

-
**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.1022 OF 2016
WITH
ORIGINAL APPLICATION NO.1025 OF 2016**

DISTRICT : THANE / MUMBAI

-
ORIGINAL APPLICATION NO.1022 OF 2016

Shri Dilip D. Navghare.)
Retired as Rationing Inspector,)
R/o. 2/A, Sukhdarshan CHS, Devdayanagar,)
Pokharan Road No.1, Thane (W) – 400 606.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary, -)
Civil Supplies Department, Mantralaya,)
Mumbai – 400 032.)
2. The Controller Rationing and Director)
Civil Supplies, Mumbai and having office)
at 5th Floor, Royal Insurance Building,)
14, J.T. Road, Churchgate,)
Mumbai - 400 020.) ...Respondents

WITH

-
ORIGINAL APPLICATION NO.1025 OF 2016

Shri Jagannath K. Pawar.)
Retired as Rationing Officer,)
R/o. 4/A, Old B.D.D. Chawl, S.S. Wagh Road,)
Naigaon, Dadar, Mumbai – 400 014.)...Applicant

Handwritten signature/initials

Versus

1. The State of Maharashtra & Anr.) ...Respondents

Mrs. Ranjana Todankar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 28.06.2019

JUDGMENT

1. Since common question of law is involved in both the Original Applications, it is being decided by common order.

2. Briefly stated facts giving rise to these applications are as under :-

The Applicant in O.A.No.1022/2016 was serving as Rationing Inspector and the Applicant in O.A.No.1025/2016 was serving as Rationing Officer. The Respondent No.2 viz. The Controller Rationing and Director Civil Supplies, Mumbai is the appointing authority of the Applicants. The Respondent No.2 initiated the Departmental Enquiry (D.E) against both the Applicants by issuance of Charge-sheet dated 29.03.2010 for breach of Rule 3(i)(ii)(iii) of Maharashtra Civil Services (Conduct) Rules, 1979 (hereinafter referred to as 'Conduct Rules 1979' for brevity) for major penalty under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). Accordingly, the Enquiry Officer was appointed and D.E. was initiated. The Applicant in O.A.1022/2016 stands retired on 31.10.2010. Whereas, the Applicant in O.A.1025/2016 stands retired on 28.02.2013. The D.E. which was already initiated against them was continued after retirement. The Applicants were held guilty for misconduct under Rule (i)(ii)(iii) of 'Conduct Rules 1979' by

disciplinary authority. After giving opportunity of hearing, the Respondent No.2 imposed punishment. In O.A.No.1022/2016, the punishment of 5% permanent deduction of pension was imposed by order dated 06.07.2013. Whereas, in O.A.1025/2016, the punishment of deduction of 5% pension for five years was imposed by order dated 24.06.2013. Being aggrieved by the punishment, the Applicants have preferred appeal which came to be dismissed by the Appellate Authority and the order of imposition of punishment was maintained.

3. While imposing punishment, the Respondent No.2 exercised powers under Section 27(i) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982') which has been maintained by the Appellate Authority. Being aggrieved by it, the Applicants have filed the present O.As. contending that, under Rule 27(i) of 'Pension Rules 1982', the Government is the only Competent Authority since the order of punishment has been passed after retirement of the Applicants. The Applicants, therefore, contend that the order of punishment being without jurisdiction is bad in law and liable to be quashed.

4. Per contra, the Respondent Nos.1 & 2 resisted the O.As. by filing Affidavit-in-reply raising common defences *inter-alia* denying that the order of punishment suffers from any illegality. The factual aspect namely date of issuance of charge-sheets, retirement of the Applicants, date of punishment are not in dispute. The Respondents contend that in both the O.As, the charge-sheets were issued against the Applicants much before their retirement and the same were continued after retirement, as provided under Rule 27(2)(a) of 'Pension Rules 1982' and Respondent No.2 being appointing authority is competent to impose punishment. In this behalf, the Respondents further contend that by Notification dated 18th January, 2016, the Pension Rules 1982 were amended by the Government in exercise of powers under Article 309 of the Constitution of India. This being the position, in view of the amendment which has come in force with retrospective effect from 2nd June, 2003, the Respondent No.2 was competent to

He

impose punishment. As such, there is no illegality in the impugned order of punishment and prayed to dismiss the O.A.

5. Smt. Ranjana Todankar, learned Advocate for the Applicant assailed the impugned order solely on the ground that the order of punishment being passed after retirement of the Applicants, the Competent Authority to impose punishment is Government as contemplated under Rule 27(1) of 'Pension Rules 1982' and the Respondent No.2 is not competent to do so.
6. Per contra, Smt. K.S. Gaikwad, learned P.O. urged that in the present matter, admittedly, the charge-sheets were issued against both the Applicants much before their retirement and after retirement, the D.E. was continued as provided under Rule 27(2)(a) of 'Pension Rules 1982' and therefore, the Respondent No.2 was competent to impose punishment and Rule 27(1) of 'Pension Rules 1982' have no application in the present situation. She has further pointed out that the Government of Maharashtra has amended Rule 27(1) exercising power under Article 309 of Constitution and the word 'Government' in Rule 27 of 'Pension Rules 1982' is replaced by the word 'Appointing Authority' w.e.f. 02.06.2003. As such, in view of amendment to Rule 27(1) of 'Pension Rules 1982', the order of punishment is legal and unassailable.
7. The crux of the matter is whether the Respondent No.2 is competent in law to impose punishment.
8. There is no denying that in both the O.As, the charge-sheets were issued against the Applicants during their service period and D.E. was continued after their retirement. It is also not in dispute that the order of punishment has been passed by Respondent No.2, who is admittedly the appointing authority of the Applicants. Here, the question is about the interpretation of Rule 27(1), 27(2)(a)

and the effect of amendment to Rule 27(1) which has been made effective retrospectively from 02.06.2003.

9. It would be, therefore, appropriate to reproduce Rule 27 which are relevant for our purpose.

"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.

- (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 the Government,
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure

Unsubm

applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of and event which took place, more than four years before such institution."

10. Simultaneously, it is imperative to see the amendment in Rule 27 by Notification dated 18th January, 2016. The perusal of Notification dated 18th January, 2016 reveals that 'Pension Rules 1982' were amended by Rules called "Maharashtra Civil Services (Pension)(Amendment) Rules, 2016 whereby Rule 27 amongst other Rules was amended. The amendment to Rule 27 of the principal Rules is as follows :-

"In rule 27 of the Principal Rules –

- (a) in sub-rule (1) for the words "Government may" the words "Appointing authority may" shall be substituted and shall be deemed to have been substituted with effect from 2nd June, 2003;
- (b) in sub-rule (2) in clause (b), in sub-clause (i), for the words "the Government" the words "Appointing authority" shall be substituted and shall be deemed to have been substituted with effect from the 2nd June, 2003."

11. Now turning to the facts of the present case, admittedly, the charge-sheets were issued much before the retirement of the Applicants, and therefore, the situation is covered by Rule 27(2)(a) of 'Pension Rules 1982' which *inter-alia* provides that such enquiry be deemed to be proceedings under Rule 27 and shall be continued and concluded by the authority by which they were commenced in the same manner and if the Government servant has continued in Government service. In other words, the D.E. initiated before retirement has to be continued by the authority by which it was initiated as if the Government servant had continued in service.

12. However, in so far as the punishment to such Government servant, who already stands retired from the Government service, the situation will be governed by Rule 27(1). In other words, in such situation, the power of imposing punishment as specified in Rule 27(1) which is restricted to the recovery of pension whole or part or withdrawal or withhold of pension lies with the Government and not with the disciplinary authority who is otherwise competent to impose punishment in the case where the D.E. is concluded while the Government servant is in service. This was the position before amendment of 2016.

13. In the present case, admittedly, the impugned order of deduction of pension has been passed by Respondent No.2 who is appointing authority and not by the Government, as per the requirement of Rule 27(1) of 'Pension Rules 1982'. However, the authority i.e. Government is substituted by "Appointing Authority" in view of amendment to 'Pension Rules 1982' in 2016 which came into force w.e.f. 2nd June, 2003. Thus, this amendment to Rule 27(1) is with retrospective effect from 2nd June, 2003. Whereas, the impugned orders of punishment were passed on 24.06.2013 and 07.06.2013 respectively. This being the position, the appointing authority i.e. Respondent No.2 was competent to impose such punishment of deduction of pension in view of retrospective effect to the amendment to Rule 27(1) of 'Pension Rules 1982'.

14. It is thus quite clear by virtue of amendment to Rule 27(1) with retrospective effect from 2nd June, 2003, there is no illegality on the part of appointing authority to pass such orders on the ground of competency and the impugned order is unassailable. The competency of Respondent No.2 is the only issued raised by the learned Advocate for the Applicant in the present matter which obviously holds no water in view of aforesaid discussion.



15. The Applicants have not challenged the virus of amendment of 2016 whereby retrospective effect has been given w.e.f. 2nd June, 2003 and appointing authority is empowered to impose punishment. As such, the present matter is squarely covered by the amendment of 2016. Resultantly, the challenge to the impugned orders is devoid of merit and both the O.As. are liable to be dismissed. Hence, the following order.

ORDER

Both the Original Applications are dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 28.06.2019

Dictation taken by :

S.K. Wamanse.

O:\SANJAY WAMANSE\JUDGMENTS\2019\6 June, 2019\O.A.1022 & 1025.16.w.6.2016.Pension.doc