

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 381/2020(S.B.)**

Shyam s/o Narayanrao Wandile,
Aged about: 59 years, Occ. Retired,
R/o Plot No. 39, Mangaldham Society,
Takli (Sim), Nagpur.

Applicant.

Versus

1. State of Maharashtra,
through Secretary,
Department of Public Health,
G.T. Hospital Building, Mumbai.
2. Commissioner,
Services Director and Health Campaign
National Health Mission, Arogya Bhawan,
Third Floor, C.S.T, Mumbai- 400001.
3. Deputy Director,
Health Services, Nagpur Circle,
Near Mata Kacheri,
South Ambazari Road, Nagpur.

Respondents.

Shri P.D.Meghe, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated:- 19th June, 2024.

JUDGMENT

Heard Shri P.D.Meghe, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

The applicant was working as Junior Clerk at Primary Health Centre, Deori, District Bhandara w.e.f. 01.07.1983. Thereafter, the applicant was promoted on the post of Senior Clerk in the year 1996. Thereafter, he was promoted as Assistant Superintendent in the year 2000. Due to excellent and unblemished service record of the applicant, the respondents have promoted the applicant as Office Superintendent at General Hospital, Chandrapur on 02.03.2014. On 18.04.2015 due to retirement of the Chief Administrative Officer at General Hospital, Chandrapur, the applicant was given Additional Charge of Administrative Officer. The applicant was transferred in the office of respondent no.3 at Nagpur on 15.10.2016. However, the additional charge of Administrative Officer was continued at Chandrapur till 07.05.2017. The respondent no.3 issued show caused notice on 05.07.2018 to the applicant. The applicant replied the said show caused notice on 16.07.2018. On 31.07.2019, the applicant is retired on attaining the age of superannuation. On 22.11.2019, the respondents failed to release the retiral benefits.

Therefore, the applicant approached to this Tribunal for direction to the respondents to pay pension and pensionary benefits.

3. During the pendency of this O.A., it is amended with the prayer that direction be given to the respondents to complete the departmental enquiry as per charge sheet dated 31.08.2020 within a stipulated period from the date of order.

4. The O.A. is strongly opposed by the respondents. The main contention of the respondents is that the departmental enquiry is initiated against the applicant and therefore he is not entitled for the pension and pensionary benefits as per Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Hence, the O.A. is liable to be dismissed.

5. Heard Advocate for the applicant Shri P.D.Meghe. As per his submission, specific direction was given by this Tribunal to complete the departmental enquiry as early as possible before the next date as per order dated 23.02.2024, but still departmental enquiry is pending.

6. The learned P.O. has submitted that as per Rule 27 of the M.C.S. (Pension) Rules, the applicant is not entitled for pension and pensionary benefits. In support of his submission he has pointed out Judgment of the Hon'ble Bombay High Court in the cases of **Parasram Gomaji Nasre Vs. the State of Maharashtra and Others**

and in the case of **Govind Trimbakrao Kanadkhekar Vs. Chief Executive Officer Zilla Parishad, Nanded and Others.** In both these Judgments, the Hon'ble Bombay High Court has held that when the departmental enquiry is pending, the employee is not entitled to get pension and pensionary benefits. In the case of **Govind Trimbakrao Kanadkhekar Vs. Chief Executive Officer Zilla Parishad, Nanded and Others.** the Hon'ble Bombay High Court Bench at Aurangabad has held that when the Criminal case is pending it is for the employee to apply to the concerned Court for decision of the Criminal case. During the pendency of the Criminal case or departmental enquiry, pension and pensionary benefits cannot be paid as per Rule 27 of the M.C.S. (Pension) Rules.

7. In the present case, the specific direction was given from time to time by this Tribunal to the respondents to decide the departmental enquiry within time limit. As per order dated 23.02.2024 specific direction was given to the respondents to decide the departmental enquiry before the next date. The order dated 23.02.2024 is reproduced below-

2. This Tribunal has directed the respondents to decide the departmental enquiry within a period of three months as per order dated 26.07.2023. The respondents have not completed departmental enquiry.

3. As per the submission of learned counsel for the applicant, not a single witness is examined in the departmental enquiry. The applicant is getting only provision pension. As per his submission, the amount of gratuity and leave encashment not paid by the respondents because of the pendency of departmental enquiry. Hence, C.A. is disposed of with direction to the respondents to decide the departmental enquiry as early as possible before the next date. If the departmental enquiry is not completed then the concerned Officer shall remain present before this Tribunal on the next date.

8. The learned counsel for the applicant has pointed out Rule 27(2)(b) of the M.C.S. (Pension) Rules and submitted that the respondent authority has not produced copy of sanction from the Government to initiate the departmental enquiry after the retirement. As per the Rule, if the employee is retired, then departmental enquiry cannot be initiated without sanction from the Government. Rule 27(2)(b) of the M.C.S. (Pension) Rules, is reproduced below-

27. Right of Government to withhold or withdraw pension

(2)(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.

9. The respondents have issued charge sheet on 31.08.2020. Specific direction was given by this Tribunal as per order dated 23.02.2024 directing the respondents to decide the departmental enquiry before the next date. The next date was fixed on 15.04.2024. Thereafter also the respondents not decided the departmental enquiry. It appears that the departmental enquiry is initiated after the retirement of the applicant. No any sanction as required under Rule 27(2)(b) of the M.C.S. (Pension) Rules, is obtained by the respondents. Nothing is on record to show that any such sanction is obtained from the Government. Hence, the initiating departmental enquiry itself appears to be not legal and proper.

10. As per the submission of learned counsel for the applicant, respondents be directed to release the leave encashment, other benefits such as Gratuity etc. may be withheld till completion of departmental enquiry.

10. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Premnath Bali Vs. Registrar High Court of Delhi and Another reported in AIR 2016 SC 101.** As per the Judgment of the Hon'ble Supreme Court in the case of **Premnath Bali Vs. Registrar High Court of Delhi and**

Another, the departmental enquiry is to be completed within a period of six months and outer limit is of one year.

11. The learned P.O. has pointed out the Judgment Hon'ble Supreme Court in the case of **State of Madhya Pradesh and Another Vs. Akhilesh Zha and Another**. "It is held that some time is to be given to the department to complete the departmental enquiry and specific time is granted to the department to complete the departmental enquiry within 9 months."

12. In the present O.A., the departmental enquiry is pending since last more than 4 years i.e. since 2020. Therefore, the specific direction needs to be given to the respondents. Hence, the following order-

ORDER

1. The O.A. is partly allowed.
2. The respondents are directed to release leave encashment of the applicant and continue to pay the provisional pension till completion of departmental enquiry.
3. The respondents are directed to complete the departmental enquiry within a period of six months from the date of receipt of this order.

4. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated – 19/06/2024.
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.
Judgment signed on : 19/06/2024.
