

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.735 OF 2019

DISTRICT : PUNE

- 1) Dr.(Smt.) Shobha Baburao Rajure,)
Aged 58 Trs, Occ. Nil, retired as Assistant)
Director from the office of Joint Director, (T.B,)
And Leprosy), Aarogya Bhavan, Yerwada, Pune.)
R/o 39/A, Shamiwar Peth, Pune 30.) ... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department, Having Office)
At Mantralaya, Mumbai-400 032.)
- 2) The Joint Director of Health Services,)
Pune (T.B. and Leprosy), Aarogya Bhavan,)
Yerawada, Pune -6.)
- 3) The Director of Health Services,)
M.S., Mumbai, Having Office at Arogya)
Bhavan, In the campus of Saint Georges)
Hospital, P.D'Mello Road, Mumbai-400 001.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.12.2020.

JUDGMENT

1. The Applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 seeking directions to the Respondents to release his retirement benefits

Indira

particularly gratuity and leave encashment which has been held up on the ground of initiation of Departmental Enquiry (D.E.).

2. Undisputed facts necessary for the decision of the Original Application are as under:-

(a) The Applicant stands retired on 30.03.2019 from the post of Assistant Director in the office of Joint Director, TB and Leprosy, Yerwada, Pune.

(b) On the same day, i.e. on 30.03.2019 in the evening, the charge sheet under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 was served upon the Applicant at 6.45 PM.

(c) The charges leveled against the Applicant by charge sheet dated 30.03.2019 pertains to allege misconduct / dereliction of duties pertaining to period from 30.07.2012 to 02.08.2012.

(d) In D.E., enquiry officer was appointed and it is still not completed.

3. Shri A.V. Bandiwadekar, learned Counsel for the Applicant sought to contend that withholding of gratuity and leave encashment is totally unsustainable in law since no charge sheet was served upon the Applicant before retirement as serving of charge sheet after office hours i.e. 6.45 p.m. cannot be termed as initiation of D.E. before retirement. According to him, it is only in the case of pendency of D.E. on the date of retirement, the gratuity can be withheld in terms of Rule 130 of Maharashtra Civil Services (Pension) Rules, 1982. As regard withholding of leave encashment, he submits that under Rule 68 (6)(a) unless there is a specific order of the Government authority that there is possibility of some money become recoverable from the Government servant on conclusion of D.E. against him then only leave encashment can be withheld. In the present case, there being no such specific order as contemplated in the said rules, the Respondents cannot withhold earned leave encashment. He, therefore, sought directions to the Respondents to release gratuity and leave encashment to the Applicant immediately. He has further

pointed out that though the D.E. was required to be completed at the most within the period of one year it is still pending without any substantial progress, and therefore, retirement benefits of a person retired from the Government service cannot be withheld.

4. Per contra, Smt. Kranti Gaikwad, learned P.O. submits that initiation of D.E., though charge sheet has been served at 6.45 p.m., is legal and valid and D.E. has to be construed as initiated during service period of the Applicant. She, therefore, submits that withholding of gratuity in view of Rule 130 of Rules 1982 which inter-alia empowers the Government to withhold gratuity till conclusion of D.E. is legal and valid. She thus submits that claim of the Applicant is premature and gratuity as well as leave encashment will be released only after conclusion of D.E. already initiated against him.

5. At this juncture before touching to the issue raised in the matter, it is necessary to point out that the Applicant has already challenged initiation of D.E. by filing O.A.No.832/2019 which is subjudice before the Division Bench of the Tribunal. Admittedly, there is no stay to the proceeding of D.E.

6. In view of the submissions advanced at a bar, the crux of the matter is whether D.E. can be said initiated legally before retirement of the Applicant.

7. Indisputably, the charge sheet under Rule 8 of MCS (D & A) Rules 1979 has been served upon the Applicant on the last day of his service i.e. 30.03.2019 at 6.45 pm as explicit from communication letter (Page No.14 of PB). In so far as legal position in terms of Rule 130 of Pension Rules, 1982 are concerned, it empowers the Government to withhold the gratuity till the conclusion of D.E. Whereas, Rule 27 of Rule 1982 provides for initiation of D.E. against

Indira

the Government servant even after retirement **provided** it is instituted with the sanction of appointing authority and shall not be in respect of any event which took place more than four years before such institution as provides under Rule 27 (b) of Rules 1982. Suffice to say, in terms of Rule 27 of Rules 1982 even if D.E. is not initiated during tenure of service of a Government servant later it can be initiated subject to rigor of Rule 27(2)(b)(1) & (2) of Rules 1982. In that event, if the pensioner is found guilty for grave misconduct or negligence allegedly committed during the period of his service then the Government is empowered to withhold or withdraw pension or any part of it permanently or for a specific period as it deems fit.

8. Now turning to the facts of the present case, admittedly the charge sheet has been served upon the Applicant on the last date of his service at 6.45 pm. According to Shri A. V. Bandiwadekar, learned Counsel for the Applicant, the office hours ends at 5.30 pm, and therefore, service of charge sheet at 6.45 pm is invalid in law. He invited my attention to Rule 10 of Pension Rules which inter-alia provides that a Government servant shall retire from service on afternoon of the last day of the month in which he attends the age of superannuation. Thus, he is emphasizing on the word 'afternoon' in Rule 10 of Rules 1982. Rule 10 of Rules 1982 is as under :-

“ 10. Age of retirement :- *Except as otherwise provided in this rule, every Government servant, other than a Class IV servant, shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.*

9. True, technically speaking a Government servant is deemed to have been retired on afternoon on the last day of the month in which he attends the age of superannuation. However, a day means period of 24 hours and ends at 12.00 clock in the midnight, and therefore, it cannot be said that day ends in afternoon. The word 'day' has to be construed a 'day' ending at 12.00 clock in the midnight. The working hours of Government servant ends afternoon for retirement purpose

only but he continues to be Government servant till midnight of last day. Therefore, service of charge sheet at 6.45 pm cannot be construed service of charge sheet after retirement.

10. In this behalf, reference can be made to the decision of the Hon'ble Supreme Court in **(2008) 2SCC 41 UP State Sugar Corporation Ltd. v/s Kamal Swaroop Tandaon** wherein the Hon'ble Supreme Court in exactly similar situation held that service of charge sheet after office hours on the date of retirement cannot be termed illegal. In that case also, the charge sheet was served after office hours at 6.45 pm on the last day of service. The Hon'ble Supreme Court turned down the contention that after office hours there was no relationship of employer and employee and service of charge sheet after office hours is illegal. As such, in view of this decision of the Hon'ble Supreme Court, initiation of D.E. because of its service at 6.45 pm cannot be construed illegal. True, in the matter before Hon'ble Supreme Court before issuance of charge sheet show cause notice was given as pointed out by learned Counsel for the Applicant but that does not matter. Admittedly in the present case, no such show cause notice was given. However, ratio laid down by the Hon'ble Supreme Court is important wherein it has been categorically held that service of charge sheet after office hours on the last date of retirement is legal.

11. Thus, once there is initiation of D.E. even by issuance of charge sheet after office hours from the date of retirement, Rule 130 of Rules 1982 got attracted as no gratuity shall be paid until conclusion of D.E. proceeding.

12. Reliance placed by the learned Counsel for the Applicant on the decision of this Tribunal in **O.A.No.768/2018 Kondiba Ramling Nannaware V/s Commissioner, Dairy Development, Maharashtra State, Mumbai** decided on 24.04.2019 is misplaced. In that case, the

Amrinder

Applicant retired on 31.12.2016. However, the charge sheet was served on 26.09.2018 which was after two years from retirement. It is in that context, the Tribunal considered the scope of Rule 27 read with Rule 130 of (Pension) Rules, 1982 and held that where D.E. is instituted after retirement subject to compliance of Rule 27(2)(b) of Rules 1982 in that event on conclusion, if the Government servant is found guilty then the Government is empowered to withdraw or withhold the pension only. In other words, in case of filing of charge sheet after retirement, punishment to be restricted to withhold of pension only, and therefore, directions were issued to release gratuity.

13. Whereas in the present case, D.E. is instituted on the last day of retirement, and therefore, Section 130 (c) is clearly attracted which inter-alia provides that gratuity shall not be paid until conclusion of departmental proceeding.

14. Now, it comes the claim about earned leave encashment. In this behalf, Rule 68(6)(a) of Leave Rules, 1981 is material which is as follows :-

“Rule 68(6)(a) : *The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any.”*

15. As such, the competent authority is empowered to withhold leave encashment until conclusion of D.E. initiated against a Government servant. The submission advanced by the learned Counsel for the Applicant that for withholding of leave encashment, it needs specific order to that effect by the competent authority is misconceived. There is no such specific provision which mandates the passing of any such order for withholding leave encashment. Indeed, Rule 68(6)(a) of Leave Rules, 1981 as reproduced above clearly

spells that leave encashment can be withheld where D.E. is initiated against a Government servant .

16. As the Applicant has already filed O.A.No.832/2019 challenging initiation of D.E. on the grounds available to him and matter is subjudice before the D.B. of the Tribunal, I restrain myself from making any other observations on the merits of initiation of D.E. I restrict myself to the limited point as to whether only because charge sheet has been served after office hours on the day of retirement, it can be construed illegal and in my considered opinion, in the light of the decision of the Hon'ble Supreme Court (cited supra) such initiation of D.E. at 6.45 pm on the day of retirement cannot termed illegal.

17. True, there is delay on the part of Respondents to complete the D.E. since the Applicant already stands retired on 30.03.2019. In fact, D.E. ought to have been completed by this time. In terms of G.R. issued by the Government, D.E. is required to be completed within a year which has not been complied with by the Respondents. Therefore, necessary directions are required to be given to the Respondents to complete the D.E. within stipulated period.

18. During the course of argument, learned Counsel for the Applicant has also raised grievance that the Applicant has not granted non practicing allowance. Indeed this issue is not raised in O.A. However, the Applicant seems to have made representation dated 20.09.2020 addressed to Respondent No.2 – Joint Director of Health Services, Arogya Bhavan, Yervada, the copy of which was placed on record by the Applicant. In so far as this issue is concerned, it is for Respondent No.2 to decide the representation in accordance to Rules and pass appropriate order. The Respondent No.2 shall pass such appropriate order in this behalf within two months from today.



19. The totality of the aforesaid discussion leads me to conclude that the claim of gratuity and leave encashment is premature and O.A. deserves to be dismissed. Hence the following order :-

ORDER

(A) O.A. is dismissed.

(B) The Respondents are directed to complete the D.E. including final order therein within six months from today which would be subject to the final outcome of order in O.A.No.832/2019.

(C) The Applicant is also directed to cooperate for expeditious conclusion of D.E.

(D) No order as to costs.

Sd/-

vv
(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 24.12.2020

Dictation taken by : Vaishali Mane

Uploaded on :

E:\VSO\2020\Order & Judgment 2020\December 20\O.A.735 of 2019 retirement dues.doc