

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.979 OF 2017

Agnelo Arthur Joaquim Fernandes,
son of Joaquim Fernandes,
aged 52 years, Indian National,
Resident of House No.110A/22,
Kir Bhat, Nuvem, Salcete, Goa. Petitioner.

V/s.

1. Chief Secretary,
Government of Goa,
Secretariat, Porvim, Goa 403 521,

2. Union of India, through
Additional Secretary,
Ministry of External Affairs,
Vigilance Unit-II,
CPV Division, Patiala House Annexe
Tilak Marg, New Delhi 110 001. Respondent.

Mr. Carlos Alvares Ferreira, with Mr. Shane Pereira, Advocate for the
Petitioner.

Mr. Sagar Dhargalkar, Additional Government Advocate for
Respondent No.1.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 23 August 2018.

ORAL JUDGMENT: (Per N.M. Jamdar, J.)

By this Petition, the Petitioner has challenged the order dated 26 September 2017 issued by the Chief Secretary, Government of Goa. By the impugned order, the Chief Secretary has imposed a penalty of withholding of increments of pay for the next three years, as provided under Rule 11 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

2. The Petitioner joined the services of the State Government as a Joint Mamlatdar on 5 February 1996. The Petitioner was promoted as a Class I Officer in the Goa Civil Service in the year 2011. The Petitioner was sent on deputation to the Ministry of External Affairs, Government of India as a Passport Officer. The Petitioner, accordingly, joined in the Ministry of External Affairs in the Passport Office at Panaji from 10 April 2013 to 8 April 2016. It appears that there was a complaint lodged with the CBI (ACB), Goa. The CBI registered an FIR on 7 September 2015 and a search of the Passport Office and the residence of the Petitioner was also conducted. The Petitioner applied for and was granted an anticipatory bail. While the Petitioner was on deputation with the Government of India, a notice came to be issued to the

Petitioner on 17 March 2016. The Petitioner gave his reply on 30 March 2016 and denied the charges. The Petitioner, thereafter, received a communication on 28 September 2017 issued by Respondent No.1 imposing a minor penalty.

3. We have heard Mr. Carlos Ferreira, learned Counsel for the Petitioner and Mr. Sagar Dhargalkar, learned Additional Government Advocate for Respondent No.1.

4. The learned counsel for the Petitioner has raised two grounds. First, that the order passed by the Chief Secretary, State of Goa is without jurisdiction as the Petitioner was employed with the Ministry of External Affairs, Passport Office, Panaji-Goa and the action initially was initiated by the Ministry of External Affairs. Second, he submitted that the file was transferred to the Chief Secretary and the Petitioner was not aware that it was before the Chief Secretary and the impugned order was passed on 26/9/2017 by the Chief Secretary without intimating the petitioner that his file is being looked into by the Chief Secretary. The learned counsel for the Petitioner submitted that this is in violation of the principles of natural justice. He contended that Rule 16 (1)(a) of the CCS (CCA) Rules, 1965 states that after considering the representation made by the Government servant if the effect of such withholding of

increments adversely affects the amount of pension, the inquiry in the manner as laid down in the rules is contemplated.

5. The learned Additional Government Advocate submitted that the stoppage of increments is not likely to affect the Petitioner, as the Petitioner is not going to retire any time soon. He submitted that there is no need to give any hearing. It is stated that as and when found necessary, an inquiry is contemplated and consideration of representation is enough.

6. We have considered the rival contentions. Rule 16 (1)(a) of the CCS (CCA) Rules, 1965, relied upon by the learned Counsel for the Petitioner reads thus :

“16. Procedure for imposing minor penalties

(1) Subject to the provisions of sub-rule (3) of rule 15, no order imposing on a Government servant any of the penalties specified in clause (i) to (iv) of rule 11 shall be made except after-

(a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;”

7. The procedure has been laid down for imposing minor

penalties under the said Rule. The procedure clearly stipulates that if withholding of increments adversely affects the amount of pension, then opportunity needs to be given to the Government servant before proceeding to impose any punishment. It is the contention of the Respondent that the impugned order does not result in any such position. Rule 16 which lays down the procedure for imposing the minor penalties, more particularly Sub-Rule (1)(a) speaks of factual situation where withholding of the increments could result in adversely affecting the pension payable and if the pension is likely to be affected, a different methodology is laid down. However, the Chief Secretary has not finally concluded this issue.

8. Apart from this position, the learned Counsel for the Petitioner has also pointed out that the Petitioner was not aware when his file was transferred to the Chief Secretary and the impugned Order was passed by the Chief Secretary without informing him that his file is being looked at by the Chief Secretary.

9. These being the circumstances, upon which there is no dispute, it would be appropriate that before any order is passed against the Petitioner by the Chief Secretary pursuant to the show cause notice issued the Petitioner is given an opportunity to explain himself.

10. In these circumstances, we are of the opinion that the impugned order is required to be quashed and set aside and the matter is restored to the stage of 17 March 2016 wherein the Memorandum of Charge was issued to the Petitioner. In the facts and circumstances of the present case, the Chief Secretary may consider giving an opportunity to the Petitioner of presenting his case in person before the Chief Secretary, apart from giving written explanation.

11. Accordingly, the Writ Petition is disposed of as under :

(I) The impugned order dated 26 September 2017 is quashed and set aside.

(II) The proceedings shall be relegated to the stage of serving Memorandum of Charge dated 17 March 2016 on the Petitioner.

(III) The Petitioner is permitted to file an additional representation/reply before the Chief Secretary, within a period of three weeks from today.

(IV) The Chief Secretary will thereafter decide the matter as per law. It is open to the Chief Secretary to consider giving hearing to the Petitioner.

12. We make it clear that we have not commented anything on the merits of the Memorandum of Charge and the Chief Secretary will proceed as per law. All contentions of the Petitioner, as well as the Respondents-Authorities, are kept open.

13. Rule is made absolute in the above terms. No order as to costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.