

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.428 OF 2016
[Subject : Punishment (Pension) major]**

DISTRICT : THANE

Shri Ram Yashwant Kamble,)
Retired as Rationing Officer,)
From the establishment of Respondent No.2,)
Residing at 01 A, Yogeshwar Tower,)
Katemanaveli Naka, Pune Link Road,)
Kalyan (East), District Thane 421 306.)

..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)
having office at 5th floor,)
Royal Insurance Building,)
14 J.T. Road, Churchgate,)
Mumbai 400 020.)

....RESPONDENTS

Ms. S.P. Manchekar, learned Counsel for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 09.11.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Ms. S.P. Manchekar, learned Counsel for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 06.07.2013 imposing punishment of reduction of 5% in pension on permanent basis.

3. Learned Counsel for the Applicant argued that the Applicant retired on superannuation on 30.06.2012. A Departmental Enquiry (D.E.) was started against the Applicant on 29.03.2010 under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It was a joint D.E. involving several employees of the Respondent No.2. The D.E. against the Applicant continued after his retirement in violation of provisions of Rule 27 of the M.S.C. (Pension) Rules, 1982. Learned Counsel for the Applicant argued that

the D.E. was continued against the Applicant after his retirement and the order of punishment was passed by the Respondent No.2 on 06.07.2013. This order is void ab-initio as it was required to be passed by the State Government under Rule 27(1) of Maharashtra Civil Service (Pension) Rules, 1982.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant had never raised this issue when the D.E. was being conducted against him. He cannot be allowed to raise that issue now. The Applicant is now challenging order dated 06.07.2013, which is time barred. Learned P.O. contended that the D.E. against the Applicant was stated on 29.03.2010, while he was in service and it was continued after his retirement under Rule 27(2)(a) of the M.C.S. (Pension) Rules, 1982. No permission of the State Government is required to continue a D.E., which is already started before retirement. For starting an enquiry after retirement, permission of the State Government is required. However powers to start a D.E. after retirement and to impose punishment have also been delegated to the appointing authority.

5. The Applicant in para 6.8 of O.A. has stated that :-
“6.8. The applicant states that the same prompted him to take legal advice. The applicant states and submits that he came to know that the order of punishment or order of reduction in pension by way of punishment after retirement of govt. servant as per

provisions of the rule 27 of the Maharashtra Civil Services (Pension) Rules 1982 could be issued only by the govt. and not by any other authority.”

The Applicant has relied on the judgment dated 28.11.2013 in O.A.No.305/2013 in support of this contention. Relevant extracts from Rule 27 of the M.C.S. (Pension) Rules, 1982 are reproduced below:-

“27. Right of Government to withhold or withdraw pension – (1) Government may, be order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also under 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 of withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.”

From this rule, it is clear that only the State Government has powers to impose punishment of reduction in pension under Rule 27 of M.C.S. (Pension) Rules, 1982.

Impugned order dated 06.07.2013 is passed by the Respondent No.2, who was the appointing authority of the Applicant. The Respondents are relying on the G.R. dated 02.06.2003, which delegates powers under Rule 27 of M.C.S. (Pension) Rules, 1982 to the Appointing Authority. Full powers under Rule 27 to start a D.E. after retirement and to order deduction from Pension have been delegated to the Appointing Authority by G.R. dated 02.06.2003.

6. The issue to be decided is whether rules framed under proviso to Article 309 of the Constitution of India can be amended by a G.R. In fact the G.R. dated 02.06.2003, itself makes it clear that the statutory rules were required to be amended. Para 5 of the aforesaid G.R. reads :-

“वर नमुद केलेल्या महाराष्ट्र नागरी सेवा नियमामधील विद्यमान तरतूदी या शासन निर्णयातील तरतूदींच्या मर्यादेपर्यन्त सुधारण्यात आल्या आहेत असे मानण्यात येईल. या नियमात रितसर सुधारणा यथावकाश करण्यात येतील.”

Though the G.R. was issued in 2003, rules have not yet been amended. It is a settled law that G.R.'s cannot supplant provisions of statutory rules but only supplement them. This Tribunal in O.A.No.305 of 2013 has held as follows :-

“As far as the provisions namely in Maharashtra Civil Services (Pensions) Rules 1982 have been framed by the Government of Maharashtra in exercise of the powers under Article 309 of the Constitution of India. There is also no dispute that the Government Resolution dated

02.06.2003 relied upon by the Respondent No.2 and Shri Chougule, the learned Presenting Officer, was framed under Article 162 of the Constitution of India. It is settled law that Rules framed under Article 309 of the Constitution of India will always prevail over Government Resolutions issued under Article 162 of Constitution of India. In any event, the aforesaid issue has been expressly dealt with, in the aforesaid judgment of Shri Tanaji Krishna Babar Versus State of Maharashtra, dated 23.04.2012 in O.A.No.701 of 2008, by this Tribunal.”

In the present case, Rule 27(1) of M.C.S. (Pension) Rules clearly provides that the pension of a retired Government servant can be curtailed only by the State Government. The order dated 06.07.2013 is issued by the Respondent No.2 and not the State Government. Obviously, this order is void-ab-initio as it has been issued in violation of Rule 27(1) of M.C.S. (Pension) Rules, 1982 and cannot be sustained.

7. The issue of delay is not relevant as an illegal order cannot acquire legality just because it was issued 3 years back. In any case, delay in filing this O.A. has been condoned.

8. Having regard to the aforesaid facts and circumstances of the case, impugned order dated 06.07.2013 is quashed and set aside. It is held to be invalid ab-initio. The Respondents will refund the amounts deducted from pension of the Applicant within a period of one month from

the date of this order and not deduct any amount from his pension hereafter. This O.A. is allowed accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER(J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 09.11.2016
Typed by : PRK