

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 648 /2016 (S.B.)

Shri Shaikh Kalam S/o Shaikh Rahman, Aged about 61 Years,
Occupation – Retired R/o Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary, Department of Revenue,
Mantralaya, Mumbai.
- 2) State of Maharashtra through its Secretary,
Department of Food Supply,
Mantralaya, Mumbai.
- 3) The Collector Amravati,
District Amravati.
- 4) The Sub Divisional Officer,
District and Tahsil, Amravati.

Respondents

Shri R.M.Ahirrao, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 16th day of Nov., 2017)

Heard Shri R.M.Ahirrao, learned counsel for the applicant
and Shri M.I.Khan, learned P.O. for the Respondents.

2. The applicant was appointed in the Revenue Department as a Clerk in 1982 and was consequently promoted as a Food Distribution Officer. On 09/04/2013 a show cause notice was served to the applicant while he was working as a Food Distribution Officer in Amravati. The applicant was called upon to explain regarding forged ration cards in the name of Hon'ble Minister and some other renowned persons. The applicant submitted his reply on 10/04/2013. The Government also constituted some Enquiry Committee on 22/04/2013. The applicant was kept under suspension vide impugned order dated 25/04/2013 and during continuation of the said suspension, the applicant stood superannuated on 30/04/2013.

3. It is the case of the applicant that, though he stood retired on superannuation, the respondents did not release retiral benefits, such as gratuity and pension on the ground that departmental enquiry is pending against him. Thereafter, 10% of the pension amount was withheld. On 11/10/2013, it was informed to the applicant that the remaining retiral benefits will be released on completion of departmental enquiry.

4. According to the applicant, a chargesheet was issued to him on 03/09/2014 and Enquiry Officer was appointed on 17/04/2015. On 14/10/2015, additional supplementary chargesheet was filed. On 16/01/2016, the first Enquiry Committee meeting was held and on

22/02/2016, the Enquiry Officer examined only one witness out of six. The respondents have however, not completed the departmental enquiry nor paying the dues and hence this O.A.

5. In the O.A., the applicant has claimed a direction to the respondents to pay his retiral benefits, as well as gratuity and full pension and all arrears thereof and to direct the respondents to complete the departmental enquiry within two months. The prayer clauses were amended and by such amendment, the applicant claims that the respondent's action to continue departmental enquiry is illegal and arbitrary and it be declared that the respondents have no power or authority to punish the applicant in departmental enquiry and that the chargesheet issued against him on 30/09/2014 and supplementary chargesheet dated 14/10/2015 be quashed and set aside.

6. The respondent no. 3, the Collector has filed the reply affidavit and submitted that the provisional pension has been paid to the applicant. It is stated that the departmental enquiry is pending against the applicant, enquiry officer is already appointed and, therefore, till the decision of the departmental enquiry retiral benefit cannot be granted to the applicant. The respondent no. 4 has also filed the reply affidavit. It is stated that the Collector, Amravati (respondent no. 3) had already issued a show cause notice to the applicant on 09/04/2013 before initiating departmental enquiry and thereafter, the chargesheet was served.

7. The Id. counsel for the applicant submits that the applicant got retired on superannuation on 30/04/2013 and, therefore, once the applicant has retired, enquiry under Section 8 may not be continued. In response to this contention, Id. P.O. submits that the chargesheet has been served to the applicant as per the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Not only that, the Sanction of the Government has been obtained for continuation of departmental enquiry as per letter dated 30/09/2014 and permission has been granted for continuation of the enquiry.

8. As per letter dated 30/09/2014 (P.B., Pg. No.34), the Government granted sanction to continue the departmental enquiry against the applicant as per the provisions of Rule 27 (2) (b) (i) of Maharashtra Civil Services (Pension) Rules, 1982. As per letter dated 30/09/2014 (P.B., Pg. No. 35 & 36) a chargesheet was served on the applicant and in the said letter also, it is mentioned that the enquiry has to be conducted as per Rule 27 (2) (b) (i) of the Maharashtra Civil Services (Pension) Rules, 1982. Thus, sanction has already been obtained by the competent authority to continue departmental enquiry against the applicant.

9. The Id. counsel for the applicant submits that in the sanctioned letter dated 30/09/2014 on P.B., Pg. No. 34 & 36 (both inclusive), it has been mentioned that the enquiry shall be conducted as

per the provisions of Rule 8 & 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. He submits that since the applicant has already retired, enquiry under Rule 8 & 9 cannot be initiated. Even if an enquiry is conducted under rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, the procedure to be adopted for conduction of such enquiry is as per rule 8 (3) to (27) in the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The continuation of the departmental enquiry, therefore, cannot be said to be illegal.

10. The Id. counsel for the applicant placed reliance on the Judgment delivered by this Tribunal in O.A. No. 633/2015 in the case of **Shri Arunkumar Manindranath Dutta Vs. State of Maharashtra and Ors.** delivered on 07/11/2016. I have gone through the said Judgment and I am satisfied that the facts of the said Judgment are not applicable to the present set of facts.

11. The Id. P.O. submits that the departmental enquiry against the applicant will be completed within four months. The Id. counsel for the applicant submits that if such directions are issued, conditional orders may be passed so as to compel the State to complete enquiry within a stipulated period.

12. Considering the facts and circumstances as already discussed and the fact that the chargesheet has been served on the applicant on 30/09/2014 i.e. after retirement, it will be in the interest of

justice to give some directions to the respondent authorities as regards completion of the enquiry. Hence the following order:-

ORDER

- The O.A. is partly allowed with no order as to costs.
- The respondents are directed to complete the departmental enquiry within four months from the date of this order.
- It is hereby made clear that in case the enquiry is not completed within period of four months from today, the respondent authorities shall pay all retiral benefits to the applicant.

(J.D. Kulkarni)
Vice-Chairman (J).

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