

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1017/2018 (S.B.)

Dr.Suresh Vishnu Nage,
Aged 61 years, Occ. Retired,
R/o Wankhade Nagar,
Dabki Road, Akola,
Tahsil & District Akola.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai -32.

- 2) The Deputy Director of Health Services,
Akola Circle, Akola.

- 3) The Chief Executive Officer,
Zilla Parishad, Akola.

- 4) The District Health Officer,
Zilla Parishad, Akola.

Respondents

Shri G.K.Bhusari, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents 1 and 2.
Shri K.S.Malokar, Ld. Counsel for the respondents 3 and 4.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 10th October, 2023.

JUDGMENT

Judgment is reserved on 27th September, 2023.

Judgment is pronounced on 10th October, 2023.

Heard Shri G.K.Bhusari, learned counsel for the applicant,
Shri M.I.Khan, learned P.O. for the respondents 1 and 2 and Shri
K.S.Malokar, learned counsel for the respondents 3 and 4.

2. Facts leading to this O.A. are as follows. By order dated 16.09.2008 punishment of stoppage of one increment without cumulative effect was imposed on the applicant on the basis of report of enquiry dated 02.05.2008. The applicant underwent this punishment. Thereafter, on the same set of facts departmental enquiry was again initiated on 03.06.2009. The applicant challenged communication / charge sheet dated 03.06.2009. The challenge was upheld by Additional Commissioner, Amravati, by order dated 19.10.2016 (Annexure A-3). In the meantime, by order dated 23.01.2014 another departmental enquiry was sought to be initiated against the applicant. He stood retired on

superannuation on 30.11.2015. His retiral benefits were not released on the ground of pendency of departmental enquiry. On 23.08.2016 respondent no.2 wrote a letter (Annexure A-5) to respondent no.3 as follows-

विषय- डॉ. सुरेश नागे, से. नि. वैद्यकीय अधिकारी प्राथमिक आरोग्य केंद्र, सावरा यांचे विरुद्ध विभागीय चौकशी प्रस्तावीत करणे बाबत.

संदर्भ - आपले कार्यालयीन पत्र क्र. जिप/आवि/राजप/ २९६०/२०१६ दि.२९.०७.२०१६.

उपरोक्त संदर्भाकीत विषयास अनुसरून कळविण्यात येते की, डॉ सुरेश नागे से. नि. वैद्यकीय अधिकारी, प्राथमिक आरोग्य केंद्र, सावरा यांनी सन २००९-२०१०, २०१०-११, व ११, १२ या वर्षात दुरुस्ती व खरेदिमध्ये आर्थिक अनियमितता केली आहे त्याबाबत जिल्हा आरोग्य अधिकारी अकोला यांनी चौकशी करून नागे यांचे विरुद्ध विभागीय चौकशी प्रस्तावित केली आहे वास्तविक पाहता महाराष्ट्र नागरी सेवा नियम १९८१ (निवृत्ती वेतन) मधील नियम २७ नियमानुसार आर्थिक अनियमितता झाल्यानंतर व चौकशी अहवाल प्राप्त होताच विभागीय चौकशी प्रस्तावित करण्याची कार्यवाही करावयास पाहिजे होती. परंतु तसे न होता महाराष्ट्र नागरी सेवा नियम १९८१ (निवृत्ती वेतन) मधील नियम २७ मधील बाब २ नुसार निवृत्ती नंतर शिस्तभंग कारवाई मधील १) सेवेत असताना विभागीय चौकशी चालु असली तर निवृत्तीनंतर ती पुर्वी प्रमाणेच चालू राहिल. मात्र सेवेत असताना अशी कोणतीही कार्यवाही चालु नसेल तर निवृत्तीनंतर शासनाच्या पूर्वमंजूरीशिवाय अशी कोणतीही कार्यवाही करता येणार नाही.

महत्वाचे असे की अशी कार्यवाही करण्यापूर्वीच्या चारपेक्षा अधिक वर्षांच्या कालावधीत घडलेल्या घटनेसंबंधी निवृत्तीनंतर चौकशी करता येणार नाही. तसेच कर्मचा-यास निवृत्तीच्या तारखेपूर्वी दोषारोप बजावण्यात आले नसेल तर त्याच्याविरुद्ध विभागीय चौकशी प्रलंबीत आहे असे म्हणता येणार नाही. कर्मचारी निवृत्तीचे सर्व लाभ मिळण्यास पात्र असेल. साप्रवि. क्र.सेनिवे १०९०/२९०/से-४ दि २५.०३.१९--- वाचावे. त्यानुसार संबंधीत अधिकारी सेवा निवृत्त झाल्यावर विभागीय चौकशी प्रस्तावित करण्यास काहीहि उरत नाही. त्यामुळे सदर प्रकरण जिल्हा आरोग्य अधिकारी अकोला यांचे स्थरावर बंद करून सेवा निवृत्ती नंतर सर्व लाभ अदा करणे बाबत जिल्हा आरोग्य अधिकारी अकोला यांना या कार्यालयाचे पत्र दि ५. ०३. १६ पत्रा अन्वये कळविले आहे.

तरीसुद्धा सदर चौकशी करण्याकरीता संदर्भात पत्राव्दारे आपले कार्यालयाने मा प्रादे विभागीय चौकशी अधिकारी अमरावती यांची चौकशी रात्रीच अधिकारी म्हणून नियुक्ती केली आहे. वास्तविक डॉ नागे अ. हे गट अ असून शासन हे त्यांचे नियुक्ती प्राधीकारी आहे. त्यामुळे आपले स्तरावरून चौकशी अधिका-याची नियुक्ती करणे संयुक्तीक नाही

तरी तदर प्रकरण डॉ नागे से.नि.वै.अ. यांचे विभागीय चौकशी प्रकरण बंद करण्याबाबत यापूर्वी कळविल्यान्वये उक्त नियमान्वये कार्यवाही करून त्यांना सेवानिवृत्तीनंतरचे सर्व लाभ अदा करण्याची कार्यवाही करावी व तसा अहवाल या कार्यालयास पाठविण्याचे करावे. करीता माहीतीस व योग्य कार्यवाहीस आदराने अग्रेषीत.

This communication was followed by letters dated 17.01.2017 (Annexure A-6) and 03.05.2017 (Annexure A-7). On 17.07.2017 (Annexure R-2-II) respondent no.2 wrote to A.G.-II, Nagpur as follows.

उपरोक्त संदर्भिय विषयान्वये कळविण्यात येते की, डॉ सुरेश विष्णु नागे, वैद्यकिय अधिकारी गट - ब प्राथमिक आरोग्य केंद्र, सावरा जिल्हा परिषद अकोला या सेवा पुस्तकाची पडताळणी केली असता त्यांची जन्म तारिख २५ नोव्हेंबर १९५७ ही आहे. संबंधित वैद्यकिय अधिकारी हे दिनांक ३०.११.२०१५ रोजी नियत वयोमानानुसार सेवा निवृत्त झाले आहेत.

त्यानुसार सुरेश विष्णू नागे, वैद्यकिय अधिकारी गट - ब प्राथमिक आरोग्य केंद्र. सावरा जिल्हा परिषद अकोला यांचे विरुद्ध विभागीय चौकशी प्रलंबित असल्यामुळे असल्यामुळे संदर्भिय क्र. २ अन्वये दिनांक १.१२.२०१५ ते दिनांक ३०.६.२०१७ या कालावधी करिता रु.२२१४७/- (अक्षरी रु.बाबिस हजार एकसे सत्येचाळीस फक्त) तात्पुरते सेवा निवृत्ती वेतन महागाई भत्यासह मंजूर करण्यात आले आहे.

तसेच डॉ सुरेश विष्णु नागे, वैद्यकिय अधिकारी गट - ब प्राथमिक आरोग्य केंद्र सावरा जिल्हा परिषद अकोला यांचे विरुद्ध विभागीय चौकशीचा प्रकरणाचा निपटारा झाला असल्यामुळे त्यांचे अंतिम सेवा निवृत्ती प्रकरण पुढील कार्यवाहीसाठी आपणाकडे मुळसेवा पुस्तकासह सादर करण्यात येत आहे.

3. On page 10 of the O.A. the applicant has furnished following chart-

Sr. No.	Subject	Due Date	Date of receipt of payment	Period of Late Payment	Amount received belatedly	Interest on delayed payment @ 18% Rupees
1	Payment of provisional pension from 1/12/2015 to 31/5/2016	May 2016	10/11/2016	Six months	2,87,657	25,889
2	Payment of provisional pension from 1/6/2016 to 31/12/2016	May-16	12/1/2017	Twenty One months	3,41,817	15,381
3	Gratuity from 30/11/2015	May-16	22/9/2017	One year Four Months	1,35,603	32,544
4	Commutation Value of pension	May-16	12/10/2017	One year Eight Months	8,89,804	2,56,263
5	Leave encashment from 19/5/2014 to 26/5/2014	1/6/2014	4/4/2018	4 yrs. 10 months	18,748	16,310
6	Leave encashment from 24/5/2012 to 1/6/2012 & 28/8/2013 to 4/9/2013	1/7/2012 1/10/2013	23/5/2018	Six Years Three months	33,797	38,021
7	T.A.Bill May-2013 and June-2013	8/8/2013	27/7/2018	Five Years	4,536	
8	Earned Leave (300 days)	Dec-2015	29/8/2016	9 months	7,18,540	97,002
9	HRA from June-2013 to Nov-2015	Dec-2015	Not received till date	3 years	Near about Rs.96,540	Not received till date
10	Benefit of time bound promotion from 1/8/2013	1/8/2013	Not received till date	4 yrs. 4 months.	Not received till date	
	Total					5,26,750

Though, in this chart there is reference to entitlement to benefit of time bound promotion w.e.f. 01.08.2013, there is no pleading to back up said reference. There is also no prayer to this effect. The only principal prayer pertains to payment of interest on account of delayed payment of retiral benefits.

4. Stand of respondent no.2 is that as per letter dated 18.08.2017 (Annexure R-2-III) issued by A.G.-II, Nagpur payments were made to the applicant as delayed in para 5 of reply.

Further stand of respondent no.2 is as follows.

Due to the applicant's misconduct and Illegalities the departmental enquiry was contemplated by the respondent no.3 and enquiry proceeding were pending against the applicant, but due to directions as abovementioned from office of the respondent no.2 the respondent no.4 called upon the applicant to submit necessary documents so as to enable the Zilla Parishad to forward his pension case to the authority concerned (A.G Nagpur). But the said compliance was awaited on the part of the applicant. Further it is submitted that he supplied some relevant documents to the respondent no.4 on 13.7.2016 and on the basis of these documents, the respondent no.4 released provisional pension on 28.09.2016 to the applicant.

5. It is specific stand of respondent no.2 that by letter dated 15.12.2015 the applicant was called upon to furnish details of his family, nomination, etc. but he furnished this information belatedly i.e. on 13.07.2016. This assertion of respondent no.2 is not traversed by the applicant.

6. The applicant retired on 30.11.2015. Record shows that at this point of time initiation of departmental enquiry was merely contemplated and charge sheet was not issued. Subsequently it was found that departmental enquiry could not be initiated because limitation to do so had expired. For the first time, by communication dated 05.03.2016, this was informed to the concerned and it was also specifically informed that the process for release of retiral benefits should be immediately started. Even at anterior point of time the respondents had become aware that retiral benefits of the applicant were to be released without delay and there was no hurdle in doing so. Had this not been the case, the respondent would not have called upon the applicant, by letter dated 15.12.2015, to furnish certain details relating to his family. On the basis of record it can be concluded that for part of delay, from 15.12.2015 to 13.07.2016, the applicant himself was responsible. Therefore, while computing extent of delay this period will have to be excluded.

7. The applicant had made a complaint before the Hon'ble Lokayukt in respect of non receipt of H.R.A. and travelling allowance as well as interest on delayed payment of pension and other pensionary benefits. Complaint with regard to H.R.A. and travelling allowance was found to be unsustainable for want of evidence. There is nothing before me on the basis of which these two claims can be considered and allowed. In view of this, the O.A. is partly allowed in the following terms.

The applicant is held entitled to interest on pension and pensionary benefits as per Rules 129-A and 129-B of the M.C.S. (Pension) Rules, 1982. While computing delay for award of interest period from 15.12.2015 to 13.07.2016 shall be excluded. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 10/10/2023
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 10/10/2023.
and pronounced on : 11/10/2023.