superintendent, Land Record. He cancelled the measurement done by the Applicant. As per the charge, the Applicant has not fixed baseline, and therefore, the measurement done by him was incorrect. Indeed, the super nimtana measurement done by Shri Bansode is also not final, since it is already under challenge in revision and matter is also subjudice before Civil Court. Suffice to say, there is no finality to the measurement carried out by Shri Bansode. In such situation, in my considered opinion, only because the measurement done by Applicant has been cancelled, that *ipso-facto* do not constitute misconduct. Something much more is required in such situation to establish that the Applicant failed to follow to required steps while measuring the land which were mandatory for the correct measurement in terms of measurement manuals or any such instructions issued in this behalf. However, no such material is forthcoming to establish that particular set of things were required to be followed, but not followed while carrying out the measurement. In absence of any such material, it would be highly impossible to stamp or label the Applicant guilty for misconduct. Every mistake or omission done by a Government servant while discharging his duties may not be tantamount to misconduct unless it is shown that there is culpable negligence on the part of Applicant or he had shown favour to some other and with that intent carried measurement. There are no allegations of any such dishonesty or loss to a Government. The Applicant was exercising his jurisdiction as a Taluka Inspector of Land Record and in that capacity measured the land. If there was any such mistake or discrepancy in the measurement, it was subject to correction in super nimtana measurement (akin to Appellate Authority). Therefore, in my considered opinion, that cannot form basis to constitute misconduct and to punish a Government servant.

9. Here material to note that in the enquiry before Enquiry Officer, when Mr. Bansode was examined a witness, be was cross-examined by the Applicant and was questioned about the correctness of his super nimtana measurement, but he refused to give answer stating that Applicant has no locus to question his measurement. The evidence of Shri Bansode is also conspicuously silent as to what steps/stages were required to be followed by the Applicant and not followed necessary for correct measurement of the land. It appears that some portion of land Survey No.6/11/1/2 and 6/11/1/3 was acquired in land acquisition and boundaries were changed. The said measurement was part and parcel of measurement file No.7/98. The Applicant has specifically cross-examined Shri Bansode about the demarcation of measurement file NO.7/98, but again, Shri Bansode answered that it is not relevant.

10. The perusal of Enquiry Report reveals that inquiring authority has adopted a novel procedure by examining the Applicant at the very beginning of the enquiry and has not conducted the enquiry in accordance to Rule 8 of 'D & A Rules of 1979'. The Enquiry Officer was required to conduct the enquiry strictly as per Rules. He was required to examine the witnesses first and was to examine the delinquent at the end of enquiry on the circumstances appearing against him in the evidence for the purpose of enabling the delinquent to explain any such circumstances appearing in the evidence against him as stipulated under Rule 8(20) of 'D & A Rules of 1979'. However, strangely, in the present case, though Applicant did not offer himself to examine as a witness, the Enquiry Officer in the very beginning of the enquiry examined the Applicant and also cross-examined him as seen from Page Nos.31 to 33 of P.B. In cross-examination, he elicited admission that in Test Table, he has not shown baseline and in Enquiry Report and referred the said admission for coming to the conclusion that Applicant is guilty of misconduct. Such course of action which is totally unknown to law has certainly caused prejudice to the Applicant. It was always for the

Department to establish the charge by producing evidence albeit on the preponderance of probabilities.

11. Indeed, the Applicant has already explained about the non-necessity of taking baseline in his statement defence before Enquiry Officer, which is at Page Nos.39 to 48 of P.B. as well as before appellate authority as seen from Appeal Memo (Page Nos.81 to 85 of P.B.). However, it was completely ignored and brushed aside. The Applicant has raised specific contention that as nimtana measurement was already done prior to his measurement, there was no necessity to show baseline in Test Table.

12. In ***Sunjararao Nagarkar's*** case (cited supra), the delinquent was subject to punishment in D.E. on the allegation that he did not levied the penalty while adjudicating the case of assessee under the provisions of Central Excise Rules. It was alleged that he while discharging his duties as Collector of Central Excess passed an order holding that the assessee had clandestinely manufactured the excess goods willfully and evaded the excise duty and ordered for confiscation of the goods. However, he did not impose penalty in terms of Central Excise Rules. The defence was that, it was not necessary to impose penalty though law provides for imposing penalty. It is in that situation, the Hon'ble Supreme Court held that when penalty is not levied the assessee certainly benefits, but it cannot be said that by not levying the penalty, the Officer has favoured the assessee or shown undue favour to him and there has to be some basis for the disciplinary authority for such a conclusion and in absence of any such material, it cannot be said that he had shown favour to the assessee by not imposing the penalty. In Para Nos.40, 41, 42, 43 and 44, the Hon'ble Supreme Court held as under :-

> "***40.*** *When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable negligence. This is how this court in State of Punjab & Ors. & Ors. vs. Ram Singh Ex-Constable [(1992) 4 SCC 54] : (**1992 AIR SCW 2595 : AIR 1992 SC 2188**) interpreted "misconduct" not coming within the*

*purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of K.K. Dhawan (**1993 (2) SCC 56**) : (**1993 AIR SCW 1361** : **AIR 1993 SC 1478** : **1993 Lab IC 1028**), the allegation was of conferring undue favour upon the assessees. It was not a case of negligence as such. In Upendra Singh's case (**1994 (3) SCC 357**) : **1994 AIR SCW 2777**), the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of K.S. Swaminathan (1996 (11) SCC 498), was not where the respondent was acting in any quasi judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether they support the charge of the alleged misconduct. In M.S. Bindra's case (**1998) 7 SCC 310**) : (**1998 AIR SCW 2918 : AIR 1998 SC 3058** : **1998 Lab IC 3491**) where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary (1999)3 SCC 396) : (**1999 AIR SCW 648 : AIR 1999 SC 1018**), which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In K.N. Ramamurthy's case (1997) 7 SCC 101 : (**1997 AIR SCW 3677 : AIR 1997 SC 3571**), it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd.'s case (**AIR 1970 SC 253**), it was said that where proceedings are quasi judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on his part but he said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Section 325 IPC held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.*

41. *When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial*

authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal.

42. *Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.*

43. *If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge- sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.*

44. *Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed."*

13. Whereas in ***J. Ahmed's*** case (cited supra), while interpreting the connotation and implications of word 'misconduct' in Service Rules, the Hon'ble Supreme Court held that there may be negligence in performance of duties and a lapse in performance of duty or error of Judgment in evaluating the developing situation, but that itself would not constitute misconduct unless the consequences are directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high.

14. Apart, inordinate and unexplained delay for initiation of DE and its conclusion is writ at large. The Applicant had measured land on 19.03.1998 and while carrying out the measurement, he allegedly committed certain mistakes/discrepancies. However, strangely, no action was taken for 8 years for initiation of DE and it is only on the eve of retirement, the charge-sheet was served upon him on 27.02.2006 i.e. one day before his retirement. There is absolutely no iota of explanation or not taken any such departmental action for 8 years. If the charge-sheet had not been issued on 27.02.2006, in that event, the Respondents could not have instituted any such departmental proceedings after retirement of the Applicant being hit by Rule 27(b)(2) of 'Pension Rules of 1982' which *inter-alia* provides that DE shall not be initiated in respect of any event which took place more than 4 years before such institution. As such, there are reasons to say that intentionally the charge-sheet was served on the eve of retirement and such action cannot be termed bona-fide. It has caused serious prejudice to the Applicant since his retiral benefits were withheld due to pendency of D.E. Apart, DE was not completed expeditiously or within reasonable time though it was required to be completed within one year in terms of G.R. dated 07.04.2008. The Enquiry Officer has submitted the report on 15.03.2008, but it was kept in cold storage and final order of punishment was passed by the Government after 7 years on 26.11.2015. Thus, the DE had taken 11 years for its completion. There is absolutely no iota of explanation for such inordinate delay which has caused mental agony and suffering to the Applicant.

15. The legal principles governing the issue of delay in initiating departmental proceeding and its effect has been considered by the Hon'ble Supreme Court in ***1995 SCC (2) 570 State of Punjab V/s. Chaman Lal Goyal*** wherein following principles were laid down.

> *"It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It*

would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."

16. Again the Hon'ble Supreme Court in ***1998 (4) SCC 154 State of Andra Pradesh V/s. N. Radhakishan***, while dealing with the challenge to the order passed by C.A.T. quashing the proceeding of enquiry on the ground of delay laid down the following general proposition of law.

"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any default on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on that account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately the court is to balance these two diverse considerations."

17. True, mere delay in conclusion of departmental proceedings cannot be the ground to quash the proceedings and the Tribunal has to balance diverse considerations. However, in the present case, there is inordinate delay of 17 years from the date of alleged misconduct for the conclusion of proceedings, which is not at all explained by the Respondents. As stated earlier, the DE was initiated one day before retirement and Applicant has been deprived of retiral benefits for 17 years. He has undergone agony due to sheer laxity on the part of concerned authorities for not concluding departmental proceedings expeditiously. There is nothing on record to blame the Applicant for the delay. Apart, the Enquiry Officer has not conducted DE in terms of Rule 8 of 'Discipline & Appeal Rules of 1979' and committed serious illegality by examining the Applicant and cross-examining the Applicant at the very initial stage, which has certainly caused prejudice to the Applicant.

18. Apart, where DE is completed after retirement, the scope of punishment of such enquiry is very limited. As per Rule 27(1) of 'Pension Rules of 1982', the punishment in the form of withholding or withdrawing pension or any part of it, as the authority deem it fit, can be inflicted where a pensioner if found guilty for grave misconduct allegedly committed during the period of his service. Whereas in the present case, in the first place, the mistake or certain omissions attributed to the Applicant in carrying measurement even if it is construed as misconduct, in that situation also, such mistaken or omission *ipso-facto* cannot be construed as grave misconduct so as to inflict punishment of deduction of 6% pension for one year after 17 years from the date of alleged misconduct. Therefore, such situation does not fall within the parameters of Rule 27(1) of 'Pension Rules of 1982'.

19. The totality of aforesaid discussion leads me to conclude that the impugned order of punishment is not sustainable in law and liable to be quashed. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The impugned orders dated 26.11.2015 and 17.01.2017 are quashed and set aside.

(C) The amount deducted from pension, if any, shall be refunded to the Applicant within two months.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 18.11.2021
Dictation taken by :
S.K. Wamanse.
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