

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.768 OF 2018

DISTRICT : MUMBAI

Shri Kondiba Ramling Nannaware.)
Age : 59 Yrs., Occu.: Nil, Retired as)
Assistant Security Officer, Govt. Milk Scheme,)
Aarey, Goregaon, Mumbai – 400 065 and)
Residing at C/o. D.M. Vyavhare, House No.434,)
Church Road, Gaondevi Wadi, Near D-Mart,)
Ghansoli Gaon, Navi Mumbai.)...**Applicant**

Versus

1. The Commissioner.)
Dairy Development, M.S, Mumbai and)
Having office at Administrative Building,)
A.G. Road, Worli Sea Face, Mumbai – 18.)
2. The State of Maharashtra.)
Through Principal Secretary)
(Dairy Development), Animal Husbandry,)
Dairy Development & Fisheries Dept.,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.04.2019

JUDGMENT

1. The Applicant who retired from Government service in 2016 is seeking direction to the Respondents to release his retiral benefits invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.
2. Shortly stated facts giving rise to this application are as under :

The Applicant was appointed as Mazdoor (Class-IV) in 1980. During the course of his service tenure, he was promoted to the post of Assistant Security Officer. By order dated 04.09.2014, he was posted as Assistant Security officer, Government Milk Scheme, Aarey, Goregaon, Mumbai. During his tenure, there was complaint dated 30.10.2014 received by Respondent No.1 about large scale unauthorized construction on the land belonging to the Department as well as financial irregularities and corruption. The Respondent No.1 i.e. Commissioner, Dairy Development conducted enquiry of the complaint and found that the Applicant has failed in discharging his duties to check unauthorized construction and to take necessary action in that behalf. Therefore, the Applicant was suspended by order dated 05.12.2014 invoking Rule 4(1) of Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979'). However, later by order dated 09.02.2015, he was reinstated in service and posted at Nanded in the office of General Manager, Government Milk Scheme. In the meantime, the Respondents set up the Committee by order dated 05.11.2014 to hold enquiry about the alleged misconduct of the Applicant and to submit report. Accordingly, the Committee submitted its report on 04.12.2014. Consequent to it, the Respondent No.1 issued show cause notice dated 02.02.2016 and called upon the Applicant to submit his explanation. Accordingly, the Applicant has submitted his explanation/reply on 14.03.2016. However, thereafter, nothing happened in that behalf nor anything was communicated to the Applicant. The Applicant, thereafter, stood retired

w.e.f.31.12.2016 on attaining age of superannuation without having any reference to the enquiry in the retirement order. After retirement, some of the retiral benefits i.e. P.P.F, Leave Encashment and G.I.S. was released. However, Gratuity and regular pension has been withheld. He was granted provisional pension. He made representations dated 13.09.2017 and 25.06.2018 for release of gratuity and regular pension, but in vain. Ultimately, the Applicant has filed the present O.A. on 21.08.2018 for direction to the Respondents to release his remaining retiral dues contending that the same are withheld illegally.

3. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.29 to 36 of P.B.) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondents denied that the retiral benefits of the Applicant have been withheld illegally. It is not in dispute that during the tenure of the Applicant at Goregaon, Mumbai, the Department had received complaint against the Applicant in respect of which, the preliminary enquiry was conducted and the explanation of the Applicant was sought. It is also not in dispute that earlier the Applicant was suspended by order dated 05.12.2014, but later reinstated and posted at Nanded by order dated 09.12.2015. Indisputably, the Applicant stood retired w.e.f.31.12.2016 from Nanded. As regard withholding of Gratuity and regular pension, the Respondents contend that the Applicant has been served with the charge-sheet dated 28.09.2018, and therefore, till the conclusion of Departmental Enquiry (D.E.), he is not entitled to the Gratuity and regular pension in view of Rule 27(2)(b)(ii) and Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982').

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that, by order dated 31.12.2016, the Applicant stands retired honorably without having any reference of pending preliminary enquiry against him, and therefore, subsequent initiation of D.E. two years after retirement of the

Applicant, cannot be the ground to withhold gratuity or regular pension. He has emphasized that it is only a case of initiation of D.E. on or before the date of retirement, the pensionary benefits can be withheld in terms of Rules 130 of 'Pension Rules 1982'. He, therefore, urged that the Respondents' action of withholding gratuity and regular pension is totally illegal and in absence of any such provision empowering the Respondents to do so, the Applicant cannot be deprived of his statutory rights.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents sought to contend that, in view of initiation of D.E. by issuance of charge-sheet dated 26.09.2018, the action of Respondents to withhold regular pension and gratuity is consistent with Rule 27 read with 130 of 'Pension Rules 1982'.

6. In view of submission advanced at the Bar, the crux of the matter is whether the subsequent initiation of D.E. two years after retirement, can be the ground to withhold regular pension and gratuity of the Applicant ?

7. At the very outset, it needs to be stated that, during the tenure of Applicant at Goregaon, Mumbai, though there was complaint against him about inaction to check unauthorized construction and preliminary enquiry was conducted in that behalf, no D.E. in the sense of issuance of charge-sheet under the provisions of 'Rules of 1979' has been issued till the date of retirement of the Applicant. The perusal of retirement order dated 31.12.2016 (Page No.24 of P.B.) reveals that he was retired on attaining the age of superannuation and there is absolutely no mention or whisper about any pending enquiry much less D.E. against him. Thus, admittedly, on the date of retirement, there was no initiation of D.E. contemplated under 'Rules of 1979' against him.

8. As stated above, the Applicant has filed the present O.A. on 21.08.2018. Whereas the D.E. has been initiated by issuance charge-sheet dated 28.09.2018. Suffice to say, the D.E. was initiated after more than two years of retirement about the alleged misconduct took place in 2014 during the Applicant's tenure at Goregaon, Mumbai.

9. It cannot be disputed that, where the Government servant has been charged for misconduct and charge-sheet has been issued against him during his tenure, then such disciplinary enquiry could be continued even after retirement. Where any such D.E. is initiated during the tenure of service, it is necessary that an order is passed intimating the delinquent that the enquiry proceeding shall be continued after attaining the age of superannuation in view of Section 27(2)(a) of 'Rules of 1982'. As such, in the light of deeming provision contained in Rule 27(2)(a) of 'Rules of 1982', if D.E. is instituted while Government servant is in service, then it deemed to be continued even after his retirement. However, in the present case, admittedly, no such D.E. was initiated against the Applicant till his retirement and what was held was only preliminary enquiry which cannot be equated with D.E. within the meaning of Rule 27(2)(a) of 'Rules of 1982'.

10. In the present matter, the moot point is whether the Respondents can withhold regular pension and gratuity though no D.E. was initiated against him at the time of retirement. It is only after filing of the present O.A, the charge-sheet in D.E. has been issued on 26.09.2018. Whereas, the Applicant stands retired on 31.12.2016. Therefore, one need to consider the provision and scope as well as the applicability of Rules 27 and 130 of 'Pension Rules 1982'.

"27. Right of Government to withhold or withdraw pension.-

- (1) [Appointing Authority 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.

- 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 (Appointing Authority),
 - (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.
- (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 where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.

- (5) Where Government decided not to withhold or withdrawn 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 the rate exceeding one-third 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.”

“130. Provisional pension where departmental or judicial proceedings may be pending.

- (1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.
- (b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date of which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
- (c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].

- (2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

11. Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of ‘Rules of 1982’. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement of the Applicant, so as to have bearing of Rule 27(2)(a) of ‘Rules of 1982’.

12. At this juncture, it would be apposite to refer the Judgment of Hon’ble High Court in **2013(6) Mh.L.J. 311 (Manohar B. Patil Vs. State of Maharashtra)**. In that case, the Petitioner was relieved from the employment on 30.04.2010 in view of voluntary retirement, but the charge-sheet in D.E. was issued on 07.09.2011. The Petitioner had challenged the institution of D.E. after retirement. This authority highlights the scope of Rule 27 in the situation where the charge-sheet has been filed after retirement and to that extent important in the present matter. The Hon’ble High Court dismissed the petition in view of provisions of Rule 27 of ‘Rules of 1982’. The following passage from the Judgment highlights the scope and ambit of Rule 27, which is as follows :-

“On a conjoint reading of sub-rule (1) with sub-rule (2) of Rule 27 of the said Pension Rules, we are of the view that the Pension Rules provide for initiation of departmental proceedings after retirement of a Government servant subject to constraints of sub-clauses (i) and (ii) of Clause (b) of sub-rule (2) of Rule 27 of the Pension Rules. The departmental proceedings can be instituted after retirement only for the purposes of sub-rule (1) of Rule 27 to enable the Government to recover from pension, the whole or part of any pecuniary loss caused to the Government if in the departmental proceedings, the Pensioner is found guilty of grave misconduct or negligence during the period of his service. On conjoint reading of sub-rules (1) and (2) of Rule 27 of the Pension Rules, it is obvious that in the departmental proceedings initiated after retirement, no penalty can be imposed on a Government servant in accordance with the Discipline and Appeal Rules. The departmental inquiry can be initiated after superannuation only for the purposes of withholding the whole or part of the pension.”

13. It would be also useful to refer the decision of Hon’ble High Court in The Chairman/Secretary of Institute of ***Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil : 2003 (3) Mah.L.J. 602***. In that case, the D.E. was initiated during the service but was continued after retirement of the Respondent. In this authority also, the Hon’ble High Court highlighted the scope, ambit as well as limitation of Rule 27 of ‘Rules of 1982’. Para No.13 of the Judgment is important, which is as follows :-

“13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub - rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re - employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to

the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules."

14. Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of 'Rules of 1982' and where on conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.

15. As regard gratuity, the Rule 130(c) says "no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon." Here, the legislature has not used the word "pensioner" and has specifically used the word "Government Servant", which is significant in the present context. This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of 'Rules of 1982', in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired honorably, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found

guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.

16. The learned P.O. except Rule 130(c) could not point out any provision to substantiate that the gratuity can be withheld where charge-sheet in D.E. has been issued after retirement. Needless to mention, the pension as well as gratuity are the statutory rights of the Government servants, which cannot be taken away in absence of express provision to that effect.

17. Now, turning to the facts of the present case, as stated above, the Applicant stands retired on 31.12.2016 and filed the present O.A. on 21.08.2018. It is only after filing of O.A. and its service, the Respondents woke up and hurriedly served charge-sheet on 28.09.2018. Here important to note that, in respect of the said alleged misconduct, the preliminary enquiry was conducted in 2014 and in pursuance to show cause notice, the Applicant had submitted his reply. However, thereafter, no action was taken in pursuance of the said procedure. On the contrary, the Applicant was allowed to retire honorably. In retirement order, there is no reference of any such enquiry. Thus, there is inaction and negligence on the part of Respondents to initiate the D.E. at proper time and failure to do so, they must suffer its consequences.

18. The learned Advocate for the Applicant has referred to various G.Rs. and Circulars to point out that the D.E. was required to be completed within the

stipulated time. He referred to Circulars dated 08.04.1974, 19.04.1979, 02.08.1985 and 21.08.1986 which provide for completion of D.E. within six months. However, all these Circulars were completely ignored. Suffice to say, the lethargy and inaction on the part of Respondents is writ at large.

19. It is no more *res-integra* that the pension is recognized as a right in property enshrined in Article 300-A of the Constitution of India, which reads as under :

“300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.”

As such, once the right to receive pension and gratuity is recognized as a statutory right, a person cannot be deprived of it without statutory provision to that effect.

20. The necessary corollary of aforesaid discussion leads me to sum-up that the Applicant is entitled to the pension and gratuity and O.A. deserves to be allowed. I must make it here very clear that it is only in case of positive finding in D.E. which is now initiated by issuance of charge-sheet on 28.09.2018, the pension can be withheld or withdrawn as the Government deems fit in accordance to Rules. As of now, in absence of any statutory provisions, the pension as well as gratuity cannot be withheld. In so far as D.E. now initiated is concerned, it also needs to be completed within stipulated period without prejudice to the right of the Applicant to challenge the departmental proceeding, if he chose in accordance to law. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to release regular pension and gratuity within two months from today.
- (C) The Respondents are further directed to complete D.E. within six months.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.04.2019

Dictation taken by :

S.K. Wamanse.

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