

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1122 OF 2016

DISTRICT : RATNAGIRI

Shri Padmakar Gosavi Juikar,)
Retd Assistant Commissioner of Police,)
Residing at Sunshine Apartment,)
Middle Class CHS Ltd, Plot no. 96,)
Old Panvel, Tal-Panvel, Dist-Raigad.)...**Applicant**

Versus

1. Government of Maharashtra)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Director General of Police,)
Old Council Hall, Colaba,)
Mumbai.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.

2/

CORAM : Shri Justice A.H Joshi (Chairman)
Shri Rajiv Agarwal (Vice-Chairman)

RESERVED ON : 08.02.2017

PRONOUNCED ON : 02.03.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant challenging order dated 23.10.2015 ordering a Departmental Enquiry against the Applicant and memorandum dated 23.10.2015 regarding the aforesaid Departmental Enquiry.
3. Learned Counsel for the Applicant argued that the Applicant retired from Government service on superannuation on 31.5.2014 from the post of Assistant Commissioner of Police. By order dated 23.10.2015, a Departmental Enquiry has been ordered against the Applicant under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. All the events mentioned in the charge sheet happened more than four years

before the date of instituting the Departmental Proceedings against the Applicant. From the statement of Articles of charges (Appendix-2) and the imputation of misconduct (Appendix-3), it is clear that the events are more than four years before 23.10.2015, when the memorandum was issued. Learned Counsel for the Applicant contended that by order dated 5.1.2012 in Writ Petition no 2554/2011, Hon'ble High Court has given certain directions. However, the Respondents took their own time in taking action and now they are barred by Rule 27 of Pension Rules from taking any action against the Applicant.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that Hon'ble Bombay High Court by order dated 5.1.2012 in Writ Petition no 2554 of 2011 directed that action be taken against officers involved in that case. It was decided to take action against the Applicant. Sometime was taken in taking a decision in this regard and thus there was some delay in issuing order and memorandum dated 23.10.2015. However, General Administration Department has opined that though incident happened on 22.8.2011, the order of Hon'ble High Court is dated 5.1.2012 and therefore, the limitation will not start from 22.8.2011. Learned Presenting Officer further argued that charge no. 3 is regarding events on 1.12.2012, 3.12.2012, 5.12.2012 and 7.12.2012 when the complainant Smt Zainab Shaikh

26

was asked to come to the Police Station after sun set in violation of the guidelines of Hon'ble Supreme Court and that charge can be included in the charge sheet under Rule 27 of the M.C.S (Pension) Rules, 1982 as the events happened within four years from the date of institution of the departmental proceedings.

5. Rule 27 (b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982 is reproduced below:-

“(b)The departmental proceedings, if not instituted while Government servant was in service, whether before his retirement or during his re-employment,-
(ii) shall not be in respect of any event which took place more than four years before such institution.”

The rule does not admit of any relaxation. The Respondents in para 12 of the affidavit in reply dated 19.1.2017 have stated as follows:-

“12. With reference to Ground no. 7.1 of Original Application, I say and submit that in the present case the Departmental Enquiry was initiated against the Applicant with consent of the General Administrative Department vide noting dated 21.9.2015. General Administration Department gave opinion as “Though the incident of matter was took placed on 22.8.2011, the Hon'ble Mumbai High

74

Court has given directions on 5.1.2012. Hence, matter was not limited up 2011." The copy of the note sheet dated 21.9.2015 of General Administrative Department is annexed hereto and marked as Exhibit R-3."

6. We are unable to accept this contention of the Respondents. We do not find any provision in the rules, which gives power to the Government to relax any provision of Rule 27 of the M.C.S (Pension) Rules, 1982. In any case, order of Hon'ble High Court was dated 5.1.2012 and the Applicant retired on 31.5.2014, more than two years after the order of Hon'ble High Court. In para 8 of the affidavit in reply of the Respondents, it is stated that the Deputy Commissioner of Police, Zone-2, Mumbai held preliminary enquiry on 30.1.2012 and submitted report to higher authority on 16.3.2014. The preliminary enquiry has taken more than two years and the Respondents attempt to take shield under the order of Hon'ble High Court to explain delay in instituting Departmental Proceedings against the Applicant is reprehensible. The Respondents alone are responsible for the delay and the events will have to be reckoned from the date of actual happenings and not from the date of order of Hon'ble High Court for determining limitation under aforesaid Rule 27(b)(ii).

26

6. On going through the Appendix-2, i.e. the imputation of misconduct, it is seen that Article no. 1, is regarding the events that happened on 21.8.2011 and 22.8.2011. Both the events are more than 4 years old and no D.E can be held on charge no. 1. Charge no. 2 is connected with charge no. 1 and it is stated the Applicant did not pay personal attention to the complaint (which was given on 22.8.2011) of the complainant Smt Zainab Shaikh. This even is also more than four years old and on this charge also D.E cannot be held against the Applicant. Charge no. 3 mentions the dates on which the complainant was called to Police Station after sun-set in violation of guidelines of Hon'ble Supreme Court. These dates are 1.12.2012, 3.12.2012, 5.12.2012 and 7.12.2012. The events are not more than four years old and D.E on this charge is permissible under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Charge no. 4 mentions events from 20.8.2011 to 23.8.2011. No D.E can be started against the Applicant on this charge.

7. We find that no disciplinary proceedings can be held against the Applicant on charges no 1, 2 & 4 as the events are more than four years old on the date of institution of Disciplinary Proceedings, which is 23.10.2015. These charges are quashed. If the Respondents want to hold D.E against the Applicant in respect of charge no. 3, they may do so. As the

complexion of D.E may undergo change, the Applicant will be at liberty to institute appropriate legal proceedings, if he is still aggrieved. This Original Application is partly allowed in the above terms with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Sd/-

(A.H Joshi)
Chairman

Place : Mumbai

Date : 02.03.2017

Dictation taken by : A.K. Nair.