

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 123 OF 2017

DISTRICT: - JALGAON.

Shri Krishna Gulab Jadhav,
Age : - 60 years, Occu: Retired,
R/o : Row House No. 5,
Gajanan Park, Mahale Farm,
Nasik.

.. APPLICANT.

V E R S U S

1) The State of Maharashtra
The Secretary,
Agriculture, Animal Husbandry,
Dairy Development & Fishery Depart.,
Mantralaya, Mumbai-32.

2) The District Superintendent
Agriculture Officer,
Jalgaon.

.. RESPONDENTS

APPEARANCE : Shri K.B. Jadhav, learned Advocate
for the applicant.

: Shri N.U. Yadav – learned
Presenting Officer for the
respondents

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN**
(This matter is placed before the Single
Bench due to non-availability of Division
Bench.)

DATE : **22ND JANUARY, 2018.**

ORAL ORDER

1. Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.
2. Heard by consent of both the parties.
3. The applicant has approached this Tribunal with the following relief : -

“B) To quash and set aside the departmental enquiry initiated against the applicant by issuing the charge-sheet dated 7.9.2015 by the respondent No. 1.”

(Quoted from paragraph [X] page-18 of the O.A.)

4. By the impugned charge-sheet the applicant is being tried for the misconduct allegedly committed by him between the period 2008 and 2013. The text of the charge can be read from page-33, the charge No. 1, text whereof is as follows: -

“बाब :- १.

स्वातंत्र्य सैनिकांचे पाल्य यांना नियमबाह्य स्वरूपात शासन सेवेत सामावून घेणे.

श्री. के.जी. जाधव हे सहाय्यक प्रशासन अधिकारी या पदावर विभागीय कृषि सह संचालक, नाशिक या कार्यालयात दि. १९.८.२००८ ते २६.६.२०१३ या कालावधी पर्यंत कार्यरत असताना, स्वातंत्र्य सैनिकांच्या पाल्यांना शासन सेवेत नेमणूक करताना प्रचलित शासन निर्णय/परिपत्रकातील तरतूदीचे उल्लंघन करून त्यांनी आपल्या जबाबदारीत पर्यवेक्षीय शैथिल्य दर्शवून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम-१९७९ मधील नियम-३(१)(दोन) चा भंग केलेला आहे.”

(Quoted from page-33 of the O.A.)

5. The ground on which the applicant has challenged the charge-sheet is summarized in paragraph (12) Ground (D) at page-10 of the O.A., which reads as follows: -

“D) The allegations mentioned in the charge no. 1 are for the year 2008 and therefore, as per rule 27 (2) (B) (ii) it is not permissible to conduct enquiry against the applicant when the incident which took place more than four years before such institution. As such the charge no. 1 is liable to be quashed and set aside.”

(Quoted from page-10 of the O.A.)

6. The averment contained in ground No. ‘D’ is replied by the respondents with averment contained in paragraph Nos. 19 & 20 of the affidavit in reply filed by the respondent Nos. 1 & 2.

“19. As regards Ground (D), I say and submit that the contention raised by the applicant is denied. Departmental enquiry initiated against applicant along with other employees is as per the rules. Not all the charges labeled against the applicant are pertaining to the irregularities in the year 2008. Also as in case of applicant, the process of enquiry is started on date 29.5.2014; it is permissible as per the rule M.C.S.R. 27 (6) (a).

20. As regards Ground (E), I say and submit that the contention raised by the applicant is denied. After complaints regarding transfers, promotion, irregularities in the appointment of freedom fighter

nominees and irregularities in the appointment process of Group-D cadre posts, preliminary enquiry was conducted and report was submitted on date 28.02.2014 to the Respondents by the enquiry committee. In the preliminary enquiry report revealed that there are various irregularities in the appointment and transfer matters. Accordingly, the Commissioner of Agriculture, Pune submitted proposal of suspension and Departmental Enquiry of applicant along with 12 other employees to the Respondent No. 1. Accordingly the applicant was suspended vide order dated 29.5.2014 along with other employees and departmental enquiry is initiated against the applicant along with other employees.”

(Quoted from page Nos. 70 & 71 of the O.A.),

7. The case proceeded on admitted background that misconduct subject matter is allegedly committed by the applicant between 2008 and 2013.

8. The applicant stood retired from the Government service on 31st May, 2014.

9. The plea of the State is that the charge-sheet which relates to misconduct which dates back/ four years prior to the date of retirement is permissible in view of rule 27 (6) (a) of Maharashtra Civil Services (Pension) Rules 1982 (for short “the Rules of 1982).

10. It would be convenient to refer to clause 6 (a) of rule 27 of the Pension Rules (Supra), by quotation, which is quoted as follows: -

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

.. .. .
.. .. .

(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.”

11. It would have been possible for the administration to segregate exact misconduct, which was committed by the applicant after 31.5.2010 and the charge-sheet could have been served if some act/omission of misconduct after said date is seen.

12. Instead of approaching to the case in such a simple way, the charge-sheet is sought to be justified on the basis of rule 27 (6) (a) of the Rules of 1982. It is not shown as to how on facts & law, the provision of Rule 27 (6) (a) applies to present case.

13. The Government officers may be learned and honourable, yet they assert and adhere to the privilege of reading the rules to suit to their goal. The construction of rule 27 (6) (a) of the

rules of 1982, as the ground to justify its action as is done by the State *prima facie* in an absolutely irrelevant and absurd manner, is and *prima facie* done in grave departure from the rule of prudence. Such absurd argument is possible only by departing from same behaviour or due to hallucination, or that the charge-sheet subject matter is a product of total non-application of mind.

14. In the foregoing fact situation, the charge sheet deserves to be quashed and set aside, this however, shall not preclude the State from segregating the misconduct committed during four years between 31.5.2010 and 31.5.2014, and proceed to inquire the same by serving the fresh charge-sheet if upon segregation the misconduct is seen to have been committed by present applicant either individually/ singly or jointly with fellow Government Servants.

15. The Original Application is accordingly allowed and charge no.1 contained in the charge-sheet dated 7/9/2015 issued to the Applicant by the Respondent is quashed and set aside, subject to liberty as dictated in foregoing para no. 12.

16. There shall be no order as to costs.

CHAIRMAN

PLACE : AURANGABAD.

DATE : 22ND JANUARY, 2018.