

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 1137/2022(D.B.)

Ramdas s/o Karu Nandeshwar,
Aged 61 years, Occu.: Retired,
R/o At Borgaon (Bazar) Post Futana,
Tah. Deori, District Gondia.

Applicant.

Versus

1. State of Maharashtra,
through its Additional Chief Secretary,
Tribal Development Department,
Mantralaya, Mumbai-400 032.
2. Additional Commissioner,
Tribal Development Department Giripeth,
Nagpur-440 010.
3. Project Officer,
Integrated Tribal Development Project,
Aheri, District Gadchiroli-442 705.
4. Enquiry Officer and Assistant Conservator of Forest (Retd.),
Plot No.22, Tathastu, Durga Nagar,
Manewada Road, Behind Post Office,
Nagpur-440 024.

Respondents.

Shri R.M.Fating, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 29th August, 2024.

JUDGMENT

Heard Shri R.M.Fating, learned counsel for the applicant
and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of Peon as per order dated 20.11.1982. The applicant came to be promoted on the post of Junior Clerk as per order dated 19.04.1992. The applicant was further promoted on the post of Senior Clerk and was posted at Aheri, District Gadchiroli as per order dated 04.04.1998. The applicant came to be transferred from Aheri to Nagpur as per order dated 28.07.2006. The applicant joined at Nagpur on 04.09.2006. The applicant came to be promoted on the post of Tribal Development Inspector and he was posted at Deori as per order dated 23.10.2012. Thereafter, while working on the post of Tribal Development Inspector he stood retired on 30.04.2019. On 27.08.2020, the respondent no.2 issued charge sheet against the applicant stating that the applicant has not maintained the record and total amount of Rs.5,80,29,158/- shown recoverable from the

applicant. It is submitted that applicant had handed over all the record to the concerned authority. The applicant has not committed any misconduct. Starting of departmental enquiry by the respondent is not legal and proper therefore filed the present O.A. challenging the departmental enquiry, on the ground that the incident alleged in the departmental enquiry was in respect of the year 2006-2010. The applicant is already retired on 30.04.2019 and charge sheet was given to the applicant on 27.08.2020. Therefore, the applicant has filed the O.A. for the following reliefs-

12. INTERIM RELIEF SOUGHT:

i) During the pendency of Original Application, grant stay the effect, operation and execution of the impugned Charge sheet dated 27.08.2020 issued by the Respondent No.2 and further direct the Respondents to stop further departmental enquiry proceedings and not to take any coercive action against the Applicant.

(i) Hold and declare that the departmental enquiry proceeding initiated against the Applicant by the Respondents is illegal, bad in law and violative of Rule 27(2)(b)(i) & (ii) of Maharashtra Civil Service (Pension) Rules, 1982;

ii) Quash and set aside the impugned Charge sheet dated 27.08.2020 (Annexure A9) issued by the Respondent No.2, as the same is contrary to provision in Rule 27(2)(b)(i) & (ii) of Maharashtra Civil Service (Pension) Rules, 1982, in the interest of justice;

iii) Direct the Respondents to release his regular pension, gratuity and other consequential benefits along with interest @ 10% thereon till the date of actual payment;

iv) Grant any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. The O.A. is opposed by the respondents. It is submitted that the applicant has committed misconduct during his service period and therefore charge sheet was issued against the applicant. The applicant has not kept record properly. The applicant has misappropriated Government of amount. Hence, there are several charges against the applicant about the misconduct. Hence, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 and submitted that the incident alleged in the charge sheet was / is more than 4 years from the date of retirement. Therefore, the enquiry is not permissible as per Rule 27(2)(b)(i) & (ii). In support of his submission he has pointed out Judgment of the Hon'ble Supreme Court in the case of **Suchismita Misra Vs. High Court of Orissa & Ors in Writ Petition(Civil) No.1042/2021** decided on 17.05.2023 and decision of this Tribunal in O.A.No.858/2019.

5. Applicant is retired on 30.04.2019. Nothing is stated in the order of retirement about the misconduct or misappropriation. The respondents have not paid regular pension and other pensionary

benefits. The respondents are paying provisional pension to the applicant.

6. Rule 27(2)(b)(i) & (ii) of the M.C.S. (Pension) Rules, 1982 is reproduced below-

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 reemployment 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 reemployment, 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 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.

7. The Hon'ble Supreme Court in the case of **Suchismita Misra Vs. High Court of Orissa & Ors reported in Writ Petition(Civil) No.1042/2021** has held as under-

From the very scheme of Rule 7 of Rules, 1992, it needs no interpretation that in reference to the officer/employee, who stood retired from service, inquiry indeed can be initiated against him/her, provided sanction is obtained from the Government and must be during the period of 4 years before such institution and the Explanation added to the scheme of Rules makes it abundantly clear that proceedings shall be deemed to be instituted on the date on which the statement of charges are issued to the Government servant/pensioner, as the case may be.

8. There is no dispute that the applicant came to be retired in the 2019. The charge sheet was issued on 27.08.2020. Nothing is on record to show that the respondents had conducted any departmental enquiry while granting promotion to the applicant. As per Rule 27(2)(b)(ii) the incident should have been within four years

from the date of retirement. The applicant is retired in the year 2019. As per the charges levelled against the applicant the incidents are in respect of the years 2006-2010 i.e. near about 9-10 years before his retirement. Therefore, the enquiry is not permissible as per Rule 27(2)(b)(i) & (ii) of the M.C.S. (Pension) Rules, 1982. Hence, we pass the following order.

ORDER

1. The O.A. is allowed.
2. The impugned charge sheet issued by the respondents dated 27.08.2020 is hereby quashed and set aside.
3. The respondents are directed to pay regular pension and pensionary benefits to the applicant within a period of four months from the date of receipt of this order.
4. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 29/08/2024.
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 29/08/2024.
and pronounced on
