

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.259 OF 2017

(Subject : Pension / Pensionary Benefits)

District : Kolhapur

Shri Dattatraya Baburao Karnale,)
R/at. 'Shriman', 237/14, E Ward, Tarabai Park,)
Near Gold Gym, Kolhapur -03) **.. Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department (Transport),)
Mantralaya, Mumbai 32.)

2. The Transport Commissioner,)
Administrative Building,)
4th floor, Government Colony,)
Bandra (E), Mumbai 51) **..Respondents**

Shri K.R. Jagdale, the learned Advocate for the Applicant.

Smt. Archana B.K., the learned P.O. for the Respondents.

CORAM : Justice Shri A.H. Joshi, Chairman

DATE : 03.11.2017.

J U D G M E N T

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicants and Smt. Archana B.K., the learned Presenting Officer for the Respondents.
2. Heard both sides with consent. Case proceeds on admitted facts as follows :-
 - (a) Applicant was charge-sheeted on 09.06.2014, copy of charge-sheet is on record at page 49.
 - (b) Applicant has retired on 03.05.2016.

- (c) Charge-sheet does not contain a recital or declaration that the Departmental Enquiry would be continued even if applicant/ delinquent is superannuated before completion of departmental enquiry.
- (d) Departmental enquiry was not completed before superannuation.

3. Original Application contains a challenge to the continuation of departmental enquiry with averments which reads as follows :-

“7.10. In case of an enquiry which is initiated while the Government servant was in service it is necessary that an order is passed intimating the delinquent that the enquiry proceedings shall be continued even after he had attained the age of superannuation, let it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honorably, on reaching the age of superannuation, the retirement is automatic unless the competent authority passes an order otherwise.

(Quoted from page 17, paragraph 7.10 of O.A. paper book)

4. Present O.A. is opposed. The averment quoted in foregoing paragraph are replied in affidavit of the State as follows :-

“49. With reference to ground 7.10, I say as follows : That it has been clearly mentioned in the sub rule 2(a) of rule 27 of Maharashtra Civil Services (Pension) Rules 1982 that the departmental enquiry proceeding of retired government would continued if it has been initiated before his retirement. Hence the question of quashing Departmental enquiry proceeding against the applicant does not arise.....
.....”

(Quoted from page 124 & 125, paragraph 49 of O.A. paper book)

5. According to the learned Advocate for the Applicant effect of Rule 27(2)(a) of Maharashtra Civil Services (Pension) Rules 1982 as argued or any similar provision is no more open for debate and is already crystallized by settled precedent. Those precedents are discussed in following paragraphs.

6. Civil Rule No.78 of 1983, Shri Girija Kr. Phukan Versus State of Assam and Ors., decided on 04.09.1984 by the Hon’ble High Court of Gauhati reported in (1984) 2 GLR Page 488 = MANU/GH/0164/1984. The Hon’ble High Court of Gauhati was considering same issue with reference to Rule 21 of Assam Services (Pension) Rule 1969. Said Rule 21 is quoted in paragraph 6 of the judgment. Relevant discussion is seen in paragraph nos.12 and 13, which are quoted hereinbelow :-

“12. For the foregoing reasons we entertain no doubt from the position that Rule 21 of the Pension Rules does not contemplate or authorize automatic continuation if any pending disciplinary proceeding against a retire Govt. servant, Indeed, according to us, condition precedent for continuance of the proceeding in terms of Clause (a) thereof is a decision of the competent authority, namely, Governor of Assam, to take action against the pension concerned under Rule 21. That apart, before a pending proceeding can be “continued” after retirement of a Govt. servant a show cause notice must be served on him apprising him of the decision and of the action proposed to be taken in terms of Clause (a) of Rule 21. Reasonableness of this procedure would, however further mandate these requirements to be fulfilled in a reasonable manner and within a reasonable time, in Mansatam MANU/SC/0363/1983 : (1984) 1 SCC 125, their Lordships of the Supreme Court held that when time is not stipulated in the statute in respect of the proposed action the administrative action contemplated must be taken within a reasonable time. The nature of the action and the proceeding contemplated under Rule 21 make it necessary to insist on the primacy of the requirement of “reasonable time”. Because, the nature of the right created by the Pension Rules and the object of the provisions of the said Rules make it clear that there should be no unreasonable delay in the matter or settlement or a claim for pension. The object fulfilling the Directive Principles must not be defeated. Reasonable explanation must be forthcoming to explain the delay in taking decision by the competent authority under Rule 21 and also in the service of show cause notice thereunder by the disciplinary authority. A pending proceeding cannot be allowed to prolong indefinitely awaiting either the “decision” or the “show came notice” which are essential requirements of an action under Rule 21.

13. The admitted position in the instant case is that there is no decision by the Governor of Assam under Rule 21 and indeed, no show cause notice also has been served on the Petitioner informing him that the proceedings initiated against him in 1975 shall be continued. In terms of Rule 21. The Petitioner retired on 1.4.83. The return of the petition in the instant case was filed by the Respondents, State of Assam and Ors. On 6.6.83. Neither in the return nor in the course of hearing which took place from 19.6.84 to 21.6.84 we were informed that any “decision” was taken or any “show cause notice” was served on the Petitioner. The stance of the Respondents all throughout has been that Rule 21 contemplates an automatic continuance of the pending proceeding and accordingly the impugned proceeding initiated in 1975 did not lapse on the retirement of the Petitioner but continued and shall continue until the Respondents at their sweet will decide to conclude the same.

(Quoted paragraph 12 and 13 from enclosed manupatra documents.)

7. Writ Petition No.5227 of 2002, Madanlal Sharma Versus State of Maharashtra & Others, decided on 14.07.2003 by Hon’ble High Court, Bench at Aurangabad, reported in 2004 (1) Mh L J page 581. Relevant text of judgment is quoted below :-

"21.

.....
 In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that the enquiry proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably.

(Quoted portion from page 591 of report.
 Underlining is done for emphasis.)

8. Writ Petition Stamp No.41833 of 2002 with Writ Petition No.1357 of 2003, Chairman / Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Another Versus Bhujgonda B. Patil, decided on 27.02.2003 by Hon'ble High Court, reported in 2013 (5) B.C.R. 197. In this case rule similar to Rule 27(2)(a) of Maharashtra Civil Services (Pension) Rules 1982 was involved. Rule 27 has been interpreted. Observation relating to Rule 27 of said rules record as follows :-

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

"Government may, by order in wiring, 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 contended 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 issues 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."

(Quoted paragraph 12 & 13 from page 203 & 204 of report.)

9. Original Application No.655 of 2004, Shri Madhukar Krishna Kamat Versus The State of Maharashtra, decided on 29.08.2005 by Maharashtra Administrative Tribunal, Mumbai. This Tribunal has relied in all three judgments referred to in the foregoing paragraphs, and followed the interpretation as was crystallized.

10. Learned P.O. continues to persist on submission, however without touching the precedents, which attitude deserves to be deprecated. Learned P.O. has to bear in mind that the learned P.O. is a Law Officer and not a slave or bonded Labour of a rude or arrogant Government servant and ought to be guided by Law of precedents than para-wise comments furnished without application of mind and law. The Law Officer may while conceding a precedent, may argue contrary thereto for laying foundation for a path to higher forum. However, a stance, courage or intention is not shown in present case.

11. This Tribunal has to go according to the locus as settled by precedents and hold that the enquiry cannot be continued due to absence of intimation by way of a recital or mention in charge-sheet to the effect that despite superannuation / retirement / removal or abatements the departmental enquiry would be continued, the respondents are restrained by a Writ and order of prohibition to proceed with the departmental enquiry based on the charge-sheet dated 09.06.1994, copy whereof is at page 49, Exhibit-N onwards of paper book of O.A..

12. Considering that numerous enquires lapse or abate due to lack of diligence or neglect or dishonesty on the part and competent Disciplinary Authorities, State Government ought to take suitable policy stance, which could be by way of taking steps such as :-

(a) To issue direction to ensure that enquiries in the misconduct are conducted on day to day basis when the superannuation is seen affront.

OR

(b) To direct that sooner after superannuation / retirement the competent authority shall pass an order that the enquiry shall abate, and be closed if it is in complete.

OR

(c) To consider the Amendment in Rule 27(2)(a) of Maharashtra Civil Services (Pension) Rules 1982 and also in Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, to overcome the mischief of deliberate delay and / or omissions, in order to overcome the need of special intimation, however with some outer time limit that beyond which an enquiry must lapse.

OR

(d) Any other device or modality as may occur or as may be advised.

13. Copy of this order be sent to (a) Chief Secretary (b) Principal Secretary, (Law and Judiciary) Department by Registrar of this Tribunal, for special attention to the observations / directions continued in foregoing paragraph No.5.

14. Hence, following order is passed :-

(a) In view of the foregoing discussion, Original Application is allowed in terms of prayer 10(a) and (b) of O.A., which read as below :-

“10(a) By suitable orders or directions this Honourable Tribunal be pleased to quash and set aside the impugned charge sheet dated 09.06.2014 in the departmental enquiry proceedings issued by Respondent No.1, qua the Applicant, respectively, forthwith.

10(b) By suitable orders or directions this Honorable Tribunal be pleased to direct the Respondents to pay the regular pension to the Applicant from 01.06.2016 and also direct the Respondents to pay the GIS, GPF, and all other pensioner / terminal benefits to the Applicant with interest, forthwith.”

(Quoted from page 20 of O.A. paper book.)

(b) All Pensionary and other monetary benefits, whatsoever, be released within three months from today.

(c) Applicant shall be paid quantified costs of Rs.10,000/-.

(c) Steno copy and Hamdast is allowed to learned P.O.. Learned P.O. is directed to communicate this order to the Respondents for compliance of direction contained in paragraphs 12 and 13.

Sd/-

(A.H. Joshi, J.)
Chairman

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