

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 443 OF 2018**

DIST. : NANDED

Shri Jagannath Wamanrao Vispute, )  
 Age. 59 years, Occ. Retired, )  
 Shivaji Chowk, Loha, Tq. Loha, )  
 Dist. Nanded )  
 (at present) Shivaji Chowk, Lekhanagar,) )  
 Near Municipal Hospital, Nashik, )  
 Tq. & Dist. Nashik. ) .. **APPLICANT**

**V E R S U S**

1. The State of Maharashtra, )  
 Through Revenue & Forest Department,) )  
 Mantralaya, Mumbai – 32. )
2. The Collector, Nanded, )  
 Tq. and Dist. Nanded. )
3. The Sub Divisional Officer, )  
 Tq. Bhokar, Dist. Nanded. )
4. The Tahsildar, Mudkhed, )  
 Tq. Mudkhed, Dist. Nanded. ).. **RESPONDENTS**

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 APPEARANCE :- Shri M.R. Wagh, learned Advocate for the  
 applicant.

: Shri V.R. Bhumkar, learned Presenting  
 Officer for the respondent.

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**CORAM : Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**and**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**

**DATE : 10.04.2024**  
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**ORDER**

*[Per :- Justice P.R. Bora, V.C.]*

1. Heard Shri M.R. Wagh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent.

2. Aggrieved by the order dated 7.12.2016 passed by the disciplinary authority (respondent no. 03), whereby the said authority directed deduction of Rs. 500/- per month for the period of one year from the amount of pension payable to the applicant by way of punishment, the applicant has preferred the present Original Application. Vide the aforesaid order the disciplinary authority has passed the further order, thereby directing to regularize the period of suspension from 18.7.2014 to 30.11.2015 undergone by the applicant towards the leaves of the applicant with pay or without pay as the case may be. Against the order passed by the disciplinary authority the applicant had preferred an appeal under the statutory provisions to the District Collector, Nanded (respondent no. 02). Vide his order dated 19.05.2017 the learned Collector dismissed the appeal so filed by the applicant and confirmed the order passed by respondent no. 03 on 07.12.2016. The order passed by respondent no. 02 is also challenged by the applicant in the

present O.A. The applicant was kept under suspension during the period from 18.07.2014 to 30.11.2015. The order dated 18.07.2014, whereby the applicant was suspended by respondent no. 03 is also challenged by the applicant.

3. The applicant entered into the Government services as Talathi in the year 2003. Thereafter he was promoted to the post of Circle Officer and till his retirement the applicant worked on the said post. Applicant retired from the said post on 31.05.2017 on attaining the age of superannuation.

4. Vide order passed on 18.07.2014 by respondent no. 03, the applicant was suspended in contemplation of the departmental enquiry against him. At the relevant time the applicant was working as a Talathi of Sajja Daregaon, Tq. Mudkhed, Dist. Nanded. On 26.11.2014 the statement of charge was served upon the applicant. Total 04 charges were leveled against the applicant; first that one Shri Madhav Bramhaji Gade resident of Pangargaon, Tq. Mudkhed, Dist. Nanded vide his representation dated 27.5.2014 made a complaint that the applicant was frequently remaining absent, which was causing grave prejudice to the villagers and more particularly the agriculturists; the second charge was that for his absence from duty the explanation given by the applicant

was unsatisfactory and in that regard he was directed to submit the report of the works done by him during the said period in the Tahsil office on 09.5.2014, but he remained absent on the said date; and the third charge against the applicant was that in the case of illegal excavation and transportation of the soil, the applicant did not submit any explanation though vide notice dated 19.12.2013 he was called upon to give such explanation. The applicant is alleged to have submitted his explanation belatedly and it was found unsatisfactory. The fourth charge was that the conduct of the applicant was not befitting to the conduct of the Government servant as prescribed under Maharashtra Civil Services (Conduct) Rules, 1979 (for short the Conduct Rules). On such charges the enquiry was conducted against the applicant by the Tahsildar, Bhokar and he submitted the report to the disciplinary authority. The Disciplinary authority imposed the punishment on the applicant as noted hereinabove and the said order has been confirmed by the appellate authority i.e. the Collector, Nanded. The aforesaid orders are challenged by the applicant by filing the present O.A.

5. The disciplinary authority has inflicted the following punishment on the applicant. We deem it appropriate to

reproduce the said order as it is in vernacular, which reads thus:-

“आदेश

१. महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ चे नियम २७(१) मधील तरतुदीनुसार श्री. जे.व्ही. विसपुते तत्कालीन तलाठी सज्जा दरेगाव ता.मुदखेड सध्या मंडळ अधिकारी, सोनखेड ता.लोहा यांच्या निवृत्ती वेतनातून रुपये ५००/- (अक्षरी पाचशे रुपये फक्त) प्रति महा एवढी एका वर्षाकरीता कपात करण्याची शिक्षा बजावण्यात येते.

२. महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वियेत्तर सेवा, निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम १९८१ मधील नियम ७२(७)मधील परंतूकानुसार श्री. जे.व्ही. विसपुते यांचे निलंबन समर्थनिय ठरते. त्यामुळे त्यांचा दिनांक १८.०७.२०१४ ते ३०.११.२०१५ पर्यंतचा निलंबन कालावधी हा त्यांना देय व अनुज्ञेय असलेली रजा म्हणून नियमानुकूल करण्यात येत आहे.

३. उपरोक्त आदेशाची नोंद संबंधीतांच्या सेवापुस्तिकेत घेऊन तसा अनुपालन अहवाल सादर करावा.”

6. The appellate authority i.e. the Collector, Nanded has dismissed the appeal filed by the applicant against the order passed by the disciplinary authority.

7. The order passed by the disciplinary authority and the appellate authority are challenged by the applicant on several grounds. In his written notes of argument the learned counsel Shri M.R. Wagh appearing for the applicant has reiterated grounds of objections taken in the O.A. The applicant has denied all the charges leveled against him. It is contended that imposition of 02 punishments is totally unjustified and is against the principles of natural justice. It is also alleged that the applicant was unnecessarily put under suspension that too for a long period, though it was not required. It is the further

contention of the applicant that though no evidence has come on record, substantiating the charges leveled against him, the Enquiry Officer has held the charges proved against him. It is also alleged that the report of the Enquiry Officer is based on surmises. It is further contended that the applicant has brought on record sufficient facts showing his presence on the date of meeting and the report card of work done by him. On the aforesaid ground the order passed by the disciplinary authority is challenged by the applicant. The suspension order is also challenged on the similar grounds.

8. The respondent nos. 2 & 3 have filed joint affidavit in reply thereby resisting the contentions raised in the O.A. and the prayers made therein by the applicant. According to the respondents, sufficient evidence has come on record in the D.E. proving all the 04 charges leveled against the applicant. It is further contended that in the D.E. against the applicant all the charges leveled against the applicant have been substantially provided by the respondents. The respondents have therefore prayed for dismissal of the O.A.

9. We have carefully considered the submissions made on behalf of the applicant, as well as, the respondents. We have also perused the documents filed on record. At the outset

it has to be stated that the objections, which ought to have been raised by the applicant against the order of suspension, as well as, the order of imposing punishment passed by the disciplinary authority are not raised by him. Unfortunately, the learned counsel for the applicant also did not raise the said objections in his written notes of argument. Learned P.O. has also preferred to file the written notes of argument on behalf of the respondents instead of making any oral submissions.

10. The memorandum of charge was issued to the applicant on 10.12.2014 along with which the statement of charge was annexed. We deem it appropriate to reproduce the said memorandum dated 10.12.2014 as it is in vernacular, which reads thus:-

“ज्ञापन

श्री. जे.व्ही.विसपुते यांना याद्वारे कळविण्यात येते कि, त्यांच्या विरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ४० अन्वये कारवाई करण्याचे ठरविण्यात आले आहे. ज्या बाबतीत प्रस्तावीत कारवाई करण्याचे योजिले आहे त्या गैरशिस्तीचा किंवा गैरवर्तणूकीच्या दोषारोपांचे विवरणपत्र सोबत जोडले आहे.

१. श्री. जे.व्ही.विसपुते, यांना या प्रस्तावाविरुद्ध जे कोणतेही अभिवेदन करावयाची इच्छा असेल ते करण्याची संधी त्यांना याद्वारे देण्यात येत आहे.

२. श्री. जे.व्ही.विसपुते, ह्यांनी ज्ञापन मिळाल्यापासून (१०) दिवसांच्या आत अभिवेदन सादर करण्यास कसून केला तर त्यांना कोणतेही अभिवेदन करण्याची ईच्छा नाही असे गृहीत धरण्यात येईल आणि श्री. जे.व्ही.विसपुते, यांच्या विरुद्ध एकतर्फी आदेश काढण्यात येतील.

३. श्री. जे.व्ही.विसपुते, यांनी या ज्ञापनाची पोच द्यावी.

सही/-

उपविभागीय अधिकारी, भोकर

प्रति,

श्री. जे.व्ही.विसपुते,  
तलाठी सज्जा दरेगाव ता.मुदखेड  
(सध्या निलंबित, मुख्यालय तहसिल कार्यालय,भोकर)

प्रत :- तहसिलदार भोकर यांना देण्यात येवून कळविण्यात येते या सोबतचे  
दोषारोप जोडपत्राची एक प्रत श्री. जे.व्ही.विसपुते यांचे वर तामील करून दिनांकीत  
स्वाक्षरीसह या कार्यालयाकडे सादर करावी.

सही/-

उपविभागीय अधिकारी, भोकर”

11. The memorandum reveals that the enquiry was initiated under rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (for short the Discipline & Appeal Rules). Rule 10 of the Discipline & Appeal Rules prescribes the procedure for imposing ‘minor’ penalties. Minor penalties are provided under rule 5 of the Discipline & Appeal Rules, which are thus:-

“MINOR PENALTIES

- (i) Censure;
- (ii) Withholding of his promotion;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to Government, by negligence or breach of orders;
- (iv) Withholding of increments of pay;
- (v) Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;”



12. We have reproduced hereinabove the punishment imposed by the disciplinary authority vide its order dated 07.12.2016, which has been confirmed by the appellate authority vide its order dated 19.05.2017. While imposing the punishment the disciplinary authority has invoked the provision under rule 27(1) of the Maharashtra Civil Services (Pension) Rules, 1982 (for short the Pension Rules) and has directed to deduct the amount of Rs. 500/- per month from the amount of pension payable to the applicant for next one year i.e. 12 months. The question arises whether the punishment as has been imposed by the disciplinary authority (respondent no. 03) can be held to be a minor penalty. We have hereinabove reproduced which are minor penalties as provided under Rule 5 of the Discipline & Appeal Rules. The punishment as has been imposed by the disciplinary authority does not fall within any of the penalties envisaged under rule 5 of the Discipline & Appeal Rules.

13. Issuance of memorandum of charge by respondent No. 3 under Rule 10 of Discipline & Appeal Rules makes it abundantly clear that the enquiry was being conducted against the applicant for imposing the minor penalty. In the circumstances, respondent No. 3 could not have inflicted any

punishment other than prescribed under Rule 5 of the Discipline & Appeal Rules.

14. Now it is to be examined whether the respondents could have invoked the provisions under Rule 27 (1) of the Pension Rules. The said Rule reads as under: -

***“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.”*

15. Perusal of the aforesaid rule makes it clear that under the said rule the Government may withhold or withdraw a pension or any part of it whether permanently or for a

specified period, if the '**pensioner**' is found guilty of grave misconduct or negligence during the period of his service including the service rendered upon reemployment after retirement. Thus, under the aforesaid rule if any punishment is to be imposed the delinquent must be a pensioner.

16. It is undisputed that the applicant retired on 31.05.2017 on attaining the age of superannuation from the post of Circle Officer. There is further no dispute that the disciplinary authority (respondent No. 3) imposed the punishment upon the applicant on 09.12.2016. The applicant was thus, very well in the employment on 09.12.2016 when the said order was passed. When the applicant was in service till 31.05.2017 in no case respondent No. 3 could have imposed the punishment of deduction of amount of Rs. 500/- for every month for next 12 months from the amount of pension payable to the applicant. The order so passed is apparently and palpably illegal and unsustainable. Pension amount can be withheld or withdrawn in full or in part permanently or for the specific period only if the 'pensioner' is found guilty

that too of a grave misconduct or negligence. The applicant at that time was neither a pensioner nor was found guilty of any grave misconduct. The enquiry itself was conducted under Rule 10 (1) of Discipline & Appeal Rules, which is meant for imposing the minor penalties.

17. In the case of **Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal, Kolhapur and Anr. Vs. Bhujgonda B. Patil, 2003 (3) Mh.L.J 602**, the provisions under Rule 27 of Pension Rules were under consideration. The observations made and finding recorded by the Hon'ble High Court in paragraph Nos. 12 & 13 of the said judgment are quite relevant in context of the present matter. We deem it appropriate to reproduce the said paragraphs, which read thus,

*"12. Rule 27(1) of the Pension Rules provides that*

*"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."*

*Apparently, the provision of law contained in Sub-rule (1) of Rule 27 of the Pension Rules, therefore, empowers the Government to pass an order withholding or withdrawing a pension if in any departmental or judicial proceedings the pensioner is found to be guilty of grave misconduct or negligence either during the period of his service or during the period of his re-employment. Apparently, Rule 27(1) is comprised of two parts. The first part speaks of power of the Government to pass an order regarding reduction or withdrawal of pension. The second part deals with the circumstances in which such an order can be passed. The Rule nowhere empowers the Government to initiate or continue the disciplinary proceedings after the employee attains the age of superannuation. The Rule is meant for and confined to the power of Government to reduce or withdraw the pension of a pensioner on account of proved grave misconduct or negligence of such pensioner while he was in service. Besides, the Rule 2(a) of Rule 27 clarifies that the proceedings spoken of for the purpose of order relating to pension under Rule 27(1) though initially may be for disciplinary action while the pensioner was in service, those proceedings would be deemed to have been continued only for the purpose of action under Rule 27(1) relating to the pension and not for disciplinary action. Sub-rule (2)(a) of Rule 27 of the Pension Rules reads thus:-*

*"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 if the Government servant had continued in service."*

*The above clause, therefore, in clear terms provides that the departmental proceedings initiated for disciplinary action can be continued after the employee attains the age of superannuation only for the purposes of reduction or withdrawal of the pension and gratuity and not for the purpose of disciplinary action. Further, clause (a) of sub-rule (6) thereof provides that "for the purpose of the said rule, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to be Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date."*

*13. All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issue pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly sub-rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re-employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within*

*the meaning of said expression under Rule 27 of the Pension Rules.”*

18. In view of the law laid down above, the punishment imposed by the disciplinary authority directing deduction of amount of Rs. 500/- per month from the amount of pension payable to the applicant for next 12 months is apparently an illegal order and hence, cannot be sustained.

19. Vide order passed by respondent No. 3 on 18.07.2014 the applicant was suspended in contemplation of the departmental enquiry against him. It has come on record that the departmental enquiry was initiated against the applicant under Rule 10 of the Discipline & Appeal Rules, which prescribes the procedure for imposing minor penalties. The question arises when the enquiry contemplated against the applicant was not for the purpose of imposing any major penalty, was the suspension of the applicant really required. We have hereinbefore stated about the charges leveled against the applicant in the departmental enquiry initiated against him. None of the charge reveals any such misconduct which may require that the applicant shall be kept away from the duties and shall not be allowed to have any access to the documents in

the said office or for any other purpose. The allegations against the applicant were that he was not present at a particular day, that he did not attend the meeting in the office of Tahsildar though he was duly intimated therefor and that he showed negligent attitude or dereliction in duty in ignoring the illegal excavation and transportation of soil. None of the charge is as such for which the applicant was to be prevented from having access to his office and documents in the said office.

20. The Hon'ble Supreme Court in the case of **Union Of India & Anr vs Ashok Kumar Aggarwal, 2013 (16) SCC 147** has ruled that, "the power of suspension cannot be exercised in an arbitrary manner or without any reasonable ground or as vindictive misuse of power. The Hon'ble Supreme Court in this judgment itself has observed that the suspension order should be passed only when there is strong *prima-facie* case against the delinquent and if charges stand proved, warrant the imposition of major punishment. In the case of **Capt.M. Paul Anthony vs Bharat Gold Mines Ltd. & Anr, 1999 (3) SCC 679**, the Hon'ble Supreme Court has held that though the suspension is unqualified right of the employer, the said right cannot be exercised for trivial lapse, nor should be authority is concerned



be afflicted by "suspension syndrome" and place employees under suspension just for nothing.

21. In the instant case when enquiry initiated against the applicant itself is under rule 10 of the Discipline and Appeal Rules, it is evident that even according to the respondents, the misconduct allegedly committed by the applicant, even if proved, the applicant was liable only for minor punishment. As such, there appears no rational in the order passed by the respondents, thereby suspending the applicant.

22. For the sake of arguments, even if it is presumed that at the time when order of suspension was passed it was undecided whether the enquiry is to be conducted under rule 10 or rule 8 of the Discipline and Appeal Rules, on 10.12.2014, when the memorandum of charge was issued against the applicant under Rule 10 of the Discipline and Appeal Rules accompanied by the statement of charge, it had become clear that for the misconduct alleged against the applicant, respondent No. 3 was not intending to impose any major penalty upon the applicant. The respondents in the circumstances must have revoked the order of suspension and must have reinstated the applicant in service. Even, otherwise when the charge-sheet could not be served in the departmental

enquiry after date of his suspension within the period of 90 days, the respondents were under an obligation to review the order of suspension. Respondents have not taken any plea that the suspension order was reviewed. Respondents have also not provided any cogent reason/s for continuing the suspension of the applicant beyond the period of 90 days. The suspension of the applicant beyond the period of 90 days was thus wholly unjustified and the applicant, therefore, deserves to be treated as on duty for the further period of suspension till 30.11.2015.

23. For the reasons elaborated above, the following order is passed:-

### **ORDER**

(i) The order dated 07.12.2016 passed by respondent no. 03, as well as, the order dated 19.05.2017 passed by respondent no. 02 are quashed and set aside.

(ii) Suspension of the applicant beyond the period of 90 days from 18.07.2014 shall be deemed to have been revoked. The period between 18.10.2014 to 30.11.2015 undergone by the applicant as the period of suspension shall be treated as the period spent on duty for all purposes.

(iii) Recovery, if any, made from the pension amount of the applicant in pursuance of the order dated 07.12.2016, the amount so recovered be refunded to the applicant.

(iv) The monetary benefits payable to the applicant shall be released in favour of the applicant within 12 weeks from the date of this order.

(v) The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 10.04.2024**

ARJ O.A. NO. 443 OF 2018 (D.E.)