

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.401/2021

DISTRICT:- NANDED

Ramreddy s/o Ramkishtu Aitwar,
Age: 69 years, Occu. Retired Clerk,
Tahsil Office Mahur, Distirct Nanded,
R/o. Village Dundra,
Tq. Kinwat, Dist. Nanded.

...APPLICANT

V E R S U S

1] The State of Maharashtra,
Through the Principal Secretary,
Revenue and Forest Department,
Mantralaya (Main Building), First Floor,
Madam Cama Road, Hutatma Rajguru Chowk,
Mumbai – 400 032.

2] The Divisional Commissioner Aurangabad,
Aurangabad – 431 001.

3] The Collector Nanded,
Dist. Nanded.

4] The Tahsildar Kinwat,
Tq. Kinwat, Dist. Nanded.

5] The Tahsildar, Mahur,
Tq. Mahur, Dist. Nanded.

...RESPONDENTS

APPEARANCE :Shri Shamsunder B. Patil, Counsel for
Applicant.

:Shri V.G.Pingle, Presenting Officer for the
respondent authorities.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Reserved on : 05-04-2024

Pronounced on : 21-10-2024

O R D E R

[Per : Shri Vinay Kargaonkar, M (A)]

1. Heard Shri Shamsunder B. Patil, learned Counsel for Applicant and Shri V.G.Pingle, learned Presenting Officer (PO) for the respondent authorities.

2. By filing the present O.A. applicant is claiming following reliefs [paper book page 14 of O.A.]:

“(A) This Original Application may kindly be allowed.

(B) The judgment and order dated 3-3-2021 passed by the Divisional Commissioner Aurangabad and the order dated 20-11-2020 passed by the Collector Nanded in Department Enquiry No.CR 50 thereby imposing two kinds of major punishments first under Rule 72(7) of the Maharashtra Civil Services (Joining Time...) Rules 1981 and second under 27 of Maharashtra Civil Services (Pension) Rules 1982 may kindly quashed.

(C) The respondents be directed to make payment of all the monetary benefits including arrears of pension and all pensionary benefits forthwith.”

3. Pleadings and arguments of the Applicant:-

(a) The applicant submits that while working as a go-down keeper at the Tahsil Office, Kinwat, a loss of grains occurred due to heavy rains. He contends that he was not

responsible for this loss but was held liable for negligence and misappropriation. A departmental enquiry was initiated against him, along with a criminal case under sections 409 and 477 of the Indian Penal Code, which was registered and tried as Regular Criminal Case No. 263/2001 before the learned Chief Judicial Magistrate, Nanded. The criminal case remained pending for over 17 years. The applicant asserts that since the prosecution failed to produce the original records and prove the charges, he was acquitted by judgment dated 10-08-2017.

(b) The applicant further submits that he participated in the departmental enquiry, denying all charges. He successfully convinced the Enquiry Officer of his innocence, and the Officer, after reviewing the material on record, concluded that there was no evidence against him. A copy of the enquiry report was provided to the applicant, along with a show cause notice from the Disciplinary Authority (Collector, Nanded), to which the applicant responded with a detailed explanation, seeking exoneration.

(c) The applicant states that despite the available evidence, the Collector, Nanded, issued an order dated 19-09-2018, imposing a recovery of Rs. 6,58,456/- from his

pension and pensionary benefits. He further highlights that the departmental enquiry continued for over 18 years, causing him immense physical and mental hardship.

(d) The applicant filed a statutory appeal with the Divisional Commissioner, Aurangabad, against the punishment order. After hearing both sides and reviewing the records, the Commissioner, by order dated 29-08-2019, remanded the matter to the Collector, Nanded, for a fresh enquiry to be conducted by a competent enquiry officer, with a final decision to be made within three months.

(e) The applicant asserts that, following the remand, the Collector, by order dated 20-11-2020, passed a similar order as the one issued on 19-09-2018, without conducting a fresh review of the material. Aggrieved by this order, the applicant again filed an appeal to the Divisional Commissioner, Aurangabad. However, by judgment and order dated 03-03-2021, the appeal was rejected, and two major penalties were imposed under Rule 72(7) of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payments During Suspension, Dismissal, and Removal) Rules, 1981, and Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982.

(f) The applicant's counsel submits that a revision was filed before the State Government against the Divisional Commissioner's decision. However, by a communication dated 21-05-2021, the Revenue and Forest Department informed the applicant that no further appeal or revision was maintainable under Rules 18 and 25 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The applicant also refers to a letter dated 16-11-1999 from the Tahsildar, Kinwat, asking him to submit records regarding deficiencies in the go-down, but those records may have been destroyed due to heavy rains and the collapse of the office building.

(g) The applicant submits that in response to the Tahsildar's letter, he submitted a report on 02-02-2000 detailing the deficiencies in the go-down records. However, no action was taken on this report, which was ignored by the Enquiry Officer. The absence of an audit report, a crucial document, further invalidates the findings of the enquiry. As a result, the punishment order is illegal and unjust.

(h) The applicant's counsel argues that the Collector imposed two major penalties, including the recovery of Rs.

6,58,456/- from gratuity and pension. This recovery, the counsel contends, is impermissible under the Supreme Court's ruling in State of Punjab vs. Rafiq Masih (2015) 4 SCC 334, particularly as the applicant retired in 2010 and is a Class III employee. Such recovery is inequitable, harsh, and contrary to the law, especially after retirement.

(i) The applicant contends that since the Enquiry Officer and the criminal court both found no evidence against him, further departmental enquiry is unwarranted. The acquittal in criminal case by the court has attained finality as the State did not challenge it, making the impugned orders unsustainable.

(j) The applicant finally argues that the Disciplinary Authority failed to record any specific findings of guilt, making the imposition of major penalties illegal and unsustainable. The applicant prays for the Original Application (O.A.) to be allowed, and the impugned order be quashed.

4. Submissions and arguments by the Respondent Authorities :-

(a) The respondents, in their affidavit filed on behalf of Respondent Nos. 1, 2, and 3, oppose the Original

Application (O.A.) and submit that the applicant's service record was neither clean nor unblemished. During his tenure as Godown Keeper at the Tahsil Office, Kinwat, between 01.04.1997 and 30.09.1999, the applicant committed fraud, misappropriation, and dishonesty. Consequently, he was charged under sections 409 and 477 of the Indian Penal Code, 1860, for criminal breach of trust and fraudulent activities concerning food grains and edible oils stored at the government godown at the Tahsil Office, Kinwat.

(b) The respondents further submit that the applicant colluded with some Fair Price Shop holders in committing these offenses. Subsequently, the applicant was suspended from service on 01.06.2000, and criminal proceedings were initiated against him in Regular Criminal Case No. 263/2001 before the Judicial Magistrate First Class, Kinwat. The case was later transferred to the Additional Chief Judicial Magistrate in Regular Criminal Case No. 1171/2002. Due to the prosecution's failure to produce substantial evidence, the court acquitted the applicant, giving him the benefit of the doubt, by order dated 10.08.2017. Meanwhile, a Departmental Enquiry was initiated on 09.06.2000 by the Office of the Collector,

Nanded, regarding the alleged irregularities and misappropriation.

(c) The respondents submit that the Departmental Enquiry ran parallel to the criminal proceedings. However, since the original records were produced in the court, the enquiry had to wait for access to the documents to ensure a fair and impartial enquiry. This delayed the completion of the Departmental Enquiry. Eventually, the Enquiry Officer concluded the investigation and submitted the report to Respondent No. 3. The applicant was given a fair opportunity to present his written response. Upon reviewing the Departmental Enquiry report dated 20.04.2016, the written arguments submitted by the applicant on 09.06.2016, his reply dated 23.07.2018 to the pre-disciplinary action notice, and other records, the Disciplinary Authority imposed a recovery of Rs. 6,58,456/- (Rs. 1,67,551 + Rs. 4,90,904.56) from the applicant's pension and pensionary benefits for the misappropriation.

(d) The respondents further submit that the Departmental Enquiry report dated 06.05.2020 concluded the following charges against the applicant:

(i) The applicant, Shri Ramreddy Aitwar, while serving as Godown Keeper at Tahsil Office, Kinwat, from 01.04.1997 to 30.09.1999, made false entries in the original E-1 and E records and committed misappropriation of food grains and edible oils in collusion with Fair Price Shop holders, resulting in a loss of Rs. 1,67,551/- to the State Government. This conduct demonstrated a violation of Rule 3 of the Maharashtra Civil Service Rules (Conduct), 1979.

Finding: Based on witness statements, representation by the Presenting Officer, and the available records, the loss of Rs. 1,67,551/- to the State Government due to misappropriation was proven.

(ii) The applicant also showed abnormal heap-wise losses in food grains and palm oil, resulting in an additional misappropriation of Rs. 4,90,904.56/- during his tenure. The said loss is recoverable from the applicant.

Finding: The applicant failed to record the empty bardana (sacks) in the E register and N register, as required, after the distribution of food grains. He also did not take proper entries on the permit and weight register. As such, it was proven that the applicant had committed misappropriation.

(e) The respondents submit that, during the inspection of the godown, excessive deficits in food grains were discovered, for which the applicant was responsible. The

abnormal loss of Rs. 4,90,904.56/- was recoverable from the applicant after adjusting for the permitted write-offs by the Tahsildar, Kinwat, and the District Supply Officer, Nanded. The applicant was provided a fair hearing and the right to cross-examine witnesses during the Departmental Enquiry, which was conducted impartially with the necessary audit reports. The principles of natural justice were followed, and the final order dated 20.11.2020 was passed by Respondent No. 3 with proper reasoning and based on the material on record.

(f) The respondents further assert that the abnormal loss incurred by the government is the result of excessive stock deficits after the write-off process. The applicant's irregularities and misappropriation in the distribution of food grains and edible oil justify the recovery order. Hence, the respondents maintain that the recovery order is both fair and justified.

(g) The respondents submit that although the charges under the Departmental Enquiry and the criminal complaint were related, they are independent proceedings. As per Chapter Four, paragraph 4.7(2) of the Manual of Departmental Enquiries (4th edition, 1991), both

proceedings can be conducted separately. If a competent authority finds the acquittal unjustifiable, it may continue the enquiry and impose appropriate punishment.

(h) The respondents argue that the acquittal of the applicant in the criminal case was not sufficient grounds to close the Departmental Enquiry. Given the significance of the Public Distribution System (PDS) in ensuring food security, any misappropriation in the PDS commodities has serious repercussions for the weaker sections of society. Based on the gravity of the offense, the Disciplinary Authority ordered the recovery of the abnormal loss incurred by the State due to the applicant's misconduct. The respondents rely on the Supreme Court's decision in State of West Bengal & Ors. vs. Sankar Ghosh [Civil Appeal No. 10729/2013], which states that acquittal in a criminal case does not preclude departmental punishment.

(i) The respondents also argue that the Departmental Enquiry was initiated during the applicant's tenure, and even though it concluded post-retirement, it remains valid. Therefore, the case law cited by the applicant does not apply. The Hon'ble Bombay High Court, in Stanzan Toyoetsu India Pvt. Ltd. vs. Girish V & Ors., held that both

departmental and criminal proceedings can proceed simultaneously, and acquittal in criminal proceedings does not prevent disciplinary action.

(j) Lastly, the respondents submit that the applicant's actions caused financial losses to the State Government and adversely affected the PDS. Any leniency in this matter would set a dangerous precedent, encouraging similar misconduct among other government servants. Thus, a strict message needs to be sent to uphold the integrity of the service and public trust. The respondents, therefore, contend that the O.A. lacks merit and should be dismissed.

5. Submissions by the Applicant in Additional Affidavit:-

(a) In his rejoinder affidavit, the applicant reiterates the points raised in the Original Application. He submits that he was not informed about the grounds of his suspension. Through an application dated 17-10-2000, the applicant requested the Collector, Nanded, to reinstate him. As no action was taken on this application, the applicant submitted another request on 22-12-2000, stating that more than six months had passed without any departmental enquiry being initiated. Therefore, under government policy, his suspension had become illegal, and

he again requested the revocation of the suspension and his reinstatement in service.

(b) The applicant further submits that he continued to wait for a decision from the Collector until 28-05-2002. On that date, he submitted yet another application for reinstatement. The applicant highlights relevant observations made by the Commissioner in his order dated 29-08-2019, which are important to the applicant's case. Commissioner's observations in Marathi are reproduced below:

“प्रकरणात सन २००२ ते २०१५ या कालावधीत विभागीय चौकशीची कार्यवाही झालेली नसून प्रकरणात अवाजवी विलंब झाल्याचे दिसून येते. अपिलार्थी हे दि. ३०.११.२०१० रोजी नियत वयोमानानुसार शासन सेवेतून सेवानिवृत्त झालेले आहेत. अपिलार्थी यांच्या सेवानिवृत्तीचा दिनांक विचारात घेता उत्तरार्थी यांनी प्रकरणात चौकशी अधिकारी यांची वेळीच नियुक्ती करून प्रकरणात निर्णय घेते अपेक्षित असताना उत्तरार्थी यांनी तसे केल्याचे दिसून येत नाही.

उत्तरार्थी यांनी त्यांचे आदेश दिनांक १६.९.२०१५ अन्वये श्री. एम. एच. कोमटवार कंत्राटी चौकशी अधिकारी, नांदेड यांची प्रकरणात चौकशी अधिकारी म्हणून नियुक्ती केली होती. शासन आदेश दिनांक १९.९.२०१५ अन्वये श्री.एम. एच. कोमटवार यांना चौकशी अधिकाऱ्यांच्या पॅनलवरून वगळण्यात आले होते. श्री. एम. एच. कोमटवार, कंत्राटी चौकशी अधिकारी, नांदेड यांनी त्यांचे पत्र दि. ०६.१०.२०१५ अन्वये त्यांचे वय ७० वर्षापेक्षा जास्त असल्यामुळे शासन आदेश दि. १९.०९.२०१५ अन्वये कंत्राटी चौकशी अधिकाऱ्यांच्या पॅनलवरून वगळण्यात आले असल्याने मी ही नवीन चौकशी स्वीकारू शकत नाही करिता माझ्याकडील प्रकरणे इतर कंत्राटी चौकशी अधिकारी यांचेकडे वर्ग करावीत व माझे नावे नवीन चौकशीचे आदेश

काढू नयेत अशी विनंती उत्तरार्थी यांना केली होती. असे असतानाही उत्तरार्थी यांनी प्रस्तुत प्रकरणात श्री. एम. एच. कोमटवार यांचेकडून विभागीय चौकशीची प्रक्रिया पूर्ण झाली असून त्यांनी सादर केलेल्या चौकशी अहवालाच्या आधारे उत्तरार्थी यांनी अपिलार्थी यांना शिक्षा बजावल्याचे दिसून येते. तथापि चौकशी अधिकारी यांना शासन आदेश दि. १९.०९.२०१५ अन्वये कंत्राटी चौकशी अधिकाऱ्यांच्या पॅनलवरून वगळण्यात आले असताना उत्तरार्थी यांनी नवीन कंत्राटी चौकशी अधिकारी यांचेकडे प्रकरण चौकशीसाठी सुपूर्द करणे आवश्यक असताना उत्तरार्थी यांनी तसे केल्याचे दिसून येत नाही. प्रकरणात ज्यांना चौकशी करण्याचे अधिकार नाहीत त्यांच्याकडून चौकशी पूर्ण करून घेऊन त्या आधारे निर्णय देणे ही बाब नैसर्गिक न्याय तत्वाच्या विरुद्ध असल्याने प्रकरणात पुनःस्व चौकशी करणे आवश्यक आहे. तसेच प्रकरणात विभागीय चौकशीची प्रक्रिया पूर्ण करण्यासाठी झालेला विलंब पाहता विचारात घेता प्रकरणात पुनश्च विभागीय चौकशी ही तातडीने करणे आवश्यक आहे या निष्कर्षाप्रत मी आलो असल्याने प्रस्तुत अपील अर्जावर खालील प्रमाणे आदेश पारित करीत आहे.

(c) The applicant submits that the observations of the Commissioner clearly establish that he is not responsible for the delay and irregularities in the enquiry process. He contends that the Disciplinary Authority's failure to complete the enquiry promptly is the sole reason for the delay. On these grounds, the applicant argues that the punishment imposed on him is disproportionate and illegal. He further contends that government resolutions and circulars were not followed by the Collector, Nanded, especially with regard to the mandatory review of his suspension. Thus, the applicant claims that his suspension

beyond 1st September 2000, until his retirement, was entirely illegal.

(d) The applicant refers to various instructions and directions issued by the State Government in its resolutions and circulars, including:

- Government Circular dated 25-02-1988: It mandates that departmental enquiries be completed within six months. If not possible due to complexities, an extension must be sought from the appropriate authority.
- Government Circular dated 18-11-1997: This circular draws attention to paragraph 4.2 of the Manual of Departmental Enquiries (4th Edition), which emphasizes the timely completion of enquiries.
- Government Circular dated 19-03-2008: It lays down the procedure for changing the headquarters of a suspended employee during the suspension period.
- Government Resolution dated 28-03-2008: This resolution establishes a committee to review cases of suspension of government employees.
- Government Resolution dated 14-10-2011: It instructs disciplinary authorities to review suspension within three months if no departmental enquiry has been initiated. After six months, a review must be conducted to either revoke the suspension or transfer

the employee to a non-executive post while keeping the enquiry ongoing.

- Government Circular dated 28-03-2018: Issued in compliance with the Hon'ble Maharashtra Administrative Tribunal's directions in O.A. No. 1023/2017, this circular requires a thorough review of the suspension in cases involving criminal charges. The review must be objective, and all relevant records must be examined.

- Government Circular dated 09-07-2019: In compliance with the Supreme Court judgment in Ajay Kumar Chaudhary vs. Union of India (16-02-2015), this circular mandates that suspension reviews be conducted within three months of initiating a departmental enquiry.

(e) The applicant emphasizes that the suspension review, as mandated by these government resolutions and circulars, was never undertaken by the Collector, Nanded. Therefore, the applicant argues that his suspension beyond the stipulated period was illegal and urges that the Original Application (O.A.) be allowed accordingly.

6. Reasoning and Conclusions:-

(a) In the present case, the applicant challenges the prolonged departmental enquiry and subsequent imposition

of recovery from his pension and pensionary benefits on the grounds of misappropriation during his tenure as a Godown Keeper at Tahsil Office, Kinwat. The respondents, on the other hand, justify the departmental action and recovery based on findings from the enquiry, despite the applicant's acquittal in the related criminal proceedings.

Key Issues for Consideration:

- Delay in Departmental Enquiry:

The applicant argues that the prolonged delay in completing the departmental enquiry, spanning over 18 years, caused significant physical and mental distress. He claims that the suspension and subsequent punishment were unwarranted, particularly given the delay and lack of timely review of his suspension as required by government policies.

- Impact of Criminal Acquittal on Departmental Proceedings:

The applicant contends that his acquittal in the criminal case should exonerate him in the departmental proceedings as well. The respondents argue that the departmental enquiry and criminal case, though interlinked, operate

independently, and thus, acquittal in the criminal case does not necessarily negate the findings of the departmental enquiry.

- Legality of Recovery from Pensionary Benefits:

The applicant further argues that the recovery from his pension and gratuity is illegal, citing the Supreme Court's ruling in *State of Punjab v. Rafiq Masih* [(2015) 4 SCC 334], which protects Class III employees from such recoveries, especially post-retirement.

(b) Delay in Departmental Enquiry:

The prolonged delay in concluding the departmental enquiry is a matter of serious concern. In *State of Andhra Pradesh v. N. Radhakishan** [(1998) 4 SCC 154], the Supreme Court held that unreasonable and unexplained delay in the completion of disciplinary proceedings is unjust and can vitiate the entire process. The Court further emphasized that "disciplinary proceedings, if delayed, cause prejudice to the charged officer." The applicant has raised valid points regarding the delay and the failure of the Disciplinary Authority to conduct a timely review of his suspension in compliance with government resolutions.

As per the Government Circular dated 25-02-1988, departmental enquiries are to be completed within six months, and any further extension must be sought with due approval. In this case, the enquiry remained pending for nearly two decades, which is highly irregular. The Commissioner's observations in his 2019 order clearly underscore that no efforts were made by the respondents to expedite the enquiry, further confirming the administrative inefficiency.

This protracted delay, combined with the applicant's retirement in 2010, raises a legitimate question as to whether the applicant was afforded the right to a fair and timely enquiry. The delay alone, as emphasized by the Supreme Court in "Radhakishan" mentioned above, justifies the setting aside of the disciplinary proceedings, especially when no adequate explanation for the delay has been provided by the respondents.

(c) Effect of Acquittal in Criminal Proceedings:

The applicant's acquittal in the criminal case, while relevant, does not automatically exonerate him in the departmental enquiry. As held by the Supreme Court in Suresh Pathrella Vs Oriental Bank of Commerce acquittal

in a criminal case should be no bar for drawing up the disciplinary proceedings against the delinquent officer since the yardstick and standard of proof in a criminal case is proof beyond all reasonable doubt whereas in departmental proceedings it is preponderance of probability. The Court clarified that while criminal cases require proof beyond reasonable doubt, departmental enquiries are based on the preponderance of probabilities.

In this case, although the criminal court acquitted the applicant, the departmental enquiry was not concluded based solely on criminal proceedings. The enquiry report points to discrepancies in the handling of records and stock during the applicant's tenure as Godown Keeper, which, under the lighter burden of proof required in disciplinary matters, could warrant action against the applicant. However, given the unjustified prolonged delay and lack of fresh evaluation of the evidence during the re-enquiry, the findings of the enquiry lose substantial credibility.

(d) Legality of Recovery from Pension and Pensionary Benefits:

The Supreme Court in *State of Punjab v. Rafiq Masih* [(2015) 4 SCC 334] laid down specific guidelines restricting

recovery from Class III and Class IV employees, particularly in cases where such recovery is sought after retirement. The Court observed that recovery from pensionary benefits of retired employees would be "inequitable, harsh, and arbitrary" and would outweigh the right of the employer to recover. It is important to note that the principles laid down in *State of Punjab v. Rafiq Masih* [(2015) 4 SCC 334] are not applicable in this case, as the recovery in question is not related to excess payment of salary or benefits made by mistake, which *Rafiq Masih* primarily addressed. Instead, the recovery here is part of a punishment imposed following a departmental enquiry into allegations of misappropriation by the applicant. The Supreme Court in *Rafiq Masih* provided protection against recovery of excess payments, but it did not extend this protection to recoveries arising out of penalties imposed in disciplinary proceedings for proven misconduct, such as misappropriation, which is the matter at hand. Therefore, the recovery imposed as part of the punishment following the enquiry must be considered independently of *Rafiq Masih*.

(e) Given the prolonged and unexplained delay in concluding the departmental enquiry, the failure to conduct a timely review of the applicant's suspension the

punishment imposed on the applicant is disproportionate and unjust. Hence, the following order:

O R D E R

[1] Order dated 03.03.2021 passed by the Divisional Commissioner and the order dated 20.11.2020 passed the Collector Nanded in Departmental Enquiry is quashed and set aside.

[2] Respondents shall make payment of all monetary benefits including arrears of pension and all pensionary benefits to the applicant within six months from the date of this order.

[3] O.A. stands allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 21-10-2024.