

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.789 OF 2017**

**DISTRICT : PUNE**

**Sub.:- Compulsory Retirement**

Shri Shivling Keshav Pawar )  
Ex. Assistant Director (Silk), )  
R/o. A-202, Surabhi Park, Nagardas Road, )  
Aundh, Pune – 7. )...**Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Additional Chief Secretary )  
Co-operation, Marketing and Textile )  
Department, having office at Mantralaya, )  
Mumbai - 400 032. )
- 2) The Deputy Secretary, )  
Office of the Hon'ble Governor of )  
Maharashtra, having office at Rajbhawan, )  
Malbar Hill, Mumbai – 400 035. )
- 3) The Director, Silk Directorate, (M.S.) )  
Silk Directorate (M.S.) having office at )  
Administrative Building No.2, 6<sup>th</sup> floor, )  
B-Wing, Commissioner Office Campus, )  
Civil Lines, Nagpur – 1. )...**Respondents**

**Shri B.A. Bandiwadekar, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : Justice Mridula Bhatkar, Chairperson  
Shri Debashish Chakrabarty, Member-A**

**RESERVED ON : 25.11.2024**

**PRONOUNCED ON : 28.03.2025**

**PER : Shri Debashish Chakrabarty, Member-A**

**J U D G M E N T**

1. The Applicant who was working as 'Assistant Director [Silk]' prays that Respondents be directed to quash and set aside the Order dated 13.05.2016 passed by Respondent No.1 whereunder he imposed punishment of 'Compulsory Retirement' of Applicant and recovery of Rs.33.07 lakhs as per the Circular dated 30.11.1978 (Exhibit-A) issued by General Administration Department of State Government, so also the order dated 08.08.2016 (Exhibit-B) passed by Respondent No.2, thereby rejecting the 'Appeal' of Applicant dated 09.06.2016 and accordingly, Applicant be granted all consequential service benefits as if the impugned orders had not been passed. Further, Applicant prays that Respondent be directed to quash and set aside Orders dated 04.01.2017 and 06.02.2017 passed by Respondent No.3 whereunder he has ordered recovery of Rs.33.07 lakhs from Applicant and if necessary through the retirement benefits payable to Applicant.

2. Learned Counsel for Applicant has submitted that Applicant is B.Sc. in Agriculture and Masters in Sericulture. Learned Counsel has submitted that Enquiry Officer has submitted his report of enquiry on 26.09.2008 (Exhibit-C). Learned Counsel has submitted that by order of punishment dated 18.05.2010 passed by Respondent No.1 imposing punishment upon Applicant of dismissal from service and recovery of Rs.33.07 Lakhs. Learned Counsel has preferred 'Appeal' before His Excellency the Governor which was forwarded to Chief Secretary to Government of Maharashtra by letter dated 23.03.2011 (Exhibit-E). Thereafter, said 'Appeal' was heard by Hon'ble Minister for School Education and after giving an opportunity of personal hearing to the Applicant, the decision was forwarded to Respondent No.1 who communicated the said decision to Applicant by Order dated 10.01.2012 wherein the punishment was reduced from 'Dismissal' to 'Compulsory Retirement'. However, the order of recovery was maintained. Being aggrieved by punishment Order dated 18.05.2010 and decision on

'Appeal' dated 10.01.2012, the Applicant approached Hon'ble Tribunal by filing O.A.No.260/2012.

3. The Director of Sericulture initiated proceedings by framing 5 charges against Applicant. Learned Counsel has submitted that after he received 2<sup>nd</sup> charge sheet in Departmental Enquiry, he had filed O.A.No.809/2009 at MAT, Nagpur Bench, Nagpur. However, same was transferred to MAT, Principal Bench at Mumbai and re-numbered as 'O.A.No.987/2010'. In the said OA, the Applicant had challenged initiation of DE against him on various grounds available under the law. O.A.No.987/2010 with O.A.No.260/2012 was decided by this Tribunal by Order dated 08.09.2015.

4. Learned Counsel has submitted that Orders passed by 'Appellate Authority' and 'Enquiry Officer' were set aside and matter was remanded with directions. The reasons for remand is stated from the stage of submission of Enquiry Officer Report dated 26.09.2008 as 'Disciplinary Authority' was not Director, but was Government as per the earlier order. The order of Disciplinary Authority i.e. Additional Chief Secretary, Co-operation, Marketing and Textile Department dated 13.05.2016 (Exhibit-A) stating that recovery of Rs.33.07 lakhs is as per GR dated 30.11.1978. The said order was challenged in 'Appeal' before His Excellency the Governor. By letter dated 17.06.2016 (Exhibit-J) addressed to Applicant which was issued by Deputy Secretary to Governor (Admin.), it is stated that though it is review, it is mentioned in the said order as it be treated as Order passed by 'Appellate Authority' in 'Appeal' thereby confirming order of Disciplinary Authority. Learned Counsel has submitted that His Excellency i.e. 'Appellate Authority' exercises the powers under Section 25(A) of 'MCS (Discipline and Appeal) Rules 1979'. Learned Counsel has pointed out Order dated 08.09.2015 passed by this Tribunal in O.A.No.987/2010 with O.A.No.260/2012 wherein at Paragraph 10 observations were made by Tribunal has remanded the matter has attained finality and is binding on this Tribunal. Learned Counsel has

submitted that competency on point of issuance of Charge-sheet as in earlier Order, it was held by Division Bench that Charge-sheet was issued by Competent Authority.

5. At the outset, it is submitted that near about Rs.33.07 lakhs is recovered from Applicant by Respondents.

6. Learned Counsel for Applicant submitted that initially, by Order dated 18.5.2010, the Applicant was dismissed from service and in 'Appeal', it was reduced to that of 'Compulsory Retirement'.

7. Learned Counsel further submitted that there is no charge of recovery of Rs.33.07 lakhs. Learned counsel submitted that in between the Applicant retired on 31.5.2014.

8. Learned Counsel submitted that Applicant should have been imposed with punishment of reduction in pension under 'Rule 27' of the 'MCS (Pension) Rules 1982', once the departmental enquiry is rolled-over after the retirement of Applicant. This is the first flaw raised by Applicant. Learned Counsel submitted that Applicant cannot be compulsorily retired, however, he can be imposed with punishment of reduction in pension.

9. Learned Counsel submitted that the charge with recovery is not framed in the Charges, yet recovery of Rs.33.07 lakhs is imposed.

10. Learned Counsel submitted that the Government is 'Competent Authority' to issue Charge-sheet and initiate enquiry and to punish Applicant. In the present case, the Charge-sheet is issued by Director, Silk Directorate on 22.6.2004, who is not 'Competent Authority'.

11. Learned Counsel further submitted that by Order dated 26.09.2008, the Enquiry Officer has finally held that though Applicant is

found partially guilty, however, as there is irregularity in issuing Charge-sheet to Applicant, cannot be held guilty.

12. By Order dated 13.5.2016, the Order of 'Compulsory Retirement' was imposed on Applicant after his retirement on 31.5.2014.

13. Learned Counsel submitted that 2<sup>nd</sup> Show Cause Notice was not given to Applicant after holding him guilty with regard to quantum of punishment.

14. Learned Counsel submitted that in Notice dated 31.12.2015, the 'Disciplinary Authority' has not conveyed tentative reasons of disagreement, which should be germane to point qua to each of the charges.

15. The learned Advocate for Applicant points out Para 23 of Judgment dated 08.09.2015 of OA No.987/2010 with OA No. 260/2012, which is as under :-

**“23.** It is very clear that the alleged defalcation of the amount of Rs.33 lakhs was not the subject matter of the charge. There is no provision pointed out whereunder an attachment could be levied by the administrative authorities in such proceedings and yet in a mere mechanical manner, the impugned order was made. There is absolutely no reasoning given out for such a course of action. In fact, the impugned order does not even show that the material adduced by the Enquiry Officer was perused at all. We are quite conscious of the fact that on the practical side, the administrative authorities may not be that well versed in the matter of writing administrative, quasi-judicial or judicial orders and even if they are found lacking in those attributes, it is not an adverse commentary on their competence. However, it is equally true that they are senior officers in their own field and they discharge momentous duties. Form apart, but in substance at least basics must clearly come out from their orders. Here in the first place, the Director arrogated to himself the role of the disciplinary authority and the actual disciplinary authority, merely acted in a trance to mechanically endorse the views of the Director without mentioning it in so many words. This is a total flouting of the elementary principles of the administrative law and even as we are conscious of the fact that in these proceedings, the procedure is considerably relaxed when compared with the trials in the civil and criminal matters, but then, to even allow such a complete disdainful ignorance of the basic principles is not something that can pass muster with quasi-judicial test.”

16. The learned Advocate for Applicant on the point of competency of the authority issuing the Charge-sheet itself relies on Para 27 of the earlier order, which is as under :-

**“27.** It must have been observed that while reading the report of the Enquiry Officer, we have not even tried to evaluate the evidence of the 12 witnesses that were examined before him. We have taken the evidence as it is. We have also referred to the conclusions drawn by him and taken them as they were. When it comes to the Director, it is clear that he lacked in a power of a disciplinary authority and in fact, there were aspersions and even allegations against him in the report of the Enquiry Officer and in whatever form, the Government being the disciplinary authority ultimately acted, the impugned order does not show as to what action, if any, they contemplated or took against the then Director.”

17. The learned Advocate for Applicant also relies on Para 33 of the earlier Order, which is as under :-

**“33.** All the proceedings including the charge-sheet being the subject matter of OA 987/2010 (Bombay) being OA 809/2009 (Nagpur) stand hereby quashed and set aside and that OA is allowed with no order as to costs.”

18. The learned Advocate for Applicant points out Para 2 of letter dated 13.05.2016, which is as under :-

“मा. न्यायाधिकरणाच्या निर्णयातील परिच्छेद क्र. ३४ नुसार श्री. पवार यांच्या मूळ शिक्षेचे दिनांक १८ मे, २०१० चे आदेश व त्यांनी मा. राज्यपाल यांच्याकडे केलेल्या अपिलाच्या अनुषंगाने काढण्यात आलेले दिनांक १० जानेवारी, २०१२ चे आदेश हे दोन्ही शिक्षेचे आदेश रद्द केले आहेत. मा. न्यायाधिकरणाने शासनाला श्री. पवार यांचा चौकशी अहवाल रेशीम संचालनालयाकडून शासनास प्राप्त झाला त्या टप्प्यापासून पुन्हा तपासण्याचे निदेश दिले आहेत.”

19. The learned Advocate for Applicant is challenging the Charge-sheet, as it is not issued by ‘Competent Authority’ but it is issued by Director, who is not competent. The Government is the ‘Competent Authority’ to issue Charge-sheet.

20. While arguing this matter, the learned Advocate for Applicant cannot raise ground that Charge-sheet was issued by the Authority which was not competent to issue. On the said point, the learned Advocate for Applicant wants to rely on findings of Judgment in OA No.687/2010 and OA No.987/2010 delivered by the Division Bench of

this Tribunal on 08.09.2015 on the point of competency of the authority who issued the Charge-sheet. However, that order was challenged by Government before Hon'ble High Court. Because in the said Judgment, the Tribunal did not quash and set aside the Charge-sheet on the ground of want of competence, but remanded the matter to 'Disciplinary Authority' for acting in accordance herewith from the date of receipt of report of Enquiry Officer dated 25/26<sup>th</sup> September, 2008 in DE No.05/2004 by putting deadline of 31.12.2015. However, that Order was challenged by Government before Hon'ble High Court. Time was extended on 28.04.2016. So, Applicant gave reply on 03.05.2016 and thereafter 'Final Order' was passed by 'Disciplinary Authority' on 13.05.2016. The Order passed in **OA No.687/2010 & OA No.987/2010** is as under :-

"The order made by the State of Maharashtra in the Cooperation, Marketing and Textile Department No. रेशीम-१४०८/प्र.क्र.२५४/रेशीम कक्ष, मंत्रालय, dated 18<sup>th</sup> May, 2010 (Annexure 'A-21', Page 191 of the paper book) and the appellate order dated 10th January, 2012 (Annexure 'A-25', Page 218 of the paper book) both stand quashed and set aside. The matter stands remanded to the disciplinary authority to act in accordance herewith from the stage of the receipt of the report of the Enquiry Officer dated 25/26<sup>th</sup> September, 2008 in D.E. No.5/2004. The disciplinary authority shall after giving an opportunity of being heard to the Applicant shall consider the whole matter afresh in accordance with the law and observations made herein. The disciplinary authority shall decide the matter on or before 31st December, 2015. The Applicant shall appear before the disciplinary authority on 21<sup>st</sup> September, 2015 on which date, the further course of action shall be decided, so that the matter must be decided finally by 31<sup>st</sup> December, 2015. The disciplinary authority shall within one week from his order inform the same to the Applicant. If the time limit herein prescribed is not kept, the Applicant shall stand exonerated and the charge shall be taken as quashed and set aside without any further reference to this Tribunal. In that case, the Applicant shall be entitled to all pensionary and retiral benefits as if no DE took place against him. In case, the Applicant was aggrieved by the order of the disciplinary authority, he shall prefer an appeal within the prescribed time limit and if no time limit is prescribed, then within four weeks thereof. In case the appeal is preferred, the same shall be decided within two months thereof, failing which the detailed directions given just now in relation to the disciplinary authority shall apply to the appellate authority as well in toto. The Original Application No.260/2012 is allowed in these terms with no order as to costs."

21. Thus, the enquiry conducted by Enquiry Officer was not quashed and set aside and the said portion of Order was not challenged by the Applicant before Hon'ble Bombay High Court and he has accepted the said Order of remand from the stage of sending that matter before the Disciplinary Authority by the Enquiry Officer after submitting the Enquiry Report. Now, at this stage, the Applicant is estopped from raising this objection and also relied on the observations and reasoning given by this Bench in the said Judgment.

22. The learned Advocate for Applicant submits that Charge-sheet dated 03/05<sup>th</sup> February, 2015 was set aside and quashed in OA No.987/2010 and Charge-sheet issued dated 23.06.2004 which was earlier issued.

23. The learned Advocate for Applicant on the point of competency relied on Para 17 of Judgment in ***State of Tamil Nadu Vs. Pramod Kumar, IPS & Anr. Reported in 2019(1) SLR 41 (SC)*** on the point that approval of 'Competent Authority' i.e. 'Disciplinary Authority' for initiation of disciplinary proceedings and so also its approval in case of issuance of 'Charge Memo' is also required. In the said case, it was pertaining to 'Central Civil Service (Classification, Control & Appeal) Rules 1965' were considered and especially 'Rule 14(3)' was interpreted and it was held that 'Disciplinary Authority' shall "draw-up or cause to be drawn up" the charge memo and it was held that if any authority other than 'Disciplinary Authority' is permitted to draw memo, the same would result the underlying protection under Article 311(2) of the Constitution of India.

24. The learned Advocate for Applicant submits that in the present case, the memo should be given by Government, but it is given by Director.

25. The learned Advocate for Applicant then relied on the point of nature of punishment on Para 3 of the Judgment of Hon'ble High Court in ***Punjab & Haryana Vs. Amrik Singh reported in 1995 Supp (1) SCC 321***. The learned Advocate for Applicant submitted that as the Applicant retired on 31.05.2014, his case is to be covered under Rule 27, and therefore, no major penalty can be imposed except deduction in pension. The learned Advocate for Applicant further submitted that Applicant should not have been removed when he was already retired. No positive findings recording grave misconduct or negligence in discharge of duties.

26. The learned Advocate for Applicant further relied on Judgment of Hon'ble Supreme Court in ***H.L. Gulathi Vs. Union of India & Ors. reported in (2015) 12 SCC 408***. The learned Advocate for Applicant submitted that in Paras 14, 15 and 21, the findings is to be given about misconduct or negligence and then the order can be passed. There is no charge of ill-motive on the part of Applicant.

27. The learned Advocate for Applicant relied on the Judgment of Hon'ble Supreme Court in ***D.V. Kapoor Vs. Union of India reported in (1990) 4 SCC 314***, wherein it is held that no gratuity can be withheld as a measure of punishment.

28. The learned Advocate for Applicant points out the Judgment of Hon'ble Supreme Court in ***Yoginath D. Bagde Vs. State of Maharashtra & Anr.: (1999) 7 SCC 739*** on the point of manner in which disagreement of 'Disciplinary Authority'. The Show Cause Notice was sent by 'Disciplinary Authority' on 31.12.2015 i.e. after receiving the Enquiry Report from the 'Enquiry Officer' on this point. Para 31 of ***Yoginath D. Bagde*** (cited supra) reads as under :-

“31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and

the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under 'Article 309' of the Constitution."

29. The learned Advocate for Applicant points out Exb.'R' which is Show Cause Notice sent by Mr. V.R. Thakur, Under Secretary, State of Maharashtra on 31.12.2015 thereby stating tentative reasons for disagreement.

30. The learned Advocate for Applicant further points out Exb.'M' which impugned Order dated 13.05.2016.

31. In Para 35 of Affidavit-in-Reply dated 21.03.2018 of Damodar A. Kulkarni, Deputy Secretary, Cooperation Marketing & Textile, Mantralaya, Mumbai, it is mentioned that Applicant had submitted his reply on 03.05.2016. The said Para 35 reads as under :-

**"35.** With reference to contents of paragraph No. 6.39, I say as follows: It is fact that applicant is failed to submit his reply within 10 days time that is within date 10.01.2016 instead of that applicant submitted his reply on dated 03.05.2016. So vide communication dated 10.5.2016 the Respondent No.1 informed the Applicant that his aforesaid reply dated

03.05.2016 cannot be taken into consideration, stating therein that on account of deadline fixed by the Hon'ble Bombay High Court namely that of 31.05.2016 that the Respondent No.1 decided to take into consideration the earlier letter of the Applicant dated 12.01.2016 (actually received on dated 18.01.2016), a copy whereof is annexed and marked as Exhibit R-6.”

32. In Para 6.39, the Applicant has averred that he submitted reply on 03.05.2016 to Respondent No.1. However, the said reply was not taken into consideration and this was informed by the Government by its letter dated 10.05.2016 which is at Exb.'T'. This letter is given by Shri V.R. Thakur, Under Secretary and reference is given of the letter dated 03.05.2016 where it is referred that by letter dated 31.12.2015, the reasons were communicated for disagreement by the 'Disciplinary Authority' with the findings given by Enquiry Officer and 10 days' time was given for reply. However, Applicant did not file reply, but after 15 days, the delinquent officer by letter dated 12.01.2016 has informed that he did not find it necessary as of them to file the reply to the notice of disagreement issued by 'Disciplinary Authority', and therefore, as the Government was on the last stage of approval, the reply sent by Applicant on 03.05.2016 was not considered.

33. The learned Advocate for Applicant submitted that letter dated 10.05.2016 is written by Mr. V.R. Thakur, Under Secretary informing that Respondents will not consider his reply dated 03.05.2016 because he has given one letter on 06.01.2016 as the matter is subjudice.

34. In Para Nos.9 & 11 of Judgment passed in OA 621/2015 on 2<sup>nd</sup> March, 2016, this Tribunal has made stigmatic observations about the behavior of Mr. V.R. Thakur, Under Secretary.

35. In the Order dated 18.05.2010 of 'Disciplinary Authority', it was directed that loss to Government in the tune of Rs.33.07 Lakh was to be recovered by way of Attachment of the Property of the Applicant. This

amount is recovered as per Circular dated 30.11.1978 (Page No.68 of OA).

36. The learned Advocate for Applicant submitted that 'Audit Report' was never brought on record and Applicant has never given opportunity to go through 'Audit Report' to meet alleged fact of loss of Rs.33.07 Lakh.

37. The Applicant had submitted his reply on 03.05.2016 which should have been duly considered before the 'Disciplinary Authority' passed Order dated 13.05.2016. However, Mr. V.K. Thakur, Under Secretary, Textile Department displayed cavalier attitude when he informed Applicant that it was not necessary to consider his reply submitted on 03.05.2016, as Applicant had earlier submitted reply on 06.01.2016. Therefore; 'Arbitrary Exercise' of 'Statutory Powers' becomes attributable as specific directions in 'Judgment' dated 08.09.2015 in O.A.No.987/2010 with O.A.No.260/2012 were infringed by the 'Disciplinary Authority'. Further; the 'Disciplinary Authority' by passing 'Order' dated 13.05.2016 without considering the reply dated 03.05.2016 of Applicant had committed out right contravention of 'Principles of Natural Justice'. Hence, the 'Order' dated 13.05.2016 passed just one day after Applicant was informed by Mr. V.K. Thakur, Under Secretary, Textile Department on 12.05.2016 clearly smacks of deep rooted 'Prejudice' and 'Bias' on part of 'Disciplinary Authority'. Further; even if such an action was required to be taken by 'Disciplinary Authority' before deadline of 31.05.2016, there still was enough time on hand to give Applicant adequate opportunity of being heard in person; all more because 'Disciplinary Authority' had to necessarily consider the whole matter afresh in accordance with law and backdrop of detailed observations recorded in 'Judgment' dated 08.09.2015 in O.A.No.987/2010 with O.A.No.260/2012.

38. The Applicant had subsequently challenged 'Order' dated 13.05.2016 of 'Disciplinary Authority' by filing 'Review Petition' on

09.06.2016, but it was just examined and rejected as Applicant had not brought out any new points or fact or material in the 'Review Petition'.

39. The Applicant has thereafter filed this O.A.No.789/2017 on 16.08.2017 as 'Review Application' under 'Rule 25(A)' of 'Maharashtra Civil Services (Discipline and Appeal) Rules, 1979' was simplicitor examined and rejected and so conveyed on 08.08.2016 to Textile Department. The Applicant in this OA No.789/2017 has prayed that 'Order' dated 13.05.2016 of 'Disciplinary Authority' including for Attachment of Propriety and recovery of Rs.33.07 lakhs towards alleged loss to State Government which was initiated by 'Director of Sericulture, Nagpur' be quashed and set aside and Applicant be granted all consequential 'Service Benefits'.

40. The 'Order' dated 13.05.2016 of 'Disciplinary Authority' again reiterates that Rs.33.07 lakhs be recovered from Applicant. However, recovery of Rs.33.07 Lakhs only from Applicant could have been directed to be done 'Disciplinary Authority' only if Textile Department had been so directed do by way of specific recommendations made in report of 'Public Accounts Committee' of State Legislature. Further; directions given by 'Order' dated 13.05.2016 by 'Disciplinary Authority' to recover Rs.33.07 Lakhs from Applicant was completely against grain of observations recorded in 'Para 8' of 'Judgment' dated 08.09.2015 in O.A.No.987/2010 with O.A.No.260/2017. Imperative in the above mentioned context is to observe that office of 'Principal A.G. (Audit), Maharashtra' had by letter dated 09.04.2007 had only forwarded 'Statement of Facts' to Textile Department. The relevant extracts of this 'Statement of Facts' are reproduced below for greater contextual clarify about the case of Applicant :-

*"Scrutiny of records (March 2006) of Asstt. Director, Regional Sericulture Office, Pune revealed that while working out the amount recoverable from the agencies, the Departmental Committee considered the cost of quantity of silk produced but not returned by the private agencies against the raw material supplied and the labour charges due to the agencies were*

*considered as paid and deducted from the amount recoverable from them. In fact, in such cases the cost of raw material supplied but not used or returned should have been considered for recovery. However, this has not been done. Thus, due to the incorrect calculation of amount recoverable from private agencies, the total loss works out to Rs.33.89 lakh. In addition the amount outstanding for recovery by the department Rs.24.07 lakh.”*

41. The ‘Order’ dated 13.05.2016 of ‘Disciplinary Authority’ about recovery of Rs.33.07 lakhs was put into action by ‘Director Sericulture, Nagpur’ who could not have proceeded to do so by ‘Attachment of Property’ only of Applicant when viewed against the backdrop of ‘Statement of Facts’ dated 09.04.2007 from where it was extracted and incorporated in the initial ‘Order’ passed by ‘Disciplinary Authority’ on 18.05.2010. However, pertinent to observe here is that ‘Statement of Fact’ dated 09.04.2007 was not the same as an ‘Audit Para’ which had been recorded by ‘Principal AG (Audit) Maharashtra’ and which after Views/Comments were received from Textile Department had matured into recoverable loss to State Government and included in the ‘CAG Report’ of Textile Department. The ‘CAG Report’ of Textile Department would then have been taken up for scrutiny and then recommendations for recovery of Rs.33.89 Lakhs along with outstanding recovery of Rs.24.07 Lakhs would have been made by Public Account Committee.

42. The ‘Attachment of Property’ effected by ‘Director of Sericulture, Nagpur’ was under GAD Circular dated 30.11.1978 which is in respect of ‘Misappropriation of Government Money’. Nonetheless, it was necessary to observe its intended objectives as is highlighted by the procedure to be observed for it to be continued beyond 3 months :-

“Government is pleased to bring to the notice of all disciplinary authorities that necessary action for attachment of the delinquent's property can be taken under section 3(1) of the Criminal Amendment Ordinance, 1944. The scheduled offences referred to in section 3(1) include offences punishable under section 406, 408 or section 409 of the Indian Penal Code. The attachment is effective initially for 3 months only, but in case cognizance of the offence is taken or the State Government moves the District Judge, the attachment continues further and the

property is applied by the District Judge towards reimbursement of the loss, sustained by the Government and the fine imposed by the Court.”

43. The ‘Order’ dated 13.05.2016 of ‘Disciplinary Authority’ which reiterated recovery of Rs.33.07 lakhs relating to acts of commission and omission of certain ‘Private Agencies’ but it was pinned only on Applicant.

44. The initial ‘Order’ dated 18.05.2010 of ‘Disciplinary Authority’ was without any legal sanctity as charge for recovery of Rs.33.07 Lakhs from Applicant was never specifically included in ‘Articles of Charges’ framed by ‘Disciplinary Enquiry’ and no evidence was ever produced by Textile Department that such recovery from Applicant was permissible based on specific recommendation made by ‘Public Accounts Committee’ which is ‘Constitutional Authority’ in matters of discrepancies in ‘Government Revenues’ and ‘Government Expenditures’ as has been lucidly observed in ‘Judgment’ of Hon’ble Supreme Court of India in **Arun Kumar Agrawal Vs. Union of India & Ors. decided on 9th May, 2013** which had dealt with the issue of recovery of losses due to excess payment of 100% ‘Royalty’ and ‘Cess’ by ‘ONGC’. The Hon’ble Supreme Court of India has made following pertinent observations regarding sanctity of ‘CAG Report’; role of ‘PAC’ and meaning of Action Taken Report prepared by ‘Appropriate Governments’ in matters relating to ‘recovery of Government Dues’. The contents of Paras 45, 46, 53, 54, 55 and 56 thus are pertinent and reproduced below :-

*“45. The petitioner has also sought a direction to CAG/Government of India to calculate the alleged losses from payment of 100% royalty and cess by ONGC before the Cairn-Vedanta deal and for a direction to ONGC/Government to recover the excess royalty paid by ONGC from Cairn India.*

*46. CAG may be right in pointing out that public monies are to be applied for the purposes prescribed by Parliament and that extravagance and waste are minimized and that sound financial practices are encouraged in estimating and contracting, and in administration generally.*

**53.** *Action Taken Reports (ATRs) are then required to be made out by the ministries. Speaker has the power to issue directions under the rule and procedure. Direction 102 requires the Government to, as early as possible, furnish the PAC with a statement showing the action taken on the recommendations of the PAC report. The Parliament has before it not only the report of the CAG, the report of the PAC in the first instance drawn up after hearing the view of the ministries, the Action Taken Report including the replies of the Government and the further comments of the PAC on the replies of the Government.*

**54.** *We have referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG report is always subject to scrutiny by the Parliament and the Government can always offer its views on the report of the CAG.*

**55.** *The question that is germane for consideration in this case is whether this Court can grant reliefs merely placing reliance on the CAG's report. The CAG's report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for the Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's report.*

**56.** *We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective ministries have to offer on the CAG's report. The ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case."*

45. The grounds of competence of 'Director of Sericulture, Nagpur' to have initiated the 'Departmental Enquiry' cannot now be belatedly re-examined as another ground to challenge validity of 'Order' dated 13.05.2016 by 'Disciplinary Authority'; as the case of Applicant has long gone past such stage after detailed 'Judgment' dated 08.09.2015 in O.A.No.898/2010 with O.A.No.260/2012. Further, the 'Attachment of Property' could have been confirmed beyond 3 months only by observing the provisions of 'GAD' Circular dated 30.11.1978. Hence, against the backdrop of finality achieved by rejection of 'Review Petition' filed by Applicant we are of the opinion that in normal course refrain would be required to be exercised in 'Judicial Review' about the 'Quantum of Punishment' which is of 'Compulsory Retirement' subsequently imposed on Applicant by 'Order' dated 10.01.2012 by the 'Appellate Authority'.

Nonetheless it is necessary to observe that Applicant thereafter became entitled to receive 'Compulsory Retirement Pension' under 'Rule 100' of 'Maharashtra Civil Services (Pension) Rules, 1982' and even now continues to be so after passing of 'Order' dated 13.05.2016 of 'Disciplinary Authority'.

46. The punishment of 'Compulsory Retirement' awarded to Applicant by 'Order' dated 13.05.2016 by 'Disciplinary Authority' stands weakened by the fact it was done upon flagrant violation of 'Principles of Natural Justice' and with blindfolded approach by Textile Department right from beginning not to sincerely implement in letter and spirit the directions in 'Judgment' dated 08.09.2015 in O.A.No.898/2010 with O.A.No.260/2012.

47. The law relating to punishment of 'Compulsory Retirement' awarded in 'Public Interest' is no longer '*res-integra*' as such provisions in 'Service Law' have been principally made to weed out 'Dead Wood' from amongst Government Servants. Further; although order of 'Compulsory Retirement' of Government Servants are not considered penal in nature, still they can be subjected to 'Judicial Review' *inter-alia* (i) When it is 'Arbitrary', (ii) When it is without 'Application of Mind', (iii) When there is 'No Evidence'. The case of Applicant undoubtedly stands at the broad intersection of these determining factors which are of material consideration to necessitate direct intervention in 'Judicial Review' of order of 'Compulsory Retirement'. The ends of justice seem to have eluded the Applicant also because 'Review Application' was simplicitor only examined and rejected without passing 'Speaking Order'. Hence, the following Order.

### **ORDER**

- (i) The Original Application No.789/2017 is Partly allowed.

- (ii) The 'Action for Recovery' of Rs.33.89 Lakhs arising out of 'Incorrect Calculation' as mentioned in 'Statement of Facts' dated 09.04.2007 and being directed as recoverable from 'Private Agencies' and not from Applicant is thus quashed and set aside.
- (iii) The 'Attachment of Property' of Applicant could not have been sustained beyond initial period of 3 months without stringent observance of provisions of GAD Circular dated 30th November, 1978 and so it is quashed and set aside.
- (iv) The punishment of 'Compulsory Retirement' of Applicant by 'Order' dated 13.05.2016 of 'Disciplinary Authority' is quashed and set aside with directions that 'Disciplinary Authority' shall re-consider with an 'Open Mind' in next 'Six Weeks' the reply of Applicant dated 03.05.2016 and pass appropriate order afresh about 'Quantum of Punishment' with diligent acknowledgment of the fact that punishment of 'Compulsory Retirement' imposed on Applicant by 'Order' dated 10.01.2012 of 'Appellate Authority' had already been set aside by 'Judgment' dated 08.09.2015 in O.A No.987/2010 within O.A.No.260/2012.
- (v) No Orders as to Costs.

Sd/-

**(Debashish Chakrabarty)**  
**Member (A)**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

Place : Mumbai  
Date : 28.03.2025  
Dictation taken by :  
S.K. Wamanse

D:\SANJAY\SANJAY BACKUP\SANJAY WAMANSE\JUDGMENTS\2025  
\March, 2025\O.A.789.17.w.11.2024.Compulsory Retirement.doc

Uploaded on : 28.03.2025 at