

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**

**BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO. 633 OF 2015**

DIST. : NAGPUR

Arunkumar Manindranath Dutta,  
Aged 58 years, Occu. Superannuated  
as an Assistant Geologist,  
R/o A 20, Indrum Apartment,  
27 Corporation Colony, Gandhi Nagar,  
Nagpur.

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**APPLICANT**

**VERSUS**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Department of Water Supply and  
Sanitation Department,  
Mantralaya, Mumbai 400 001.
2. The Director of Ground Water  
Survey and Development Agency,  
Shivaji Nagar, Bhujal Bhavan,  
Near Agricultural University,  
Pune.
3. Divisional Enquiry Officer,  
C/o Office of the Divisional  
Commissioner, Nagpur.
4. The Executive Engineer,  
Rural Water Supply Division,  
Zilla Parishad, Gadchiroli.
5. The Accountant General,  
Accounts & Entitlement II,  
Near New Zilla Parishad Building,  
Nagpur - 440 001.

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**RESPONDENTS**

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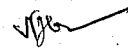
APPEARANCE : Shri R.V. Shiralkar, learned Advocate for  
the applicant.  
: Shri P.N. Warjurkar, learned Presenting  
Officer for respondents.

**CORAM : HON'BLE SHRI J. D. KULKARNI,  
MEMBER (J)**

**DATE :- 7<sup>th</sup> NOVEMBER, 2016**

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

1. The Applicant Shri Arunkumar Manindranath Dutta states that he has been honourably superannuated on 31.1.2015 from the post of Assistant Geologist. However, till today the respondents have not released his regular pension and have also not granted retiral benefits to him. It is further stated that the respondents initiated 2 Departmental Enquiries (for short D.E.) against the applicant before his retirement. Out of these 2 D.Es. the applicant has been exonerated in the first D.E., which was initiated in the year 2009, however, the second D.E. initiated in the year 2011 is still pending even after his retirement on superannuation. The learned Advocate for the applicant submits that the respondents have not passed any order as regards continuation of the said D.E. against the applicant even after his retirement. It is stated that the second D.E. of the year 2011 has been completed and the Enquiry Officer has submitted his enquiry



report to the disciplinary authority. It is, therefore, claimed that the res. no. 1 be restrained from taking the cognizance of the enquiry report and hence the applicant has filed this O.A.

2. From the facts, as admitted, it seems that, the applicant was selected and appointed to the post of Jr. Geologist from 6.2.1980. On 13.8.2009, the applicant was served with first charge sheet, whereas on 3.1.2011, the second charge sheet was served on him. In the second enquiry, the report was served on the applicant vide letter dated 12.2.2015 on 22.2.2015. In the meantime the applicant was allowed to retire on superannuation, honourably on 31.1.2015. The applicant has not been granted regular pension and other retiral benefits. According to the applicant, he has been made a scapegoat and though he has not committed any misconduct or though he has not made any financial irregularities and though in the first D.E. he has been exonerated, still second D.E. is initiated against him and it is kept pending for a long time with a mala-fide intention. Since the applicant has been retired honourably, the second departmental enquiry should not have been continued by the respondents as he was allowed to superannuate honourably.

3. The first charge sheet was filed on 13.8.2009 and the enquiry report in the said charge sheet is dated 14.11.2014 and it

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is placed on record at paper book pages 39 to 133. The charges in the first D.E. and the Enquiry Report submitted by the Enquiry Officer is not material, since admittedly the applicant has been exonerated from the first D.E. as per the charge sheet dated 13.8.2009. The observations against the applicant in the first D.E. are at paper book pages 120 to 125 from which, it seems that, none of the charges as framed against the applicant in the said D.E. are proved. In short, the applicant has been exonerated in the first D.E.

4. In the aforesaid situation, charges leveled against the applicant in the second D.E. are material. There is no dispute that the second D.E. has been initiated vide charge sheet dated 3.1.2011. The charges framed against are at paper book pages 136 and the same are asunder :-

१. रेती घाटांचे प्रमाणपत्रे सादर करतांना विहित कार्यप्रणालीचा अवलंब न करणे.
२. नेमून दिलेली कामे बेजबाबदारपणे करणे.
३. शासकीय दस्तऐवजांमध्ये नियमबाह्य पध्दतीने बदल / फेरफार करणे.
४. रेतीघाट सर्वेक्षणाचे काम करण्यासाठी कालावधी विहित केला असतांना देखील त्याचे उल्लंघन करणे.”

5. The 4 charges are discussed in detail and it is at paper book page 22, which reads as under :-

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**बाब-१** श्री ए.के. दत्ता, सहायक भूवैज्ञानिक, हे वरिष्ठ भूवैज्ञानिक, भू.स.वि.यं. नागपूर येथे कार्यरत असताना, मा. पंतप्रधानांनी स्वातंत्र्यदिनी जाहिर केलेल्या पाणी पुरवठा कार्यक्रमांतर्गत लेखाविषय आर्थिक व्यवहार करित होते, त्याबाबतचे रोखनोंदवही व धनादेश प्राप्त नोंदवही व त्याप्रमाणे तयार करावयाचे देयके व नोंदवही न ठेवून (आर्थिक गैरव्यवहार) वित्तीय अनियमितता केलेली आहे. त्यामुळे ते प्रत्यक्षरित्या आर्थिक गैरव्यवहारात सहभागी असल्याचे आढळून आले आहे.

**बाब-२** शिवकालीन पाणी साठवण योजना व पंतप्रधानांनी स्वातंत्र्यदिनी जाहिर केलेल्या पाणी पुरवठा कार्यक्रमांतर्गत प्राप्त अंनुदान व खर्चाबाबतचे रोख नोंदवही वरिष्ठ भूवैज्ञानिक, भू.सं.वि.यं. नागपूर यांचे कार्यालयांत न ठेवणे, रोखपुरस्तिका न ठेवल्यामुळे शिवकालीन पाणी साठवण योजनेअंतर्गत एकूण किती निधी प्राप्त झाला, खर्च व शिल्लक याचा हिशोब लावता येत नाही.


**बाब-३** शिवकालीन पाणी साठवण योजना अंतर्गत प्राप्त होणा-या निधीच्या व्यवहाराबाबत स्टेट बँक ऑफ इंडिया, सिव्हील लाईन, नागपूर येथे क. एस.बी. १३८०६ चे खाते उघडलेले आहे व हे खाते मुख्य कार्यकारी अधिकारी व वरिष्ठ भूवैज्ञानिक हे संयुक्तपणे वापरतात. या बँक खात्यातील प्रथम नोंद दि. ९.६.२००३ रोजीची असून ती रु. ९०,९९,०००/- इतक्या रकमेची असल्याचे आढळते. मात्र या रकमेची बँक काउंटर फाईल कार्यालयातील कोणत्याही नस्तीत उपलब्ध झालेली नाही. यावरून प्राप्त धनादेश विहित नमुन्यानुसार खात्यात जमा न करता वैयक्तिक खात्याच्या पध्दतीने ते जमा करण्यात आले आहे. मुंबई वित्तीय नियमावली १९५९ च्या नियमानुसार शासकीय निधीचे व्यवहार अशा पध्दतीने करणे नियमबाह्य असून ही बाब अतिशय गंभीर आहे. शासन निर्णय, दि. २४ मे, २००३ नुसार योजनेसाठी प्राप्त निधी व खर्च झालेला निधी यांचे त्रैमासिक अहवाल शासनास पाठविणेबाबत स्पष्ट निर्देश आहेत, असे अहवाल सादर न केल्यामुळे शासनाने दिलेल्या निर्देशाचे पालन न करता निधीवर कोणतेही नियंत्रण नसल्याचे दिसून येते. मुंबई वित्तीय नियम १९५९ चे नियमानुसार कार्यालय प्रमुखाने रोख पुस्तकाची आकस्मिक तपासणी करणे बंधनकारक आहे. या योजने अंतर्गत वरिष्ठ भूवैज्ञानिकांची रोखपुरस्तिका व धनादेश नोंदवही न ठेवल्याने संपूर्ण आर्थिक व्यवहार

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हा संशयास्पद आहे. कोणत्याही नियमाचे पालन न करता नियमबाह्य पध्दतीने कामकाज झालेले आहे.

**बाब-४** शिवकालीन पाणी साठवण योजना व मा. पंतप्रधानांनी जाहिर केलेल्या स्वातंत्र्यदिनी योजनेतर्गत प्राप्त रु. ५,१४,०९,३५०/- निधीचा खर्च नोंदविल्याबाबत रोखनोंदवही, देयकांची कार्यालयीन प्रत व प्रमाणके उपलब्ध करून ठेवली नाहीत. प्रमाणके उपलब्ध न झाल्यामुळे रु. ५,१४,०९,२५०/- च्या व्यवहारात आर्थिक अनियमितता झाल्याचे स्पष्ट होते.”

6. The res. nos. 1 & 2 have resisted the claim of the applicant. It is submitted that the Enquiry Officer has submitted the report to the Govt. on 14.11.2014 and even the applicant has filed his say on 6.8.2015. To take a final decision in the matter, prior consultation of the General Administration Department and Maharashtra Public Service Commission is necessary and, therefore, necessary proposal in this regard has been sent to the competent authority and after receipt of the same order of imposing punishment upon the applicant, according to Rule 27 of the M.C.S. (Pension) Rules, 1982, will be imposed. It is stated that, since the charge sheet has been served upon the applicant prior to his superannuation, taking cognizance of the second D.E. is legal and valid.



7. The res. no. 5 filed separate affidavit in reply and stated that its role is very limited and pension cannot be granted unless proper proposal therefor is received.
8. The applicant has filed his rejoinder and submitted that the respondents took 3 years time for supplying him the copy of the Enquiry Report. It is stated that, merely because there is a provision to withhold the regular pension, that does not mean that the D.E. shall continue for indefinite period.
9. The res. no. 1 has filed affidavit in reply to the rejoinder of the applicant. It is stated that steps have been taken in the D.E. and out of 4 charges, 3 charges have been proved against the applicant and after due enquiry a decision has been taken to impose following punishment on the applicant :-

***“6% amount of monthly pension to be deducted from the monthly pension of the applicant for the next 2 years.”***

It is stated that, due decision will be taken in the matter

10. To this affidavit in reply of res. no. 1 to the rejoinder of the applicant, the applicant has filed counter affidavit on 29.6.2016 and submitted that the Enquiry Report does not state about the



alleged grave misconduct against the applicant and, therefore, the Enquiry cannot sustain after retirement of the applicant.

11. The learned Advocate for the applicant submits that, though the D.E. has been initiated against the applicant before his retirement, the applicant was allowed to retire honourably on superannuation and no order has been passed to continue the said D.E. against the applicant and, therefore, respondents now cannot continue the said D.E. The learned Advocate for the applicant further submits that, since no grave allegations were made against the applicant and the charges against him were not so serious or grave, the D.E. should not have been continued, and therefore, the applicant be exonerated from all the charges levelled in the D.E. and the same be dropped.

12. Heard Shri R.V. Shiralkar, learned Advocate for the applicant and Shri P.N. Warjurkar, learned Presenting Officer for respondents. I have perused the affidavit, affidavits in replies filed by the respective respondents, rejoinder filed by the applicant, counter reply of res. no. 1 to the rejoinder of the applicant and counter rejoinder filed by the applicant and various documents placed on record.





13. The material points to be considered in this O.A. are as follows :-

- (i) Whether continuation of second D.E., without specific order in this regard after honourable retirement of the applicant on superannuation, is legal and proper ?
- (ii) Considering the nature of charges framed against the applicant, whether the applicant is entitled to claim the regular pension ?

14. It seems from the admitted facts that, the second charge sheet has been served on the applicant on 3.1.2011 and the applicant was allowed to retire honourably on 31.1.2015.

15. The learned Advocate for the applicant invited my attention to the judgment in the case of **MADANLAL SHARMA VS. STATE OF MAHARASHTRA & ORS. {2004 (1) MH. L.J. 581}**, wherein the Hon'ble Bombay High Court has observed as under :-

*"In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the enquiry proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably. On*

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*reaching the age of superannuation, the retirement is automatic unless the competent authority passes an order otherwise."*

16. There is nothing on the record to show that in the present case any order regarding continuation of the D.E. even after retirement of the applicant has been passed.

17. The learned Advocate for the applicant also placed reliance on the decision of the **HON'BLE CALCUTTA HIGH COURT in the case of OM PRAKASH YADAV VS. UNION OF INDIA AND OTHERS {2009 (2) SLR 663}**, wherein it is observed that, as there is no provision for intimation or continuation of disciplinary proceeding after retirement of the employee nor there is a provision stating that in case misconduct is established a deduction could be made from his retiral benefits and, therefore, disciplinary proceeding lapses and appellant is entitled to get full retiral benefits.

18. It seems that the decision in the case of **OM PRAKASH YADAV** (supra) is of Hon'ble Calcutta High Court and in the said case probably there may not be Service Rules, whereby D.E. can be continued even after retirement of an employee.

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19. In Maharashtra, however, there are Service Rules known as Maharashtra Civil Services (Pension) Rules, 1982, wherein there is a provision regarding withholding of pension and pensionary benefits as well as continuation of D.E. after retirement of an employee. The rule 27 of M.C.S. (Pension) Rules, 1982 is relevant in this regard, which is as under :-

***“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:*

*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.*

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- (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 the Government,*
- (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.*

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- (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 and 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 were departmental proceedings are continued under sub rule (2), a provisional pension as provided in rule 130 shall be sanctioned.*
- (5) *Where Government decides not to withhold or withdraw 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 rate exceeding 1/3 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.”*

20. As per rule 27 (2) as mentioned above, the Govt. servant against whom D.E. is initiated before his retirement, such D.E. shall be deemed to be under rule 27 of the M.C.S. (Pension) Rules, 1982 and shall be continued and concluded by the competent authority. Off course, there are some preconditions for conducting the said D.E. As per rule 27 (3) of the M.C.S. (Pension) Rules, 1982, no enquiry pertaining to the events prior to 4 years of the enquiry are to be taken against the retired employee.

21. The learned Advocate for the applicant, however, invited my attention to the judgment in the case of **CHAIRMAN / SECRETARY, INSTITUTE OF SARDSPM. VS. BHUJGONDA B.**

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**PATIL {2003 (3) MH L.J. 602}**, wherein it has been held that no disciplinary proceedings could be initiated against a Govt. servant after he had retired and Rule 27 could be invoked only for the purpose of deciding about deduction in pension.

22. The learned Advocate for the applicant further placed reliance on the judgment in the case of **KESHAV GOPAL CHANDANSHIVE {2008 (4) MH. L.J. 741}**, wherein it has been clearly held that for inflicting any punishment on a pensioner, the misconduct committed by him is required to be proved to be of a grave nature.

23. Both the above judgments are referred by this Bench of the Tribunal in the order of **O.A. No. 653/2010 {TIKARAM MAROTRAO FUNDE VS. THE STATE OF MAHARASHTRA & ORS}** passed on 4.3.2015. In the said case the enquiry was quashed in view of the fact that the charges against the applicant therein were not grave and the action proposed was under rule 27 of the M.C.S. (Pension) Rules, 1982.

24. In view of the submission made as aforesaid, now it is necessary to consider as to what are the charges against the applicant herein in the D.E. instituted in the year 2011 and the findings given by the Enquiry Officer. The charges framed against

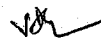
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the applicant are mentioned in the foregoing paras of this judgment. From the said charges, it seems that, there is no allegation of grave misconduct against the applicant, and on the contrary, allegations seem to be of the irregularities committed by the applicant. No financial loss has been alleged against the applicant and there is no allegation of misappropriation or fraud against the applicant and, therefore, it is necessary to see as to what are the observations made by the Enquiry Officer.

25. It is material to note that the applicant has retired on 31.1.2015 honourably and the charges framed against him pertain to period from 31.10.2006 to 23.6.2008, though the charge sheet is served on the applicant on 3.1.2011. This period is material while considering the seriousness of the charges.

26. The enquiry report has been placed on record and the particular findings against the applicant are at paper book pages 198 to 210 (both pages inclusive). As already stated, the applicant has been exonerated from the charge no. 4 and, therefore, other 3 charges are material. The charge no. 1 is as under

“1. रतीघाटाचे प्रमाणपत्र सादर करतांना विहित कार्यप्रणालीचा अवलंब न करणे”





In this regard the Enquiry Officer has observed on paper page book 199 as under :-

“ जिल्हा खनिकर्म अधिकारी, नागपूर यांना सादर केला तो निशाणी क्र. पी. ४ नुसार आहे. सादर प्रमाणपत्रासोबत ४ गटाऐवजी १६ गटाचा योग्य प्रमाणे केलेला नकाशा निशाणी डि. ९, नुसार असून त्या नकाशावर १६ गट रेंती उत्खननसाठी हेचिंग केलेला आहे व त्यावर अपचारी श्री अर्काटकर यांची स्वाक्षरी आहे. या मुळ प्रमाणपत्रांत त्यांनी नकाशात विसंगती निर्माण झाली होती त्या अनुषंगाने जिल्हा खनिकर्म अधिकारी, नागपूर यांनी अपचारी श्री दत्ता यांनी दुरुध्वनीवरून विसंगतीबाबत सूचना दिली, तथापी सादर रेंतीघाटाचे संरक्षण अपचारी श्री अर्काटकर यांनी केले असल्याने श्री दत्ता यांनी त्यांचेशी दुरुध्वनीवरून चर्चा केली व त्यांनी नकाशातील अतिरिक्त १२ गटांचा समावेश व त्या अनुषंगाने प्रमाणपत्र करण्यासाठी त्यांना निर्देश दिले होते. नकाशावर श्री. अर्काटकर यांनी हेचिंग केल्याचे आधारे व श्री अर्काटकर यांचे सुचनेप्रमाणे अपचारी श्री दत्ता यांनी अतिरिक्त १२ गटांचा समावेश केला. सादर तृटीची दुरुस्ती करतांना अपचारी श्री. दत्ता यांनी कार्यालयीन कार्यप्रमाणालीचा भंग केलेला नसून कार्यालयीन प्रमुख म्हणून श्री अर्काटकर यांचे सुचनांचे पालन केले. तोंडी सुचनांचे आधारे देखील कनिष्ठ कर्मचारी/अधिकारी यांना कामे करावी लागतात, ही वस्तुस्थिती नमुद करून प्रभारी वरिष्ठ भुवैज्ञानिक म्हणून श्री अर्काटकर यांचे तोंडी सुचनेप्रमाणे अपचारी श्री दत्ता यांनी सदरील दुरुस्ती केली होती, असे नमुद केले आहे. त्यांनी पुढे असेही नमुद केले की, १२ अतिरिक्त गट निशाणी क्र. पी ५ व पी ६, चे सर्वेक्षण करण्यास त्यांनी भेट दिली होती, परंतु नदीपात्रात पूर असल्याने सर्वेक्षण करता आले नाही. त्यामुळे या १२ गटांच्या योग्यतेबाबत अपचारी श्री दत्ता यांनी अभिप्राय सादर केलेला नाही. यांस, सरकारी साक्षीदार श्री मैदमवार यांनी कबुली दिल्याचा दावा केलेला आहे. पुढे त्यांनी असेही नमुद केले आहे की, अपचारी श्री अर्काटकर यांची यासाठी संमती घेतली नसती तर सुधारीत प्रमाणपत्रावर स्वाक्षरी करण्यास ते नकार देवू शकले असते किंवा त्यांचे विरुद्ध कार्यवाही देखील करू शकले असते, परंतु तसे झालेले नाही, असा दावा त्यांनी केलो आहे. तथापी, अपचारी यांनी सादरकर्ता अधिकारी यांचे लेखी टाचणावर आक्षेप घेऊन असे नमुद केले की, अपचारी विरुद्धचे आरोप १ ते ४ प्रकरणी

२५६

स्वमर्जीने व अपचारी यांस दोषी धरण्याच्या गैरहेतुपोटी सरकारी साक्षीदार श्री मैदमवार यांचे साक्षीसंबंधीचे पुरावे उलट तपासणीत नमुद केले असतांना त्याकडे जाणीवपूर्वक दुर्लक्ष करून चौकशी प्राधिकरणाची दिशाभूल करण्याचा प्रयत्न केलेला असल्याचा दावा केला आहे. अपचारी यांचे गैरवर्तणुक तथा कर्तव्यपारायणतेविरुद्ध कोणतेही दस्तऐवज अपचारी यांना कसुरदार ठेवण्यास जोडपत्र ४ मध्ये उपलब्ध नाही, अशी कबुली साक्षीदार श्री मैदमवार यांनी उलट तपासणीमध्ये दिलेली आहे. त्याअर्थी, सादरकर्ता अधिकारी यांचे आरोप क्र. १ प्रकरणी मुद्दे क्रं. १ ते ६ खारीज करण्यांस दखलपात्र ठरते, असे त्यांनी त्यांच्या निवेदनात नमुद केले आहे.”

27. The charge no. 2 against the applicant is as under :-

“2. नेमुण दिलेली कामे बेजबाबदारपणे करणे”

In this regard it is observed by the Enquiry Officer as under

:-

“---त्यामुळे अपचारी श्री दत्ता यांनी कार्यालयीन टिपणी सादर केला नाही. प्रमाणपत्रातील अपचारी यांनी फेरबदल करून कार्यालय प्रमुखास सादर केले, ही आरोपाची बाब निराधार ठरते. अपचारी यांनी कार्यालयीन टिपणी सादर केली नव्हती, अशा परिस्थितीत कार्यालय प्रमुख अपचारी श्री अर्काटकर यांनी जिल्हा खनिकर्म अधिकारी यांचे मागणीनुसार दि. १५.४.२००९ च्या बचावाचे निवेदनात नमुद केल्यानुसार सुधारीत प्रमाणपत्रावर स्वाक्षरी करणे त्यांचे कर्तव्य व जबाबतदारीनुसार अपेक्षित नव्हते. त्यामुळे अपचारी विरुद्धचा दोषारोप निराधार असल्याने पुराव्याअभावी ते जबाबदारीस पात्र ठरत नाही. सादरकर्ता अधिकारी यांनी श्री मैदमवार यांचे साक्षीचा उल्लेख केलेला असला तरी सकृतदर्शनीचे पुरावे समोर आले नाही. त्यामुळे, स्वमर्जीने त्यांनी अपचारी यांस दोषी धरण्याचा अयशस्वी प्रयत्न केलेला असल्याने अपचारी कसुरवार ठरत नाही. त्यामुळे दोषारोप क्र. २ सादरकर्ता अधिकारी यांच लेखी टाचणातील नमुद बाब खारीज करण्यांस पात्र ठरतात.”

18/10

28. The charge no. 3 against the applicant is as under :-

“3. शासकीय दस्तऐवजांत नियमबाह्य पध्दतीने बदल/फेरफार करणे.”

The Enquiry Officer has observed on this charge as under :-

“....त्यामुळे, अपचारी यांनी नियमबाह्य पध्दतीने बदल व फेरफार ही बाब अपचारी यांचे कर्तव्याशी दखलपात्र ठरत नाही. कारण अपचारी यांनी ज्या अतिरीक्त गटाची दुरुस्ती केली ती अपचारी श्री. अर्काटकर यांचे निर्देशानुसार केले असून सुधारीत प्रमाणपत्र अर्काटकर यांनी जिल्हा खनिकम अधिकारी यांना त्यांचे स्वतःचे स्वाक्षरीनुसार सादर केले. सबब, अपचारी यासाठी दोषी ठरत नाही. सादरकर्ता अधिकारी यांनी श्री. मैदमवार यांच्या साक्षीच्या आधारे टाचणातून अपचारी यासाठी जबाबदार ठरतात असे जरी नमुद केले असले तरीही त्यासंबंधीचा अभिलेख उपलब्ध नाही, अशी कबुली दिल्याने म्हणजे दस्तऐवजीन पुराव्याच्या आधारे अपचारी यांचे उलट तपासणीत सदर दोषारोप सिध्द होत नाही.”

29. From the perusal of the said observations on all three charges i. e. charge nos. 1 to 3, which are alleged to be proved against the applicant, it seems that, no major role has been played by the applicant in the alleged irregularity. On the contrary, it seems that, he has acted as per directions of his superior Shri Arkatkar.

30. From the aforesaid circumstances, it will be clear that the charges against the applicant, in no way, can be said to be grave so as to continue the D.E. against him for so many years even



after his retirement. The charges were served on the applicant on 3.1.2011 and the applicant got retirement on 31.10.2015. The respondents ought to have completed the enquiry against the applicant before his retirement. As already stated, no specific order has been passed for continuation of the said D.E. even after retirement of the applicant and even for the sake of argument if it is accepted that the D.E. under rule 27 of the M.C.S. (Pension) Rules, 1982 can be continued, but the said D.E. shall be only for grave charges.

31. This Bench of the Tribunal while passing order in **O.A. No. 653/2010 {TIKARAM MAROTRAO FUNDE VS. THE STATE OF MAHARASHTRA & ORS}** on 4.3.2015 (supra) has observed as under :-

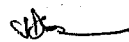
*"13. From the above, it seems clear to us that there is no allegation of any grave misconduct on part of the applicant. The charges are of irregularity in releasing the payments to the contractor prior to completion of the works and carrying out of measurements through a subordinate employee. The respondents do not dispute that although the payments of works were released by end of March, 2002, the works were actually completed in September, 2002. There is no allegation in the charges of any misappropriation or false claim about actual completion of field work. We therefore cannot*

*✓*

help reaching the conclusion that the reasons expressed by the Govt. for disagreeing with the D.E. are not sufficient to state that the charge no. 1 has been proved against the applicant. Thus, we are of the further view that no charge of grave misconduct has been proved against the applicant in the D.E.

15. The applicant has relied on **K.G. Chandanshive**, in which hon'ble the High Court has interpreted Rule 9 of the C.C.S. (Pension) Rules, 1972, which is the same as Rule 27 of M.C.S. (Pension) Rules by holding that no deduction can be made from the pension of the retired Govt. employee unless in an enquiry he is found to be guilty of a grave misconduct. For this, their Lordships have relied on the judgment of the Apex Court in the case of **D.V. Kapoor -Vs- Union of India (1990 SC 1923)**, wherein it has been held as follows :-

**“Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee’s right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as**



**assured under Art. 41 of the Constitution.”**

16. *Keeping in view the provisions of Rule 27 (a) and the law as laid down by hon'ble High Court and Apex Court as above, we hold that the impugned order is not in conformity with the provisions of Section 27 of the Pension Rules and hence the same is not legally tenable and deserves to be quashed and set aside. For this reason we refrain from delving further into the legality of the impugned order in the light of various other judgments relied on by the applicant.”*

32. In view of the discussion in foregoing paragraphs I pass the following order :-

**ORDER**

- (i) The O.A. stands allowed.
- (ii) The res. no. 1 is directed to not to take any cognizance of the concluded enquiry report of the D.E. initiated against the applicant prior to his retirement, which is continued after his retirement in any manner.
- (iii) The res. no. 1 is further directed to release the regular pension and consequential retiral benefits of the applicant forthwith.

There shall be no order as to costs.

sd/-

**MEMBER (J)**