

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 855 OF 2017**

DISTRICT: - JALNA.

**Ganesh S/o. Rekhanaiik Rathod,**

Age-60 years, Occu. : Retired,

R/o. Hastur Tanda,

Tq: - Partur, Dist. Jalna.

.. APPLICANT.

**V E R S U S**

**1. The State of Maharashtra,**

Through it's Secretary,

Home Department,

Mantralaya, Mumbai.

.. RESPONDENTS.

---

**APPEARANCE :** Shri. H.A. Joshi, learned Advocate  
for the applicant.

:  
Smt. Sanjivani Deshmukh-Ghate –  
learned Presenting Officer for the  
respondents.

---

**CORAM :** **JUSTICE M.T. JOSHI, VICE CHAIRMAN**  
**AND**

:  
**ATUL RAJ CHADHA, MEMBER (A)**

**DATE :** **8<sup>TH</sup> FEBRUARY, 2019.**

---

**O R D E R**

**[Per : Justice M.T. Joshi, Vice Chairman]**

1. Shri H.A. Joshi, learned Advocate for the applicant  
and Smt. Sanjivani Deshmukh-Ghate, learned Presenting  
Officer for the respondents.

2. Heard both sides.
3. By the present Original Application the applicant is seeking the following relief: -

*“B] By issue of appropriate order or direction in the like nature the impugned (sic.) it be held and declared that the departmental enquiry initiated against the Applicant in pursuance to impugned communication / Charge Sheet dated 30.01.2015 cannot be held and impugned communication / Charge Sheet dated 30.01.2015 be quashed and set aside declaring it to be illegal.*

4. The present applicant was working as Sub Divisional Police Officer, Shevgaon Division, District Ahmednagar. On 16.05.2013 he received a charge-sheet from Director General of Police, to show cause as to why he should not be punished with minor penalty for six misconducts committed by him, which were enumerated in the said charge-sheet. The applicant replied the same vide his submission dated 13.6.2013. Thereafter, nothing further had occurred in the said episode. On 30.1.2015 another charge-sheet was issued to the applicant on the same charges. He was superannuated

on 31.1.2015 and the charge-sheet was received to him on 1.2.2015. The copy of the same is filed on record at Annexure 'A-4', page-37.

5. The applicant, therefore, raised the grounds in the application that on 1.2.2015 the jural relationship of employer and employee came to an end between the applicant and department. The intention of initiation of fresh enquiry caused harassment to the applicant. The action of the respondents is against the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and hence, he submits that the charge-sheet be quashed and set aside.

6. The respondent State opposed the plea of the applicant. It was submitted that initially the Director General of Police issued the charge-sheet for inflicting the minor punishment. However, the Government found that the alleged misconduct committed by the applicant, are of serious nature. Therefore, the memorandum was cancelled and on 30.1.2015 fresh charge-sheet was issued for conducting regular departmental enquiry

against the applicant for major punishment under rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. On that date the present applicant was very well in service and even very much jural relationship would not come to an end upon superannuation of the employee. Even otherwise under rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 a disciplinary action can be taken against the employee subject to certain conditions and even the previous enquiry instituted can be continued after retirement.

7. Learned Advocate for the applicant Shri H.A. Joshi vehemently submitted before us that under rule 27 of Maharashtra Civil Services (Pension) Rules, 1982, a disciplinary enquiry instituted earlier to superannuation cannot be continued thereafter. He relies on the ratio laid down in the following cases :-

**1. CHAIRMAN / SECRETARY OF  
INSTITUTE & ANR. VS. BHUJGONDA B. PATIL  
reported in 2003 (6) LJSHORT 41;**

**2. PRABHAKAR AMBADASRAO DONGRE  
VS. STATE OF MAHARASHTRA THROUGH**

**SECRETARY AGRICULTURE & ORS. reported  
in 2016 (11) LJSOFT 84;**

**3. STATE OF ZHARKHAND & ORS. VS.  
JITENDRA KUMAR SRIVASTAVA & ANR.  
(CIVIL APPEAL NO. 6770 OF 2013 ARISING  
OUT OF SPECIAL LEAVE PETITION (CIVIL)  
NO. 1427 OF 2009)**

8. On the other hand, learned Presenting Officer submits that date of issue of charge-sheet would be material. As the charge-sheet was issued on the date on which the applicant was in service i.e. on 30.01.2015, it cannot be said that the charge-sheet was issued after the applicant was superannuated. To buttress the submission, he relied on the ratio laid down by the Hon'ble Supreme Court in the case of **DELHI DEVELOPMENT AUTHORITY VS. H.C. KHURANA 1993 (3) SCC 196**. Further rule 27 (2) (a) provides that a departmental proceeding instituted while the Government servant was in service is deemed to be proceedings under this rule i.e. initiation of departmental enquiry against the retired employee and the same would be continued. He, therefore, submits that the ratio of the

authorities on which the applicant placed reliance would not be applicable. He alternatively submits that for initiation of the departmental enquiry against the superannuated employee now there is no need to seek any sanction of the Government in view of the recent amendment to rule 27 of the M.C.S. (Pension) Rules, 1982.

9. Rule 27 of the M.C.S. (Pension) Rules, 1982 holding field at the time of superannuation of the present applicant reads 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.*

**(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.**

- (2)(b) .. .. .
- (3) .. .. .
- (4) .. .. .
- (5) .. .. .

(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) .. .. .  
..”

*(Emphasis supplied)*

10. In the case of **DELHI DEVELOPMENT AUTHORITY VS. H.C. KHURANA 1993 (3) SCC 196** the Hon'ble Supreme Court in paragraph No. 14 has ruled as under:-

*14. 'Issue' of the charge-sheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the charge-sheet and taking of the necessary action to despatch the charge-sheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the charge-sheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No. (4), but the fact of 'issue' of the charge-sheet to the employee is emphasised in para 17 of the decision. Conclusion No. (4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.*

11. If provision of Rule 27 of the M.C.S. (Pension) Rules, 1982 and the decision of the Hon'ble Supreme Court quoted above are read then it would be clear that the date of issue of charge-sheet would be material and not the date of service of the charge-sheet on the employee.

12. The copy of the acknowledgment filed by the applicant on record at Annexure 'A-4', page-37, would show that the charge-sheet was issued on 30.1.2015 by the Director General of Police, which was received to the Aurangabad office on 31.1.2015 and the applicant received it on 1.2.2015. Thus, the charge-sheet was issued on 30.1.2015. Since the date of issue of charge-sheet would be material, it can very well be concluded that the date on which the charge-sheet was issued the applicant was in service.

13. Learned Advocate for the applicant strenuously argued that the disciplinary enquiry cannot be continued after superannuation of the applicant. In the case of CHAIRMAN / SECRETARY OF INSTITUTE & ANR. VS. BHUJGONDA B. PATIL relied by the present applicant at Sr. No. 1 in paragraph No. 15 it has been held that, "in view of the absence of any specific provision of law continuation of the departmental enquiry after the employee attains the age of superannuation is not

permitted and the disciplinary action should be deemed to have been lapsed.

(Emphasis supplied)

However, in the present case provision of Sub-rule 2 (a) of rule 27 of the M.C.S. (Pension) Rules, as reproduced above would clearly shows that there is a provision that disciplinary proceedings initiated earlier to the retirement shall be deemed to be proceeded under rule 27 and shall be continued after retirement and concluded by the authority. Therefore, the said ratio would not be applicable in the present case.

14. In the case of PRABHAKAR AMBADASRAO DONGRE VS. STATE OF MAHARASHTRA THROUGH SECRETARY AGRICULTURE & ORS., relied by the applicant at Sr. No. 2, in paragraph Nos. 8 & 9 it was again held that continuation of departmental enquiry after retirement, in the absence of specific provision, is not just, legal & proper. Again in view of the above provision, the ratio would not be applicable.

15. In the case of STATE OF ZHARKHAND & ORS. VS. JITENDRA KUMAR SRIVASTAVA & ANR., relied by the

applicant at Sr. No. 3, Hon'ble Supreme Court was again dealing with the similar issue and held as in Jharkhand State the rule did not provide for continuation of the departmental enquiry or withholding of pension, or gratuity or part of the same pending departmental enquiry the action was illegal. In paragraph No. 15, it was observed as under: -

“15 .. .. .  
 .. .. *On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.*”

(Emphasis supplied)

16. In view of the above discussion, there is no merit in the present Original Application. The same is, therefore, dismissed without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 8<sup>TH</sup> FEBRUARY, 2019.**

O.A.NO.855-2017(DB-D.E.)-HDD-2019