

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.122/2017**

**DISTRICT: - JALGAON**

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Chandrashekhar S/o. Raghunath Chopdar,  
Age : 60 years, Occu. : Pensioner  
R/o. Adarshnagar, Pimpale Road,  
Plot No.18-B, Amalner,  
Dist. Jalgaon.

...APPLICANT

**V E R S U S**

- 1) The Secretary,  
Revenue & Forest Department,  
Mantralaya, Mumbai-32.
- 2) The Commissioner,  
Nashik Division, Nashik.
- 3) The Collector Jalgaon,  
Dist. Jalgaon.

...RESPONDENTS

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APPEARANCE :Shri S.D.Joshi Advocate for the Applicant.  
:Shri D.R.Patil Presenting Officer for the  
respondents.

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CORAM : B. P. Patil, Member (J)

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DATE : 13<sup>th</sup> September, 2017  
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**J U D G M E N T**

**[Delivered on 13<sup>th</sup> day of September, 2017]**

The applicant has challenged the order dated  
25-06-2015 passed by the respondent no.3 dismissing his

appeal challenging order passed by the respondent no.2 on 08-02-2016 thereby imposing punishment of reducing 10% amount from the monthly pension of the applicant for the period of one year and prayed to quash the said orders and also sought direction to treat his suspension period from 20-07-1998 to 16-07-2006 as duty period by filing the O.A.

2. The applicant was appointed as a Junior Clerk on the establishment of respondent no.3 on 13-09-1978. He rendered service for the period of 36 years and retired on superannuation on 31-07-2014. He served on various places under Collector, Jalgaon including Parola, Amalner and Dhadgaon. While working in Tahsil Office Amalner during the year 1991 to 30-06-1997, he was assigned work of drawing and disbursing salary of Talathis, Awwal Karkuns, Clerks, Peons and Kotwals. While discharging the work applicant deducted amount from the pay and allowances of the employees but it was alleged that he had not deposited the said amount in the respective small savings accounts of the employees and misappropriated the said amount for his personal use and committed an offence punishable u/s.409 of Indian Penal Code (IPC). On the basis of complaint of superior authority a crime bearing

CR.No.132/1998 came to be registered against him on 20-07-1998. He was arrested and was detained in the Police custody for more than 48 hours. Therefore, Collector, Jalgaon by his order dated 17-08-1998 placed him under suspension by exercising power u/s.4(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The applicant was chargesheeted before the Chief Judicial Magistrate, Jalgaon. Considering the fact that there was likelihood of delay in decision of the criminal case and burden on the Government to pay salary and allowances in the form of suspension allowance to the applicant, respondent no.1 passed order dated 18-10-2000 directing reinstatement of the applicant on the post of Clerk subject to outcome of the criminal case and departmental enquiry pending against him. It was directed by the respondent no.1 that respondent no.3 should assure recovery of misappropriated amount from the applicant and then to post him on non-executive post. It was further directed that departmental enquiry initiated against him should be completed within a stipulated period and same be kept pending for final decision subject to outcome of the criminal case.

3. In spite of direction given by the respondent no.1 to reinstate the applicant, respondent no.3 has not reinstated him in service and had not taken any effective steps to complete the departmental enquiry. Respondent no.3 has initiated departmental enquiry against the applicant by issuing chargesheet dated 14-05-2001. Enquiry was concluded by the Enquiry Officer on 30-11-2005 holding that out of 4 charges the charge no.1, 2 and 4 had not been proved against him whereas the charge no.3 had been proved partly against him. Respondent no.3 then reinstated him in service on receiving enquiry report by order dated 15-07-2016 and posted him as Clerk in Tahsil Office Dharangaon against newly created post. It has been further mentioned in the order that outcome of the Regular Criminal Case No.18/1999 would be binding on the applicant. Thereafter, Criminal Case No.18/1999 which was re-numbered as Regular Criminal Case No.128/2007 in the court of Chief Judicial Magistrate (CJM), Jalgaon, was decided by the CJM on 02-04-2014 and the applicant was acquitted of the offences punishable u/s.409 of the I.P.C. The applicant, thereafter retired on 31-07-2014. He filed representation dated 13-08-2014 on the basis of the judgment of the CJM Jalgaon and requested the

respondents to regularize his suspension period from 20-07-1998 to 16-07-2006 as duty period. He has also requested the respondents to exonerate him from the charges levelled against him in the departmental enquiry.

4. On 30-03-2015 respondent no.3 has issued show cause notice to him as to why punishment of 10% deduction from pension for one year should not be inflicted against him. The applicant replied to the said notice. It is contention of the applicant that show cause notice dated 30-03-2015 issued by the respondent no.3 was illegal and void *ab initio* as power to exercise provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is with the Government only and the respondent no.3 has no power to punish him. Respondent no.3 then passed the impugned order on 25-06-2015 in view of the provisions of Rule 27(1) of Maharashtra Civil Services (Pension) Rules, 1982.

5. Applicant has filed representation dated 17-06-2015 with the respondent no.3 requesting to regularize his suspension period from 20-07-1998 to 16-07-2006 as duty period. In response to the said communication respondent no.3 issued show cause notice to the applicant to which the

applicant has given reply on 01-10-2015 and informed that he had preferred an appeal before the Commissioner challenging order passed by the respondent no.3 in the departmental enquiry on 25-06-2015 and had taken recourse to the provisions of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal) Rules and requested to treat his suspension period as duty period. Respondent no.3 on 27-11-2015 passed order directing to treat the suspension period as duty period only for the purpose of terminal benefits for pension purpose and also ordered that the applicant is entitled for 75% of the salary and the same is paid to him.

6. It is the contention of the applicant that appeal preferred by him before the respondent no.2 has been decided by the respondent no.2 on 08-02-2016 and the respondent no.2 rejected his appeal. The applicant has challenged the said orders passed by the respondents by filing the present O.A.

7. Respondent nos.1 to 3 have resisted the contention of the applicant by filing their affidavit in reply. It is their contention that the applicant has misappropriated the

amount of recurring deposits of the employees, and therefore, a crime was registered against him. He was arrested in crime and detained in police custody for more than 48 hours, and therefore, he was suspended. The government passed order dated 18-10-2000 and at that time departmental enquiry was in progress. The Enquiry Officer submitted report on 19-09-2005, and thereafter, the applicant was posted as a Clerk by order dated 15-07-2006 subject to outcome of the criminal case.

8. It is their contention that respondent no.2 has taken decision in the departmental enquiry in view of the powers delegated to him by the G.R. dated 02-06-2003 and by the said G.R. the Government has delegated all the powers to initiate enquiry and to reduce pension in view of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 to the appointing authority, and accordingly, respondent no.3, being appointing authority of the applicant, has passed the impugned order. It is their contention that there was no need to refer the matter to the Government as powers were delegated to the respondent no.3 as per the said G.R. It is their contention that the order has been passed in view of the provisions of Maharashtra Civil Services Rules and

there was no illegality in the said order. It is their contention that appeal has been rightly decided by the respondent no.2, and therefore, they prayed to reject the O.A.

9. Heard Shri S.D.Joshi Advocate for the Applicant and Shri D.R.Patil Presenting Officer for the respondents. Perused the documents produced on record by the parties.

10. Admittedly, the applicant was appointed as Junior Clerk on the establishment of respondent no.3 on 13-09-1978. Admittedly, the applicant was serving in Tahsil office, Amalner during the year 1991 to 30-06-1997 and he was doing work of drawing and disbursing salary of Talathis, Awwal Karkuns, Clerks, Peons and Kotwals. It is not much disputed that complaint had been filed against the applicant and a crime bearing CR.No.132/1998 had been registered against him on the basis of complaint of superior authority as he had not deposited the said amount in the respective small savings accounts and misappropriated the said amount for his personal use and committed the offence punishable u/s.409 of Indian Penal Code. On the basis of complaint of superior authority a crime bearing CR.No.132/1998 had been



registered against him. The applicant was arrested in crime and detained in police custody for more than 48 hours. Collector, Jalgaon by order dated 17-08-1998 was pleased to place him under suspension by exercising provisions under Rule 4(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Admittedly, thereafter the Government passed order dated 18-02-2000 directing reinstatement of the applicant on the post of Clerk subject to outcome of the criminal case and departmental enquiry pending and initiated against him with direction to respondent no.3 to assure that recovery of misappropriated amount is made from the applicant and then only applicant be posted on non-executive post.

11. There is no dispute about the fact that a chargesheet dated 14-05-2001 had been served on the applicant in the departmental enquiry and enquiry had been conducted thereafter. Enquiry was concluded on 30-11-2005 and the Enquiry Officer submitted enquiry report to the respondent no.3 holding that the charge no.3 was partly proved against him and it was held that rest of the charges had not been proved against the applicant. On receiving the enquiry report, Collector i.e. respondent no.3 reinstated

the applicant in service on 15-07-2006 and posted him in Tahsil Office Dharangaon against newly created post. Admittedly, criminal case bearing RCC No.128/2007 (Old Criminal case no.18/1999) was decided by the CJM, Jalgaon and the applicant was acquitted of the offence punishable u/s.409 of I.P.C by his judgment and order dated 02-04-2014. The applicant stood retired on superannuation w.e.f. 31-07-2014. Thereafter, he filed representation dated 13-08-2014 requesting regularization of his suspension period from 20-07-1998 to 16-07-2006 and treat it as duty period. Thereafter, respondent no.3 issued notice to the applicant as to why punishment should not be imposed against him in view of the report submitted by the Enquiry Officer on 30-03-2015. The applicant has given reply to the said notice.

12. After considering the reply respondent no.2 passed the impugned order dated 25-06-2015 and imposed punishment of reduction of 10% amount from the pension of the applicant for the period of one year. The applicant has challenged the said order by filing appeal no.25/2015 before the respondent no.3. Meanwhile, the applicant received notice from the respondent no.3 regarding his

representation dated 17-06-2015. The applicant replied it and informed the respondent no.3 that appeal is pending. Admittedly, the appeal no.25/2015 preferred before the respondent no.2 had been decided on 27-11-2015 and respondent no.2 dismissed the appeal and upheld the order of the respondent no.3.

13. Learned Advocate of the applicant has submitted that the applicant has retired w.e.f. 31-07-2014. Therefore, in view of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, power to inflict punishment is with the Government only. He has submitted that the respondent no.3 Collector has no power to impose penalty against him deducting his pension amount, and therefore, order passed by the Collector on 25-06-2015 is without authority, and therefore, it is illegal. He has submitted that the applicant has raised said ground before the Collector as well as the appellate authority i.e. Commissioner but both the authorities had not considered the said aspect with proper perspective and they have relied on the G.R. dated 02-06-2003 which provides that powers to initiate departmental enquiry after retirement and reduction of pension are delegated to the appointing authority. He has submitted

that the G.R. is against the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that the G.R. will not prevail over the provisions of Maharashtra Civil Services (Pension) Rules, 1982 as the rules have been enacted in view of the powers conferred on the Government under Article 309 of Constitution of India. He has submitted that G.R. cannot override the statutory rules, and therefore, G.R. dated 02-06-2003 is not useful to the respondents in establishing that the respondent no.3 Collector has power to pass orders regarding imposing penalty in the cases of the retired Government employees. In support of his submissions, he has placed reliance on the judgment in case of **Jagdish Prasad Sharma & Others V/s. State of Bihar & Others** reported in [(2013) 8 SCC 633].

14. To this, learned P.O. has submitted that the order passed by the respondent no.3 imposing punishment on the applicant in view of the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is in accordance with the provisions of G.R. dated 02-06-2003. He has submitted that by virtue of the said G.R., Government had delegated powers to impose penalty under

Rule 27 and to initiate proceedings against the retired Government servant, to the appointing authority. He has submitted that respondent no.3 is appointing authority of the applicant, and therefore, he was empowered with the said powers by the Government in view of the G.R. dated 02-06-2003. Therefore, respondent no.3 has rightly imposed punishment on the applicant and there was no illegality on the part of the respondent no.3 in passing impugned order dated 25-06-2015. He has submitted that the contentions raised by the applicant have been considered by the Collector as well as the Commissioner in appeal and they have recorded findings accordingly. He has submitted that there is no illegality in the order, and therefore, he supported the order under challenge.

15. On considering the submissions advanced on behalf of the parties, it is crystal clear that the main grievance of the applicant is that, respondent no.2 was not empowered to impose punishment against the applicant as the applicant had retired from the service. According to the applicant, Government is the only competent authority to exercise the power to impose punishment to withhold the pension of the retired Government employee in view of the

provisions of Rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982 and the impugned order has been passed by the Collector without following the provisions of Rule 27(1) of the M.C.S. (Pension) Rules, 1982. Rule 27(1) of the M.C.S. (Pension) Rules, 1982 which is relevant and material in this case is reproduced hereunder:

***"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."*

16. On going through the same, it reveals that the said rule specifically provides that the Government has to exercise right to withhold or withdraw the pension of the Government employee if the employee is found guilty of misconduct in any departmental or judicial proceedings during the period of his service. Said provision does not empower the disciplinary authority to impose penalty to withdraw or withhold pension on the pensioner.

17. It is submitted on behalf of the respondents that powers under Rule 27 had been delegated by the Government to the disciplinary/appointing authorities by the G.R. dated 02-06-2003. No doubt, on perusal of the G.R. dated 02-06-2003 (page 66), it reveals that powers under Rule 27 of the M.C.S. (Pension) Rules, 1982 have been delegated by the Government to the appointing authority so far as the initiation of the departmental enquiry after retirement of the Government servant and to reduce pension of the retired employee.

18. It is material to note here that M.C.S. (Pension) Rules, 1982 had been framed by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Said rules being in the form of subordinate legislation under Article 309 of the Constitution of India, the same will prevail over the Government Resolutions, and therefore, G.R. dated 02-06-2003 will not prevail over Rule 27(1) of the M.C.S. (Pension) Rules, 1982. In this regard, I am fortified with the observations made by the Hon'ble High Court in the case of **Shrinivas Govind Samant & Ors. V/s. State of Maharashtra & Ors.** reported in [2007 (6) Bom.C.R.766], wherein it is observed as under:

*"11. .... The said Rule being in the form of subordinate legislation under Article 309 of the Constitution of India would, therefore, prevail over the Government Resolution dated 11.11.1983 and the circular dated 24.7.1991 on the basis of which the impugned orders have been passed against the petitioners. In our view therefore, the action taken by the respondents for making recoveries, and re-fixation of pay of the petitioners is unsustainable. "*



19. Therefore, G.R. dated 02-06-2003 will not prevail over the provision to Rule 27 of the M.C.S. (Pension) Rules, 1982 and it does not confer powers on disciplinary/appointing authority to impose punishment on the applicant reducing his pension as the said right is vested with the Government in view of the provisions of Rule 27(1) of the M.C.S. (Pension) Rules, 1982. Therefore, impugned order passed by the Collector dated 25-06-2015 imposing punishment on the applicant to reduce his pension to the extent of 10% for the period of one year is against the provisions of Rule 27(1) of the M.C.S. (Pension) Rules, 1982, and therefore, it is not legal.

20. Divisional Commissioner, Nashik has also not considered the said aspect while rejecting the appeal preferred by the applicant. He has also not considered the fact that the G.R. dated 02-06-2003 has no overriding effect over the M.C.S. (Pension) Rules, 1982 framed under Article 309 of the Constitution of India, and therefore, the order passed by the Divisional Commissioner Nashik in the appeal preferred by the applicant is also not legal one. Consequently, decision of the Collector, Jalgaon dated 25-06-2015 and the order passed by the Divisional

Commissioner, Nashik dated 08-02-2016 in the appeal preferred by the applicant are against the provisions of M.C.S. (Pension) Rules, 1982 and are illegal. Therefore, they are required to be quashed by allowing the O.A.

21. As the Collector, Jalgaon has not considered provisions of Rule 27(1) of the M.C.S. (Pension) Rules, 1982, it is just to remand the matter back to the disciplinary authority i.e. Collector, Jalgaon to consider the matter afresh in view of the provisions of Rule 27(1) of the M.C.S. (Pension) Rules, 1982 and to take appropriate steps in the matter and appropriate decision be taken by the competent authority in the departmental enquiry against the applicant by giving him an opportunity of being heard. Therefore, I proceed to pass following order which will meet the ends of justice.

### **ORDER**

- (i) O.A. is partly allowed.
- (ii) The impugned order passed by the Collector, Jalgaon dated 25-06-2015 in the departmental enquiry and the order passed by the Divisional Commissioner, Nashik dated 08-02-2016 in the appeal preferred by the applicant, are hereby quashed and set aside.

- (iii) The matter is remanded back to the disciplinary authority to decide the point of imposing punishment in view of the provisions of Rule 27 of the M.C.S. (Pension) Rules, 1982 afresh by giving an opportunity of being heard to the applicant.
- (iv) No order as to costs.

**(B. P. Patil)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 13-09-2017.**