

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.191 OF 2017**

DISTRICT : RATNAGIRI

Shri Mahadev Atmaram Sawant,)
Age 66 years, (DOB : 6.1.1952),)
Date of Retirement : 31.1.2010,)
Occ: Retired from the post of Senior Assistant,)
R/at Kalambani, Budruk Malwadi, Tal. Khed,)
District Ratnagiri)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Medical Education & Drugs Department,)
Mantralaya, Mumbai)

2. The Director,)
Medical Education & Drugs Department,)
M.S., Mumbai)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)

RESERVED ON : 6th August, 2018

PRONOUNCED ON : 9th August, 2018

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

Admitted facts:

2. On 1.6.2005 the Applicant was appointed as Senior Assistant on promotion in Grant Medical College, Mumbai. From 1.6.2005 till 27.11.2006 he worked as Cashier in the same place. During the audit examination from 13.11.2006 to 15.11.2006, it was noticed that the Applicant did not maintain the cash book. Hence, the Directorate suspended the Applicant on 28.11.2006. Thereafter the Applicant was directed to complete the cash book by number of memos repeatedly. The Applicant meanwhile filed OA No.5 of 2008 before this Tribunal. On 12.8.2008 his suspension was cancelled and he was reinstated and posted at Nagpur. The Applicant retired on 31.1.2010. On 1.10.2013 the Applicant approached the Tribunal vide OA No.199 of 2012 for receiving retirement benefits. The Tribunal ordered that without cancelling the DE, the DE should be completed within four months. Accordingly the department took a decision which is the impugned order. The Tribunal disposed off the OA on 21.8.2014.

Prayers:

3. Applicant has challenged the impugned punishment order dated 24.7.2014 (Exhibit D page 53) and impugned order by Respondent No 1, dated 15.11.2016 (Exhibit G page 64). It stipulates:

- (1) 10% deduction from his pension for 2 years,

- (2) Withholding Rs.1,05,806/- from his gratuity,
- (3) Recovery of remaining amount of Rs.2,11,612/- in 60 installments from his pension; and
- (4) Treating period from 27.11.2006 to 12.8.2008 as on duty.

4. In support of his prayers the Ld. Advocate for the Applicant has made following grounds in OA:

“7.6 Mr. Vishnu Kamble (Junior Clerk) who was working at Grant Medical College was also suspended for the same charges like the Applicant and he had not handed over the charge of Cashier to the Applicant and continued on the same post. Hence, the charge of updating cash book will not be attracted against the Applicant. However, the Respondents imposed very minor punishment of deduction of 2% from Mr. Kamble’s pension and all pensionary benefits have been paid to him. No recovery was ordered against Mr. Kamble. On the contrary very major and severe punishment has been imposed on the Applicant.

7.7 Mr. Pillai, Administrative Officer at Grant Medical College same charges were leveled against him, however, he escaped through the liability in provisions of Rule 27(2)(b)(ii) of Pension Rules, 1989 and after interference of this Hon’ble Tribunal in OA No.659 of 2010 dated 30.11.2010. Ultimately the Respondents have made target to the Applicant shifting the entire responsibility on the shoulders of the Applicant imposing major punishment on the Applicant.

7.11 That in the case of the similarly situated Mr. Kamble, the Respondent no.2 himself has treated his suspension period of about 4 years as duty period. This act of the Respondent no.2 is discriminatory and violative of Article 14 and 16 of the Constitution of India.”

(Quoted from page 7 & 8 of OA)

5. Ld. Advocate for the Applicant further contends in para 7.8 page 7 of OA as follows:

“7.8 That the impugned orders of the Respondents No.1 and 2 are non speaking and arbitrary.”

(Quoted from page 7 of OA)

6. Ld. Advocate for the Applicant refers to order passed by the Director at Exhibit D page 53 and by State Government at Exhibit G page 64 of OA and states that the order is cryptic. According to him, mere reference to the findings by the Enquiry Officer is not adequate.

7. Ld. Advocate for the Applicant mentions that Applicant retired on 31.1.2010. However, the charge sheet was given to him on 3.10.2011, which was after his retirement. In this connection the averment by the Ld. Advocate for the Applicant is at para 7.15 to 7.17 at page 8a and 8b of the OA, which reads as follows:

“7.15 The DE could not have been continued against the Applicant due to absence at the relevant time of intimation by way of a recital or mentions in charge sheet to the effect that despite superannuation/retirement the DE would be continued against the Applicant. Therefore, the Respondents are restrained by a writ and order of prohibition to proceed with DE based on the charge sheet dated 3.10.2011 against the Applicant as per the provisions of Rule 27(2)(a) of MCS (Pension) Rules, 1982. In the present case charge sheet was served on the Applicant on 3.10.2011 by Respondent no.2 and prior to that the Applicant was to retire on 31.1.2010. However, neither at the time of retirement not at the time of serving the charge sheet was the Applicant communicated that the DE initiated will be continued after his retirement. Therefore, the DE and consequently final punishment order dated 15.11.2016 is bad in law and requires to be quashed and set aside as per the provisions of Rule 27(2)(a) of MCS (Pension) Rules, 1982.

7.16 That as per the provision of Rule 27(2)(b) of MCS (Pension) Rules, 1982 which provides that the departmental proceedings if not instituted while the Government servant was in service whether before his retirement shall not be in respect of any event which took place more than 4 years before such institution. In the present case the Applicant was retired on 31.1.2010 and charge sheet was served on the Applicant on 3.10.2011, the alleged incidence is dated 1.6.2005 to 26.11.2006. Thus in the present case the alleged incidence is prior to 4 years of his retirement. Therefore as per the provisions of Rule 27(2)(b) of MCS (Pension) Rules, 1982 the continuation of enquiry vide charge sheet dated 3.10.2011 and final punishment order dated 15.11.2016 is bad in law and requires to be quashed and set aside. Therefore in the case of colleague of the Applicant who was facing same alleged charges in the same alleged incidence, this Hon'ble Tribunal vide on 30.11.2010 was pleased to quash and set aside the charge sheet against the said employee in OA No.659 of 2010 as per the provisions of Rule 27(2)(b) of MCS (Pension) Rules, 1982 and same judgment was confirmed in the Review Application No.29 of 2011 by this Hon'ble Tribunal on 26.4.2012. Therefore, considering the legal provisions of law the charge sheet served on the Applicant dated 3.10.2011 and the final punishment order dated 15.11.2016 requires to be quashed and set aside.

7.17 That the Respondent No.2 malafidely, illegally and without any basis has mentioned the period of alleged incidence from 1.6.2005 to 16.7.2008 in fact the period of alleged incidence was 1.6.2005 to 26.11.2006. This mistake/wrong on charge sheet was pointed out by the Applicant in his reply dated 21.10.2011, roznama dated 21.2.2012 and 3.1.2013 as well as in his representation dated 12.3.2013 before the DE officer, also the IO report dated 20.3.2013 mentions/Applicant had pointed out that the Applicant was suspended on 27.11.2006 and was reinstated and posted at Nagpur on 21.8.2008. It proves that without verifying the record the Respondent no.2 has leveled the charges against the Applicant, therefore the interference of this Hon'ble Tribunal is necessary."

(Quoted from page 8a & 8b of OA)

8. Ld. Advocate for the Applicant has relied on Rule 27(2) of the MCS (Pension) Rules, 1982, which reads as under:

“27(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 the Government,

(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.”

9. In this connection he relies on para 7 of the judgment dated 30.11.2010 passed by this Tribunal in OA No.659 of 2017 Mr. Rajan Bhargavan Pillai Vs. State of Maharashtra, which is as under:

“7. After hearing both Shri Bandiwadekar, the learned counsel for the Applicant as well as Shri Kadam, the learned Presenting Officer for the Respondents specially, in the light of the aforesaid Rule 27(2)(b)(ii) the Respondents cannot institute any disciplinary enquiry

after the lapse of four years of retirement that is after 30th November 2006. If that be so, Respondents are duty bound to pay all the terminal benefits. Accordingly, Original Application is made absolute in terms of prayer clause 9(a), however, with no order as to costs.”

(Quoted from page 77 of OA)

10. Ld. Advocate for the Applicant also refers to judgment and order dated 3.11.2017 passed by this Tribunal in OA No.259 of 2017 Shri Dattatraya Baburao Karnale Vs. The State of Maharashtra & Anr.

11. Relevant portion of judgment and order dated 11.9.2007 of this Tribunal in O.A. No.308 of 2007 (Shri Ramesh V. Deshpande Vs. Government of Maharashtra) is quoted below : page 151, paragraph 10 :-

“10. Applying the above said ratio to the facts of this case i.e. the charge sheet was issued to the Applicant vide memorandum dated 15.6.2005 beyond the statutory limitation incorporated by rule 27(2)(b)(ii). Thus, we hold that Respondent-the disciplinary authority who issued the charge sheet is incompetent to issue the same as it was beyond the period of four years from the alleged date of misconduct.”

(Quoted from page 151 of OA)

12. Learned Advocate relies on the following judgments:-

(a)	<i>UCO Bank Vs Rajindar lal Kapoor, AIR SCC 2008 (1831)</i>
(b)	<i>Dev Prakash Tewari Vs. UP Cooperative Industrial Service Board, 2014 (6) All MR 448.</i>
(c)	<i>D.A. Jadhav Vs. MAIDC Ltd., WP 1930/2005 dated 05.02.2010.</i>
(d)	<i>P.M. Nadgauda Vs. State of Maharashtra, 1987 (2) Bom CR 674,</i>
(e)	<i>R.V. Deshpande Vs. State of Maharashtra in O.A.No.308/2007 dated 11.09.2007.</i>
(f)	<i>D.B. Karnale Vs. State of Maharashtra in O.A.No.259/2017 DATED 03.11.2017.</i>

13. Learned P.O. for the Respondents states as follows:-

- (a) *Applicant retired on 31.01.2010.*
- (b) *The incident, for which he was proceeded against, pertains to 01.06.2005 to onwards.*
- (c) *The charge-sheet was issued against him on 03.10.2011 (page 13).*
- (d) *Show cause notice was issued on 19.07.2014 (page 55).*
- (e) *Applicant received the said show cause notice on 11.08.2014 (page 57).*
- (f) *Impugned order was issued on 24.07.2014 (page 53).*

14. The Applicant was suspended on 28.11.2006. In this connection, Learned P.O. invites attention to Sub Rule 6 of Rule 27 of MCSR, which reads as under:-

- (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 compliant or report of a police officer, or 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.

15. Learned P.O. further contends, Respondent No.2 who is appointing authority of the Applicant has stated in his affidavit in paragraph 18, page 91 as under :-

“18. With reference to Ground para 7.4, I say as follows :- The departmental enquiry proceeding itself is proposed with the suspension of the Applicant and said rule 27 6(a) of MCS (pension) rules 1982 is applicable to him. It submitted that this Hon’ble Tribunal, Mumbai considered the Departmental enquiry against the Applicant is void and instructed to the present Applicant to fully cooperate in the departmental enquiry and will not remain absent unnecessary, in their order dated 3/12/2012 in C.A.No.71 of 2012 in M.A.No.190 of 2012 in O.A.No.199 of 2012.”

(Quoted from page 91 of OA)

16. Paragraphs No.2 to 4 of the amended Affidavit-in-reply of Respondents No.1 and 2 at page 107-110 reads as under :-

“2. With reference to paragraph no.7.15, I say and submit the considering the issue in the present case the entire chronology may be taken into consideration. In spite of repeated instructions the Applicant did not completed the entries in relevant cash book. It can be seen from the exhibits submitted by the Applicant himself that he was clearly informed vide letters dated 25.09.2006, and explanation was also asked from him as to why that disciplinary action should not be taken against him.”

“3. With reference to paragraph no.7.16, I deny the contents herein. The Applicant is misleading this Hon’ble Tribunal regarding the provision of rule 27(2)(b) of MCSR (Pension) Rule 1982. It is stated that Rule 27 of MCSR Pension is regarding Right of Government to withhold or withdraw pension. The sub rule 6 of this Rule 27 states as under:

(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, 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 in made, and (ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

“4. With reference to paragraph no.7.17, I say and submit that just a oversight error in citation does not means that without verifying the record the Respondent No.2 has leveled the charges against the Applicant. The error could be rectify. Such error could not change the fact that the Applicant failed to perform his duties honestly. He was instructed and informed time to time to developed his performance but he could not comply the same. Appropriate opportunity was given to him to submit his say. The procedure of enquiry was following rightfully.”

(Quoted from page 107-110 of OA)

17. Learned P.O. for the Respondents states that as far as charges of discrimination against the Applicant 'vis a vis' Kamble and Pillai are concerned, the same are not true. In support of the same, Ld. PO refers to para 20-21 of the reply filed by Respondents No.1 and 2 at page 92-94 of the OA which reads as under:

“20. Mr. V.S. Kamble who was also suspended along with Applicant is partially held responsible in the DE. Hence, as per MCS (Pension) Rules, 1982, Directorate of Medical Education and Research, Mumbai, vide its order dated 4.7.2014 issued show cause notice to the Applicant and imposed the punishment on Applicant:

(1) The present Applicant is partially held responsible in the DE hence as per MCS (Pension) Rules, 1982, Rule 72(1), to withheld of 5% of his monthly pension for a period of 2 years.

i. It is also submitted that as per the order of the Respondent, Mr. V.S. Kamble had been completed the cash-book of his working tenure, during his suspension period. It is also submitted that Mr. Kamble followed the order of the Respondent and given cooperation to detect the irregularity/misappropriation of money. Hence, the gratuity amount of Rs.1,05,806/- which was withholding till the final decision of the Departmental Inquiry was decided to release him.

ii. It is submitted that the Applicant was not only asked to complete the cash book but also another person Mr. Vishnu Kamble who have been also suspended along with the present Applicant in the same subject. The Applicant was main cashier and Mr. Kamble was junior Clerk. Mr. Kamble another accused, responding to the appeal and instructions of the Respondent regarding complete the cash book. The Applicant has purposely neglected the same. Even the Applicant was deputed to work at Grant Medical College, Mumbai. The another accused, Mr. Kamble is a Junior Clerk and also not trained, but he has responding to the appeal of the Respondent to complete the cashbook. It is submitted that as stated earlier due to negligence on the part of Applicant and careless is shown to instruction of higher-ups by the Applicant is the only reason behind no development could be undertaken.”

“21. The Applicant was main cashier and responsible to handle the daily cash transaction and make proper entries in cash book.

i. The inquiry officer in his enquiry report has mentioned that the charge no.1 is proved. It is submitted that the Dean of Government Medical College, Mumbai where the Applicant was then working had issued numbers of memos dated 25.9.2006, 7.10.2006, 10.10.2006 and 9.11.2006 to the Applicant to complete the cash book and other relevant books and also asked clarification about shortage of physical cash as observed by the internal audit team from the office of Respondent No.2. However, it will be pertinent to note that the Applicant did not paid any attention to the above mentioned memos and also did not complete the cash books and other books, so that the final audit work could not be completed. The inquiry officer has also mentioned in his report that the charge no.2 and 4 are proved. Therefore, the Respondent no.2 has rightly and legally held the Applicant responsible for the amount of Rs.3,17,418/- being the amount difference as observed by the internal audit committee.

(Quoted from page 92-94 of OA)

18. As far as Mr Pillai is concerned, para 7 of the judgment dated 30.11.2010 passed by this Tribunal in OA No.659 of 2017 Mr. Rajan Bhargavan Pillai Vs. State of Maharashtra is relevant. This is as under:

“7. After hearing both Shri Bandiwadekar, the learned counsel for the Applicant as well as Shri Kadam, the learned Presenting Officer for the Respondents specially, in the light of the aforesaid Rule 27(2)(b)(ii) the Respondents cannot institute any disciplinary enquiry after the lapse of four years of retirement that is after 30th November 2006. If that be so, Respondents are duty bound to pay all the terminal benefits. Accordingly, Original Application is made absolute in terms of prayer clause 9(a), however, with no order as to costs.”

(Quoted from page 77 of OA)

19. According to learned P.O. since Respondent No.2 himself is the appointing authority no separate sanction from the appointing authority is required. After the Applicant was served with the final punishment order

on 24.07.2014, he preferred an appeal to the Government. After considering the same the Government passed an order in the appeal (page 64) as under:

“शासन आदेश

श्री. सावंत यांनी त्यांच्या अपील संदर्भात सादर सादर केलेल्या निवेदनात त्यांच्या विभागीय चौकशी प्रकरणी संचालनालयाकडून ज्या तांत्रिक बाबी पूर्ण केलेल्या नाहीत याबाबत वारंवार आक्षेप घेतलेले आहे. सदर आक्षेप तपासून पाहण्यात आलेले आहेत. श्री.सावंत यांनी शासकीय कामकाज करतांना केलेल्या अनियमिततेमुळे त्यांच्यावर दोषारोप बजावण्यात आलेले आहेत. शासकीय सेवेत कामकाज करतांना प्रत्येक अधिकारी / कर्मचारी यांनी आपल्या, कामकाजात कर्तव्यपरायणता राखणे आवश्यक आहे. श्री. सावंत यांच्याकडे रोखपाल पदाचा आर्थिक बाबींशी संबंधित असलेला महत्वाचा कार्यभार होता. श्री.सावंत यांनी केलेली कृती बेजबाबदारपणाची व शासकीय नियमांचे उल्लंघन करणारी आहे. त्यांच्या या कृतीमुळे म.ना.से.(वर्तणूक) नियम ११७९ च्या नियम ३(१) (एक) ३ (१) (दोन) व ३ (१) (तीन) चा भंग झालेला आहे. त्यानुसार संचालक, वैदकीय शिक्षण आणि संशोधन मुंबई यांनी दि.२४.७.२०१४ च्या जापनाव्यये शिक्षा बतावली आहे. संचालक, वैदकीय शिक्षण आणि संशोधन मुंबई यांनी दि.२४.७.२०१४ च्या जापनाव्यये बजावलेली शिक्षा कायम करण्यात येत असून श्री. महादेव सावंत यांनी केलेले अपील फेटाळण्यात येत आहे.”

20. Refuting the arguments by the Advocate for the Applicant that this order is non speaking and does not disclose the reasons, Respondents No.1 and 2 in their reply at paragraph 22, page 94 mention as under:-

“22. With reference to Ground para 7.8, I say as follows : The RespondentNo.2 has rightly and legally held the Applicant responsible for the amount of Rs.3,17,418/- being the amount difference as observed by the internal audit committee. For the recovery of the said amount of Rs.3,17,418/- the Respondent No.2 issued office order dated 24.07.2014 which is proper and legally tenable. The Applicant was main cashier and responsible to handle the daily cash transaction and make proper entries in case book.”

21. In view of the foregoing, following issues are for consideration:

- (1) Has discriminatory treatment been given to Shri Vishnu Kamble (Junior Clerk) and Shri Pillai, Administrative Officer at Grant Medical College, Mumbai, who were also considered responsible for the charges of not completing the cash book in time?
- (2) Whether the impugned orders passed against the Applicant by the Respondent no.1 and 2 are non-speaking and arbitrary?
- (3) Whether the charge sheet given to the Applicant after his retirement violates legal provisions?

Discussion, findings and reasons:

22. As clarified by the Respondents in the affidavit Shri Vishnu Kamble (Junior Clerk) completed the cash book of his working tenure during the period under scrutiny. Shri Kamble cooperated in detecting irregularity/misappropriation of money. On the other hand, Applicant was main cashier and did not cooperate in the enquiry. He purposely neglected the same. Moreover, Shri Kamble was a Junior Clerk and was not trained in maintenance of the cash book. Hence, the gratuity amount withheld in respect of Shri Kamble was released after the DE was completed.

23. As far as Shri Pillai is concerned he had filed OA No.659 of 2010 and this Tribunal passed the following order on 30.11.2010:

“6. Shri M.B. Kadam, the learned Presenting Officer appearing on behalf of Respondents pointed out that the Applicant had been paid provisional pension and the dues such as GPF, GIS have also been paid to the Applicant. However, certain amount of DCRG, Leave Encashment and commutation value of pension have still not been paid. Mr. Kadam, the learned Presenting Officer could not controvert the fact that till date no departmental enquiry have been instituted or initiated and it is only under contemplation.”

7. *After hearing both Shri Bandiwadekar, the learned counsel for the Applicant as well as Shri Kadam, the learned Presenting Officer for the Respondents specially, in the light of the aforesaid Rule 27(2)(b)(ii) the Respondents cannot institute any disciplinary enquiry after the lapse of four years of retirement that is after 30th November 2006. If that be so, Respondents are duty bound to pay all the terminal benefits. Accordingly, Original Application is made absolute in terms of prayer clause 9(a), however, with no order as to costs.”*

(Quoted from page 76-77 of OA)

24. As is seen from the above, Shri Pillai retired on 30.11.2006. Even after completion of four years the DE was not initiated but only under contemplation. Hence, the action against him was dropped.

25. In view of the foregoing, I do not find any discriminatory treatment from the Respondents against the Applicant as against Shri Kamble and Shri Pillai for reasons stated above. On the other hand the Applicant has been persistently delaying completion of the DE without any justifiable reason. If he had cooperated in completing the cash book in time, he could have claimed similarity with Shri Kamble and Shri Pillai.

26. The order in appeal passed by Respondent No.1 is as under:

“शासन आदेश

श्री. सावंत यांनी त्यांच्या अपील संदर्भात सादर सादर केलेल्या निवेदनात त्यांच्या विभागीय चौकशी प्रकरणी संचालनालयाकडून ज्या तांत्रिक बाबी पूर्ण केलेल्या नाहीत याबाबत वारंवार आक्षेप घेतलेले आहे. सादर आक्षेप तपासून पाहण्यात आलेले आहेत. श्री.सावंत यांनी शासकीय कामकाज करतांना केलेल्या अनियमिततेमुळे त्यांच्यावर दोषारोप बजावण्यात आलेले आहेत. शासकीय सेवेत कामकाज करतांना प्रत्येक अधिकारी / कर्मचारी यांनी आपल्या, कामकाजात कर्तव्यपरायणता राखणे आवश्यक आहे. श्री. सावंत यांच्याकडे रोखपाल पदाचा आर्थिक बाबींशी संबंधित असलेला महत्वाचा कार्यभार होता. श्री.सावंत यांनी केलेली कृती बेजबाबदारपणाची व शासकीय नियमांचे उल्लंघन करणारी आहे. त्यांच्या या कृतीमुळे म.ना.से.(वर्तणूक) नियम ११७९ च्या नियम ३(१) (एक) ३ (१) (दोन) व ३ (१) (तीन) चा भंग

झालेला आहे. त्यानुसार संचालक, वैदकीय शिक्षण आणि संशोधन मुंबई यांनी दि.२४.७.२०१४ च्या जापनाम्बये शिक्षा बतावली आहे. संचालक, वैदकीय शिक्षण आणि संशोधन मुंबई यांनी दि.२४.७.२०१४ च्या जापनाम्बये बजावलेली शिक्षा कायम करण्यात येत असून श्री. महादेव सावंत यांनी केलेले अपील फेटाळण्यात येत आहे.”

27. As is clear from the above, the order is self speaking and explicit and therefore to say that it is cryptic and non-speaking is devoid of any merit. The reasons have been mentioned and clear.

28. The facts in the present case are different than in the judgments relied upon by the Ld. Advocate for the Applicant. Hence, those are not relevant.

29. As clarified by Respondents No.1 and 2 in the amended affidavit in reply (para 3.1 page 109), the DE against the Applicant has been already completed and only final order was to be issued. Hence, there is no delay in the filing of the DE against him or action against him. The relevant para 3.1 at page 109 reads as under:

“3.1 It is further stated in the present case the departmental enquiry has already completed. The Applicant previously filed OA No.199 of 2012 in this Tribunal to cancel the Departmental Enquiry and the Hon’ble Tribunal passed following order on 1.10.2013 as under:

After hearing both the learned Advocate for the Applicant and the learned Presenting Officer for the Respondents, in view of the fact that the departmental enquiry itself has been completed, there is no quashing the departmental enquiry at this stage. The Respondents are directed to pass a final order with regard to the aforesaid departmental enquiry, as expeditiously as possible, preferably within a period of four months from the date of receipt of this order. The Respondent are also directed to comply with their own communication

dated 1st January, 2013 whereby the Respondent have agreed to release the terminal dues, as mentioned in that letter after retaining the sum of Rs.1,05,806/-. The Original Application stands disposed off accordingly.”

(Quoted from page 109 of OA)

30. As per record furnished by the Respondents it is noticed that the Applicant proceeded on frequent leave during his posting at Nagpur. The Respondent No.2 suggested him that he could be deputed to Grant Medical College, Mumbai but the Applicant preferred to neglect the same. The Dean, Grant Medical College, Mumbai issued him number of memos on 25.9.2006, 7.10.2006, 10.10.2006 and 9.11.2006 to complete the cash book and explain about the shortage of physical cash as observed by the Internal Audit Team. The Applicant deliberately continued to non-cooperate. Further during the DE as well, the Applicant failed to remain present before the enquiry officer on 21.9.2012, 10.10.2012 and 21.11.2012. It is worth recalling, “Hon’ble Tribunal, Mumbai instructed the present Applicant to fully cooperate in the departmental enquiry and he will not remain absent unnecessary, in their order dated 3/12/2012 in C.A.No.71 of 2012 in M.A.No.190 of 2012 in O.A.No.199 of 2012.”. The above narration supports the claim made by the Respondents that the Applicant deliberately and intentionally remained non-cooperative to the DE. Moreover, the Applicant was suspended on 28.11.2006, and hence sub rule 6 of Rule 27 of MCSR is applicable in his case.

31. In view of the foregoing since the Applicant is solely responsible for the deliberate delay, the Respondents cannot be considered as accountable for the same. Had there been any lapse on the part of the Respondents in completing the enquiry and serving the charge sheet in time then the legal provisions relied on by the Applicant would have been tenable. Non cooperating in completing the enquiry for years without any convincing reasons and then claiming protection of legal provisions

preventing departmental action would amount to encouragement to defaulters and defeating even justifiable punishment. In the present case the Applicant appears to be avoiding cooperation right from 2006 when he committed the default till his retirement in 2010. Hence, the OA is devoid of any merits and deserves to be dismissed.

32. OA is dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
9.8.2018

Dictation taken by: S.G. Jawalkar.

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