IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.688 OF 2013

DISTRICT : MUMBAI

Sub.:- Compulsory Retirement/Pensionary Benefits

Shri Hisamuddin A.R. Kazi.)
Age : 66 Yrs, Occu.: Retired)
R/o. V.P. Road Police Quarters,)
1st Floor, Room No.20, Girgaum,)
Mumbai – 400 004.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)

2. The Commissioner of Police.)
Having Office at Opp. Crawford)
Market, Mumbai.)

3. The Additional Commissioner of)
Police, South Territorial Division,)
Nagpada, Mumbai – 400 008.)**...Respondents**

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

Smt. S.P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J
BIJAY KUMAR, MEMBER-A

DATE : 22.02.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged the order dated 07.12.1987 passed by Respondent No.2 – Commissioner of Police, Mumbai whereby he was compulsorily retired from service and also challenged final order of appellate authority dated 21.02.2013 passed by Respondent No.1 whereby punishment was confirmed dismissing the appeal. He also challenged the order dated 24.02.2011 whereby Respondent No.2 declined to grant compassionate pension.

2. This O.A. has checkered history involving several rounds of litigation. The facts in brief giving rise to the disciplinary proceedings are as under :-

The Applicant was Sub-Inspector at Gamdevi Police Station, Mumbai. The complaint lodged by Shri Jaisingrao Chavan, Sub-Inspector, SRPF is the basis of departmental proceedings. In the night of 21.10.1984, Motor Lorry No.MHO-1778 carrying smuggled goods was detained at the lower gate of Raj Bhavan, Malbar Hill, Mumbai by Shri Chavan. Shri Chavan in his complaint stated that at about 9.00 p.m. while he was patrolling in Raj Bhavan, they noticed one branch of tree fallen on the road inside Raj Bhavan. When they approached to the tree, they saw one person standing nearby who was later identified as Shri Keshav Bhosale belonging to PWD and stated that he would be removing the tree. He made a signal by hand to someone to come up from seashore side and one person emerged who was later identified as Sabnis, Superintendent working in the Raj Bhavan. When Sabnis was asked as to what was he was doing there, he started going towards lower gate hurriedly. Shri Chavan and Shri Hollar chased him and found some persons running away near from Lorry. When Chavan stopped Sabnis and asked reason for running away, Sabnis stated that the Lorry was containing the blankets for distributing them to the riot affected people in Bhiwandi. Shri Chavan shouted at the people near lower gate where

one Pawar and other Constables stopped the Lorry, but the persons in charge of the Lorry managed to run away in the darkness. Thereafter, at about 11.15 p.m, Police Personnel of Gamdevi Police Station came on the spot. The Policeman when searched the Lorry, they found packages containing wrist watches. The Applicant told his Policeman that if someone wanted wrist watches, they may take out from the Lorry before the Custom Authorities arrived. Some of the packages were removed from the Lorry and thrown into the bushes and it was done by the Applicant despite the objection of Shri Chavan and Prabhu which resulted in some verbal exchanges between them. In the night, Custom Officials came on the scene of occurrence and seized the contraband articles found in the Lorry.

3. The Applicant was subjected to regular departmental enquiry (DE) for following charges :-

> "अ) आपण त्या दिवशी कर्तव्य बजावताना कोठे-कोठे गेलो त्याच्या नोंदी गावदेवी पोलीस ठाणे येथे ठेवल्या नाहीत.
>
> ब) कस्टम अधिका-यांच्या आगमनापूर्वी मोटार लॉरी क्र.एम.एच.ओ.१७७८ मधील चोरट्या आयातीच्या मालामध्ये अनाधिकाराने फरक केला (Tampered) व चोरीचा माल त्या ट्रकमधून काढला.
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> क) श्री. सबनिस, अधीक्षक, राजभवन यांचा राजभवनमधील चोरट्या मालाच्या आयातिच्या प्रकरणांशी संबंध असताना व एस.आर.पी.च्या कर्मचा-यांनी सबनिस यांना ताब्यात घेतले असताना सबनीस यांचेविरुद्ध कायदेशीर कार्यवाही करण्यात कसूर केली.
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> ड) श्री. सबनिस यांचा चोरट्या मालाच्या आयातीबरोबर संबंध असल्याबद्दल वरिष्ठांकडे अहवाल सादर करण्यात कसूर केली.
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> इ) पोलीस अधिकारी म्हणून कर्तव्यात कसूर केली व आपली सचोटी अबाधित ठेवण्यात अयशस्वी झालात तसेच राज्य राखीव दलाच्या अधिका-यांनी आपल्या गैरवर्तणूकीस आक्षेप घेतला असता त्याकडे दुर्लक्ष करून त्यांना अपमानास्पद वागणूक दिली."

4. Following are the admitted facts and details of further proceedings:-

(i) The Enquiry Officer held the Applicant guilty for the charge Nos.2 to 5. The Charge No.1 held partly proved. The Applicant was charged along with 4 other co-accused in common enquiry. The Respondent No.2 – Commissioner of Police, Mumbai as a disciplinary authority issued show cause notice on 04.06.1987 as

to why he should not be dismissed from service to which Applicant gave reply on 20.07.1987.

(ii) Respondent No.2 by order dated 07.12.1987, however, imposed punishment of compulsory retirement.

(iii) Being aggrieved by the punishment, the Applicant has preferred appeal before Government under Rule 15 of Maharashtra Police (Punishments and Appeals) Rules, 1956 (hereinafter referred to as 'Rules of 1956' for brevity) which came to be dismissed on 28.12.1989.

(iv) The Applicant challenged the order of disciplinary authority as well as appellate authority by filing O.A.No.155/1991 before this Tribunal, which was heard on merit and came to be dismissed on 06.05.1999.

(v) The Applicant filed Writ Petition No.1820/2000 before Hon'ble High Court. Hon'ble High Court confirmed the findings recorded in DE holding the Applicant guilty. Hon'ble High Court observed that the finding of Enquiry Officer cannot be said to be perverse or without any supporting material. However, it was noticed that the order of appellate authority was not in consonance with Rule 15 of 'Rules of 1956'. Hon'ble High Court held that the appellate authority failed to consider three aspects viz. (a) Whether the facts have been established supporting the impugned order, (b) Whether the established facts adequately support the punishment imposed, and (c) Whether the punishment was excessive or adequate. Hon'ble High Court observed that the order of appellate authority is cryptic and merely reproduces the conclusion. Apart, it was observed that no personal hearing was given to the Applicant in appeal. Consequent to it, the order passed by the appellate authority and confirmed by MAT was quashed and set aside and the matter was remitted back to appellate authority with

direction to give personal hearing to the Applicant and to decide the appeal in accordance with Rule 15 of 'Rules of 1956' with speaking order by Judgment dated 12.08.2005.

(vi) The appellate authority (Government) then again dismissed the appeal on 30.08.2007 with a cryptic order of one page without bothering the compliance of Rule 15 of 'Rules of 1956'. It was again challenged by the Applicant by filing O.A.No.527/2008 which was dismissed. The Applicant challenged it by filing Writ Petition No.3284/2009. The Hon'ble High Court having found that appellate authority dismissed the appeal without compliance of Rule 15 of 'Rules of 1956', the order passed by appellate authority as well as order of MAT passed in O.A.527/2008 was quashed and set aside. The appeal was again remitted back to the appellate authority to decide the same strictly in accordance to Rule 15 quoted above. The appellate authority then heard the matter and dismissed the appeal by order dated 03.02.2011.

(vii) Being aggrieved by it, the Applicant again filed fresh O.A.No.207/2011 before this Tribunal, which was decided on 25.01.2012 and again remitted the matter to the appellate authority with the observation that there is no reference to the material or evidence led before the Enquiry Officer and findings recorded by Enquiry Officer as to why appellate authority concurs with the Enquiry Officer. The Tribunal further observed that there is no discussion whatsoever about the arguments advanced by the Applicant in appeal. The appellate authority then again heard the matter and dismissed the appeal by order dated 21.02.2013.

5. It is on the above background, the Applicant has filed this O.A. challenging the initial order passed by disciplinary authority dated 07.12.1987 and last final order of appellate authority dated 21.02.2013 after various rounds of litigation one after other.

6. Shri C.T. Chandratre, learned Advocate for the Applicant sought to assail the orders dated 07.12.1987 as well as 21.02.2013 and also assailed one more order dated 24.02.2011 whereby Respondent No.2 declined to grant compassionate pension, invoking Rule 100(1) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity).

7. Shri C.T. Chandratre, learned Advocate for the Applicant made two-fold submissions. The findings of disciplinary authority and maintained by appellate authority as well as by this Tribunal that the charges are proved, is incorrect and needs interference by this Tribunal. In second limb of submission, he urged that Applicant was entitled to compassionate pension, but it was declined without giving any opportunity of hearing, and therefore, order dated 24.02.2011 is unsustainable in law.

8. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer submits that now the Tribunal cannot go into correctness of the findings of holding the Applicant guilty for the charges levelled against him in view of its confirmation by MAT as well as by Hon'ble High Court. According to her, the matter was repeatedly remitted by Hon'ble High Court as well as by MAT to the appellate authority only for compliance of Rule 15 of 'Rules of 1956'. Finally, appellate authority by order dated 21.02.2013 made proper compliance and it needs no interference by the Tribunal. As regard denial of compassionate pension, she submits that in view of serious charges or smuggling of goods in Raj Bhavan, the competent authority rightly declined to grant compassionate pension. She further submits that Rule 101(1) of 'Pension Rules of 1982', the Government servant cannot claim pension as a matter of right.

9. In view of submissions advanced at the Bar, two-fold issues arise for consideration. Firstly, whether the finding recorded by disciplinary authority and confirmed by appellate authority holding the Applicant

guilty for the charges framed against him and punishment is sufficiently supported by the evidence produced before Enquiry Officer or it needs interference by the Tribunal. Secondly, whether having regard to the facts and circumstances of facts and proven delinquency, the order passed by Respondent No.2 declining to grant compassionate pension is legal and valid.

10. As regard sustainability of the charges and conclusion recorded by disciplinary authority as well as confirmed by appellate authority, needless to mention, the scope of the Tribunal for interference is very limited. Hon'ble Supreme Court in ***(2015) 2 SCC 610 [Union of India & Ors. Vs. P. Gunasekaran]*** in Para Nos.12 and 13 of the Judgment held as under :-

> "***12.*** *Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
>
> *(a) the enquiry is held by a competent authority;*
>
> *(b) the enquiry is held according to the procedure prescribed in That behalf;*
>
> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
>
> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
>
> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
>
> *(g) the disciplinary authority had erroneously failed to admit the*

admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

11. Now turning to the facts of the present case, as rightly pointed out by learned CPO while dealing with this issue, Hon'ble High Court in this matter in Writ Petition No.1820/2000 decided on 12.08.2004 turned down the contentions raised by the Applicant that the charges are not proved. Hon'ble High Court held that the finding of Enquiry Officer cannot be said perverse or without any supporting material. In Para No.19, Hon'ble High Court dealt with this issue as under :-

"***19.*** *The second submission, as stated above, has been that even on the material on record, the misconduct was not established. Reliance is placed on the entries made by Shri Chavan in his diary after the date of the incident and it is submitted that it does not mention the detention of Shri Sabnis or the removal of the wrist watches from the bushes. It is submitted that there is no mention of this material aspect in his own diary. It is difficult to accept Shri Chavan's statement made one year thereafter involving the Petitioner. The defence to this submission has been that Shri Chavan has already explained as to how he was under the threat of the Petitioner and Shri Prabhu. The fact that Shri Sabnis was detained on the date of the incident for some time and later on he was allowed to go by*

Shri Prabhu is not disputed by the Petitioner in his preliminary statement. As far as the recovery of the watches from the bushes is concerned, that is also accepted by him. If that is so, the absence of this information in Shri Chavan's diary cannot be said to be fatal for the findings on record arrived at by the Enquiry Officer. What is material to be noted is as to whether there is some material to come to the conclusion which the departmental authorities have arrived at. The Court is not supposed to sit in appeal while exercising the writ jurisdiction and to re-appreciate the evidence as held in Union of India v. A.N. Rao - AIR 1998 SC 111. The finding of the Enquiry Officer, therefore, cannot be said to be perverse or without any supporting material only for this omission."

12. Thus, the perusal of Judgment of Hon'ble High Court reveals that the contentions raised by the Applicant about the sustainability of the charges were dealt with and finally, findings of Enquiry Officer as well as disciplinary authority holding the Applicant guilty for the charges levelled against him has been confirmed. All that, Hon'ble High Court remitted the matter to appellate authority because of very cryptic order passed by appellate authority without following Rule 15 of 'Rules of 1956'. For that limited purpose only, the matter was remitted to appellate authority. Suffice to say, insofar as acceptability of findings holding the Applicant guilty is concerned, now it cannot be re-agitated in view of specific conclusion by the Hon'ble High Court already recorded in the matter. That apart, learned Advocate for the Applicant could not point out as to how it is a case of no evidence or perverse. There is no grievance of denial of opportunity or breach of principles of natural justice. Having regard to the serious delinquency, the punishment of compulsory retirement also cannot be said disproportionate, which shocks the conscience of the Tribunal.

13. Next issue comes about the legality of order dated 24.02.2011 whereby Respondent No.2 declined to grant compassionate pension. Notably, grant of compassionate pension where a Government servant is compulsorily retired from service or removal from service is governed by Rules 100 and 101 of 'Pension Rules of 1982. However, pertinently, Rules 100 and 101 is amended in view of Notification dated 07.12.1994 and amended Rules 100 and 101 are as under :-

"**100.** Compulsory Retirement Pension.-(1) A Government servant compulsorily retired from service as a penalty may be granted, by the authority competent to impose such penalty, pension or gratuity or both at the rate not less than two-third and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of the power of review) awarding a person less than the full compensation pension admissible under these rules, the Maharashtra Public Service Commission shall be consulted before such order is passed.

Explanation.- In this sub-rule, the expression "*Pension*" includes gratuity.

(3) A person granted under sub-rule [1] shall not be less than the minimum pension as fixed by Government.

101. Grant of compassionate Pension in deserving cases by Government.- (1) A Government servant who is removed from service shall forfeit his pension and gratuity :

Provided that if the case is deserving of special consideration. Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.

(3) A dismissed Government servant is not eligible for compassionate pension."

14. Whereas old Rules 100 and 101 of 'Pension Rules of 1982' prior to amendment to 1994 is as under :-

"**100. Grant of Compassionate Pension-**

(1) A Government servant who is removed or required to retire from Government service for misconduct or insolvency shall be granted no pension other than a Compassionate Pension.

(2) A Government servant who is removed or required to retire from Government service on the ground of inefficiency, shall, if he be eligible for a superannuation, or retiring pension, be granted such pension. If he is not eligible for a superannuation or retiring pension he shall be granted no pension other than a Compassionate Pension.

101. Grant of Compassionate Pension in deserving cases by Government-

(1) When a Government servant is removed or required to retire from Government service for misconduct or insolvency or is removed or required to retire from Government service on grounds of inefficiency before he is eligible for a Retiring or Superannuation Pension, Government may, if the case is considered deserving of special treatment, sanction the grant to him of a Compassionate Pension.

(2) A dismissed Government servant is not eligible for Compassionate Pension."

15. Shri C.T. Chandratre, learned Advocate for the Applicant sought to contend that in view of amendment to 'Pension Rules of 1982' in 1994, the competent authority has discretion in the matter of grant of compassionate pension and there is no automatic forfeiture of compassionate pension. He further submits that initially, show cause notice was issued by Respondent No.2 as to why Applicant should not be dismissed from service, which Applicant gave reply and in consideration thereof, the punishment of compulsory retirement has been imposed. He has pointed out that Applicant has rendered 20 years' service and it would be unjust to decline compassionate pension.

16. True, as per Section 100(1) of amended 'Pension Rules of 1982', Government servant compulsorily retired from service as a penalty may be granted pension or gratuity or both at not less than two-thirds of and not more than full pension or gratuity. Whereas as per Rule 100(1), as stood before retirement, a Government servant who is removed or required to retire from Government service for misconduct or insolvency shall be granted no pension other than a Compassionate Pension.

17. Now turning to the facts of present case, the incident giving rise to the misconduct took place on 21.10.1984 i.e. before the amendment of 1994 in 'Pension Rules of 1982'. The Applicant was compulsorily retired on 07.12.1987 which is now confirmed. Therefore, the situation is governed by old Rules as stood before amendment of 1994.

18. True, as per old Rule 100(1), there is provision for grant of compassionate pension to a Government servant, who is removed or required to retire from Government service for misconduct or insolvency. However, grant of compassionate pension is not legally vested right, once there is punishment of removal from service or compulsory retirement. It cannot be claimed as a legally vested right much less legally enforceable in the court of law. The discretion is with the competent authority either to grant or refuse it having regard to the seriousness and gravity of the proven delinquency. Indeed, this issue is no more res-integra in view of decision of Hon'ble High Court in ***2003(2) ALL MR 10 [Baliram R. Majgaonkar Vs. District and Sessions Judge, Satara & Anr.]***. In that case, Baliram Majgaonkar was subjected to disciplinary proceedings for misappropriation of Government money of Rs.30,315/- and punishment of compulsory retirement was imposed. He claimed compassionate pension under 'Pension Rules of 1982'. It was rejected against which he filed Writ Petition before Hon'ble High Court in which Rules 100 and 101 of 'Pension Rules of 1982' were thoroughly discussed. Hon'ble High Court held that the Government servant cannot claim compassionate pension as a matter of right and having regard to the serious charges, the order of declining compassionate pension was confirmed. In Para Nos. 5 and 6, Hon'ble Supreme Court held as under:-

> "***5.*** *The scheme of the aforesaid provision clearly suggests that a Government servant who is removed or required to retire from Government service for misconduct or insolvency is not entitled to any pension save and except the compassionate pension. The compassionate pension to such Government servant who has been removed or required to retire from Government service is not payable as a matter of course which is clearly reflected from the provisions contained in sub-clause (1) of Rule 101. An analysis of the said Rules would suggest that in either of the case (a) when a Government servant is removed; or (b) he is required to retire from the Government service; or (c) he is required to retire from the Government service for insolvency; or he is removed or he is required to retire from Government service because of inefficiency before he is eligible for retirement or superannuation pension, his case must be found deserving special treatment for grant of compassionate pension. The expression "before he is eligible for retirement or superannuation" is only applicable to a situation where a Government servant is required to remove from Government service on the ground of inefficiency. The said expression "before he is eligible for retirement or superannuation" is not applicable to*

the situation where the Government servant is removed or required to retire from Government service for misconduct or insolvency. In the present case, it is not in dispute that the petitioner who was a Government servant was removed from the Government service for misconduct. In that event, obviously the Government could consider his case for grant of compassionate pension if he was found deserving or of a special treatment. We have no hesitation in holding upon conjoint reading of Rules 100 and 101 that a Government servant who is removed from Government service for misconduct, though may be considered for grant of compassionate pension, is not entitled to compassionate pension as a matter of right. The construction, thus, put forth by the learned counsel for the petitioner that in the case where the Government servant is removed or required to retire from Government service for misconduct is entitled to compassionate pension as a matter of right is not acceptable since it overlooks the scheme reflected from Rules 100 and 101 when read together.

6. *The question now arises, whether, in the facts and circumstances of the case, the Government was justified in not accepting the petitioner's prayer for grant of compassionate pension. Every misconduct is not similar nor for every misconduct punishment awarded is similar. Here is a case where the petitioner was employed in the District Court as a senior clerk at the relevant time. The Court is seen by the common man as temple of justice. In the temple of justice, be it a Judge or a clerk, has to conduct himself like Ceaser's wife that is beyond suspicion. The petitioner not only acted not beyond suspicion but indulged himself in misconduct overtly and directly by misappropriating the government money to the extent of Rs.30,315/- which, without doubt, is very serious and grave misconduct. Misconduct liberally means wrong conduct or improper conduct. It is wrongful behaviour, wilful in character which is forbidden. A conduct or rather a misconduct relating to misappropriation is always referable to moral turpitude and, therefore, apparently the petitioner was not deserving for grant of compassionate pension.*

19. The aforesaid Judgment is squarely attracted and holds the field. In the present case also, the Applicant is held guilty for serious and culpable delinquency of involvement in smuggling of goods, that too, in very high security premises of Raj Bhavan, Mumbai. Such a conduct definitely constitutes grave misconduct which shows his depravity. It is also referable to moral turpitude and breach of ethics by a Government servant. Therefore, in my considered opinion, he does not deserve any leniency for grant of compassionate pension. No case is made out for special treatment so as to grant compassionate pension. Suffice to say, the order passed by Respondent No.2 declining compassionate pension cannot be termed perverse and needs no interference by the Tribunal.

The learned Advocate for the Applicant could not point out any provision for hearing of delinquent before passing such order.

20. In view of aforesaid discussion, in our considered opinion, the challenge to the impugned orders is devoid of merit and O.A. is liable to be dismissed. Hence, the order.

O R D E R

The Original Application is dismissed. No order as to costs.

Sd/-	Sd/-
(BIJAY KUMAR)	**(A.P. KURHEKAR)**
Member-A	**Member-J**

Mumbai
Date : 22.02.2023
Dictation taken by :
S.K. Wamanse.
D:\SANJAY WAMANSE\JUDGMENTS\2023\February, 2023\O.A.688.13.w.2.2023.Compulsory Retirement, Pensionary Benefits, etc..doc

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