

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

**ORIGINAL APPLICATION NO. 602 OF 2019  
(Subject – Recovery / Pension and Pensionary Benefits)**

**DISTRICT : JALGAON**

1. **Bhaskar S/o Daulat Baviskar,** )  
Age : 64 years, Occ. : Nil, )  
R/o. 430, Wadi, At Post Paldhi, )  
Tq. Namner, Dist. Jalgaon. )
  
2. **Rajendra s/o Shankar Mali,** )  
Age : 55 years, Occ. : Nil, )  
R/o. Prakash Nagar, Jalgaon Road, )  
Jamner, Dist. Jalgaon. )
  
3. **Arjun s/o Rau Pawar,** )  
Age : 62 years, Occ. : (Retired), )  
R/o. 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, Dist. Jalgaon.)  
**(applicant died on 30.12.2021)**
  
- Arjun s/o Rau Pawar,**  
Since dead through his L.Rs.-
  
- 3-A) Smt. Rukhmini w/o Arjun Pawar, )  
Age : 56 years, Occu. : Household, )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9595155053. )
  
- 3-B) Sunil s/o Arjun Pawar, )  
Age : 40 years, Occu. :, )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9552283030. )
  
- 3-C) Kavita d/o Arjun Pawar, )  
Age : 37 years, Occu. Household, )  
R/o : 11, Bhushan Colony, )  
Behind MJ College, Jalgaon, )  
Dist. Jalgaon. Mob. : 9421636392. )

- 3-D) Dipali w/o Rajesh Rathod, )  
 Age : 35 years, Occu. : Household, )  
 R/o : 5, 2<sup>nd</sup> Floor, Municipal Staff )  
 Quarters, Senapati Bapat Marg, Dadar )  
 West, Mumbai. Mob. : 8779985747. )
- 3-E) Kiran s/o Arjun Pawar, )  
 Age : 32 years, Occu. : , )  
 R/o : 11, Bhushan Colony, )  
 Behind MJ College, Jalgaon, )  
 Dist. Jalgaon. Mob. : 9595953188. )

.... **APPLICANTS**

**V E R S U S**

1. **The Divisional Commissioner,** )  
 Nasik Division, Nasik. )
2. **The Collector,** )  
 Jalgaon. )
3. **The District Supply Officer,** )  
 Jalgaon. )

) ... **RESPONDENTS**

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**APPEARANCE** : Ms. Preeti Wankhade, Advocate for the  
 Applicants.

: Shri I.S. Thorat, Presenting Officer for  
 Respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**

**DATE** : **31.03.2022.**  
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**O R D E R**

1. By invoking jurisdiction of this Tribunal under Section 19  
 of the Administrative Tribunals Act, 1985, this Original

Application is filed challenging the impugned order of recovery dated 24.08.2018 (Annexure A-4) issued by the respondent No. 2 i.e. the Collector, Jalgaon to the extent of three applicants and further seeking direction to the respondents to extend the pension and pensionary benefits to the applicants to which they will be entitled in view of quashment of the impugned recovery order dated 24.08.2018.

2. During pendency of the present Original Application, the original applicant No. 3 i.e. Arjun s/o Rau Pawar died on 30.12.2021. His heirs and legal representatives being applicant Nos. 3-A to 3-E are being brought on record, who have continued this proceedings as right to sue survives in them after death of original applicant No. 3.

3. The facts in brief giving rise to this application are as follows:-

(a) The applicants have preferred the present common Original Application challenging one and the same action of respondent authorities. The facts and circumstances and grounds upon which the applicants are praying for the abovesaid reliefs are similar in nature and are most identical.

(b) The applicant Nos. 1 and 2 entered into the service of the Government of Maharashtra in its Revenue Department as Peon and the applicant No. 3 as Clerk. All these three applicants have retired from the service on 31.05.2013, 31.03.2015 and 31.05.2014 respectively. At the time of retirement, the applicant Nos. 1 to 3 were holding post of Godown Keeper, Supply Inspector and Naib Tahsildar respectively.

(c) It is contended that the respondent No. 3 i.e. the District Supply Officer, Jalgaon issued show cause notices to all the applicants, much after their retirement i.e. on 20.03.2017 (Annexure A-1 collectively). Thereby applicants were called upon to show cause as to why they should not be held responsible for loss caused to the Government in 30 godowns of maize in Shendurni Godown at Jamner Taluka, Dist. Jalgaon. The applicants submitted their replies (Annexure A-2 collectively). Thereby they pointed out that at the relevant time i.e. during the alleged period of 08.12.2008 to 19.06.2019 the applicant No. 1 Shri B.D. Baviskar was working at Jamner Godown and not at Shendurni Godown. Similarly, during the period of

20.06.2009 to 30.04.2010 the applicant No. 2 Shri R.S. Mali was working at Jamner Godown and not at Shendurni Godown and during alleged periods of 01.05.2010 to 02.05.2011 and 18.05.2011 to 09.06.2011 the original applicant No. 3 Shri A.R. Pawar was working at Jamner Godown and not at Shendurni Godown. The alleged recovery is in respect of loss caused to the Government in respect of stored coarse grains, which was stored in Shendurni Godown. In order to substantiate their postings at the relevant periods, the applicants have also relied upon the posting orders and charge reports at Annexure A-2 collectively.

(d) It is further submitted that the alleged loss is clearly attributable to the persons handling grains and the recovery to that extent is feasible against such persons and / or their sureties.

(e) It is further submitted that the respondents issued show cause notices only after retirement of the applicant and in respect of alleged incidents beyond four years of the respective dates of retirement of the applicants and therefore, the action of recovery and withholding pension

and pensionary benefits is in contravention of the provisions of Rule 27(2)(b)(i) and (ii) of the Maharashtra Civil Services (Pension) Rules, 1982.

(f) It is further submitted that the respondent No. 2 issued impugned order of recovery dated 24.08.2018 (Annexure A-4) thereby directing recovery amount of Rs. 1,68,734/-, 3,13,892/- and 3,88,257/- respectively from the applicant Nos. 1, 2 and 3. The said recovery is not sustainable in the eyes of law, as the same is issued in contravention of the provisions of Rule 27(2)(b)(i) and (ii) of the Maharashtra Civil Services (Pension) Rules, 1982. Moreover, the alleged loss is not attributable to the applicant Nos. 1 to 3, as none of them was working at Shendurni Godown and they were also not having additional charge of Shendurni Godown. In fact, as per the record, the charge of Godown Keeper during the relevant period was given to one Shri M.R. Kumbhar and surprisingly his name does not find place in the impugned recovery order. In these circumstances, the impugned order of recovery is liable to be quashed and set aside and the applicants are entitled to get release of their pensionary benefits.

4. The affidavit in reply on behalf of respondent Nos. 1 to 3 is filed by one Shri Prashant Jayant Kulkarni, working as Assistant District Supply Officer, in the office of Collector, Jalgaon, District Jalgaon, thereby he denied all the adverse contentions raised in the present Original Application. It is specifically contented that as per the officer order dated 24.08.2018, two orders were issued for recovery from the employees. One order is for Godown at Shendurni (Tq. Jamner) and another for Jamner Godown. It is further contented that the applicants were working as Godown Keeper in Jamner Taluka during the relevant period. Heavy loss was occurred in respect of stored coarse grains during the relevant periods, when the applicants were working as Godown Keepers in Godowns at Jamner Taluka. Initially show cause notices were issued to the applicants in the year 2012, to which they submitted their replies dated 17.04.2012. Thereafter, recovery orders were issued by the Collector, Jalgaon on 04.02.2016. The applicants preferred appeal before the Divisional Commissioner, Nashik Division, Nashik. The Divisional Commissioner, Nashik Division, Nashik ordered fresh enquiry. In view of the same, after conducting fresh enquiry, show cause notices were issued to the applicants on 20.03.2017. After taking on record replies of the applicants and making enquiry,

the impugned order of recovery is issued, which is legal and proper. Some of the pensionary benefits are already released to the applicants. In view of the same, the impugned order of recovery is legal and proper and therefore, the Original Application is liable to be dismissed.

5. I have heard the arguments at length advanced by Ms. Preeti Wankhade, learned Advocate for the applicants on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

6. The applicants have denied their liability in respect of recovery orders contenting that at the relevant time none of them was working or holding the charge of the post of Godown Keeper at Shendurni Godown. When the applicants specifically denied and also produced documents on record at Annexure A-2 collectively showing that they were posted at Jamner Godown at the relevant time, heavy burden was upon the respondents to establish with documentary evidence that at the relevant period the applicant Nos. 1 to 3 were working as Godown Keeper or holding charge of that post at Shendurni Godown. However, no documentary evidence is adduced by the respondents. In these circumstances, bare statement in the affidavit in reply of the

respondents would not inspire confidence to hold that at the relevant period, the applicants were working or holding charge of the post of Godown Keeper at Shendurni Godown. In view of the same, it is difficult to fasten the responsibilities or liability upon the applicants for any alleged loss caused to the Government in respect of stored coarse grains.

7. That apart, the applicants have come out with a contention that the alleged disciplinary action is initiated by the respondents after their respective dates of retirement by issuing show cause notice dated 20.03.2017 (Annexure A-1 collectively), to which the applicants submitted their replies dated 15.04.2017, 15.04.2017 and 12.04.2017 respectively in detail. Thereby they denied that they were working at Shendurni Godown at the relevant time. Moreover, they have also contended that alleged disciplinary action was initiated against them was of the period beyond four years of their respective dates of retirement.

8. In this regard, the respondents have come out with a case that disciplinary action was initiated against the applicant in the year 2012 in respect of Shendurni Godown, however, the respondents have not produced any documentary evidence to show that in fact they initiated action in any form either by

issuing show cause notice or otherwise in the year 2012. It seems that the respondents are mixing up the issues of Jamner Godown and Shendurni Godown. No documentary evidence is produced by the respondents that action was initiated in the year 2012 i.e. before retirement of the applicants in respect of Shendurni Godown.

9. In this regard, the provisions of Rule 27(2)(a) and (b)(i) & (ii) of the Maharashtra Civil Services (Pension) Rules, 1982 would be relevant and therefore, it is reproduced as under :-

***“27. Right of Government to withhold or withdraw pension.***

(1) .....

(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 [Appointing Authority],*

*(ii) shall not be in respect of any event which took place more than four years before such institution, and ”*

10. In the background of the abovesaid Rule, if the facts of the present case are considered, it is seen that the relevant period of the applicant No. 1 is shown as 08.12.2008 to 19.06.2019. The relevant period of the applicant No. 2 is shown as 20.06.2009 to 30.04.2010. The relevant period of applicant No. 3 is shown as 01.05.2010 to 02.05.2011 and 18.05.2011 to 09.06.2011. The said periods are beyond four years of the respective dates of the retirement of the applicant Nos. 1 and 2, which are 31.05.2013 and 31.03.2015. In view of the same, the recovery order in respect of applicant Nos. 1 and 2 directly comes into the teeth of the provisions of the Rule 27(2) (b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982. So far as the applicant No. 3 is concerned, the alleged event is within the period of four years of his retirement.

11. However, from the documents on record, it is crystal clear that the respondents have not produced on record any

documentary evidence to show that at the relevant time, the applicant No. 3 was working as Godown Keeper or holding charge of that post at Shendurni Godown. The applicants have categorically stated that during the said period they were working at Jamner Godown and not at Shendurni Godown. In view of the same, the impugned order of recovery dated 24.08.2018 (Annexure A-4) issued by the respondent No. 2 i.e. the Collector, Jalgaon against the applicant Nos. 1 to 3 is not at all sustainable in the eyes of law and no any loss can be attributed to the applicants in respect of Shendurni Godown. In view of above, the impugned order of recovery is liable to be quashed and set aside and consequently the applicants would be entitled for getting released their pensionary benefits. I therefore, proceed to pass following order :-

**ORDER**

The Original Application is allowed in following terms :-

- (A) The impugned order of recovery dated 24.08.2018 (Annexure A-4) issued by the respondent No. 2 i.e. the Collector, Jalgaon to the extent of the applicant Nos. 1 to 3 is hereby quashed and set aside.

- (B) In view of the quahsment of recovery order dated 24.08.2018 (Annexure A-4), the respondents are directed to process the case of the applicants for regular pension and pensionary benefits, which are due to the applicants in accordance with law and to release withheld pensionary benefits, if any at the earliest and in any case, within a period of three months from the date of this order.
- (C) There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 31.03.2022**

**(V.D. DONGRE)**  
**MEMBER (J)**

**KPB** S.B. O.A. No. 583 of 2019 VDD Recovery/ Pension and pensionary benefits