

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2973 OF 2012

Omprakash s/o. Madanlal Nimodia,
Age : 65 years, Occ. Pensioner,
r/o. Sahara Building, Vasant Nagar,
Near Gandegaonkar's Petrol Pump,
Anand Nagar Road,
Nanded

..Petitioner

Vs.

1. The State of Maharashtra,
Through : The Secretary,
Planning Department,
Maharashtra State,
Mantralaya,
Mumbai – 32
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad
3. The Executive Engineer,
Minor Irrigation Division,
Parbhani
4. The Executive Engineer,
Purna Irrigation Division,
Vasmatnagar,
Dist. Hingoli

..Respondents

Mr. Sujeet Joshi, Advocate for petitioner

Mr. P.S.Patil, AGP for respondents

**CORAM : PRADEEP NANDRAJOG, C.J. &
R.G. AVACHAT, J.
DATE : SEPTEMBER 25, 2019**

PER COURT :-

1. Heard learned Counsel for the parties.
2. While the petitioner was serving as a Sub-Divisional Engineer/Deputy Engineer, on 10.09.2001, a communication was issued to him by the Executive Engineer informing that under cover of the communication he was being sent a charge-sheet. It is the case of the petitioner that under cover of the communication dated 10.09.2001, he received a memorandum of charge-sheet dated 26.07.2001 sans the charge-sheet, statement of imputations and list of relied upon documents. On receipt of the communication dated

10.09.2001, he immediately informed said fact to the Superior authority on 25.09.2001.

3. It is the case of the petitioner that on 31.07.2002, he served a notice seeking to be voluntarily retired which was accepted on 14.10.2002. It is the case of the petitioner that the charge-sheet which was enclosed under the memorandum dated 26.07.2001 was ultimately served on him in the year 2004. On these facts, the petitioner urges that in view of sub-rule 6 of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, departmental proceedings being required to be deemed to be instituted on the date on which the statement of charges is issued to the delinquent would require it to be held that on 10.09.2001 no charge-sheet was issued for the reason issuance means the documents going out of the hand of the transmitter. Learned counsel urges that on 10.09.2001 what went out of the hand of the transmitter was the memorandum under which the charge-sheet was issued sans the charge-sheet actually issued. With reference to clause (b) of sub-rule (2) of the same Rule i.e. Rule 27

which prohibits institution of departmental proceeding after a Government Servant retires save and accept with the sanction of the appointing authority and not to be in respect of events which took place more than four years before such initiation, learned counsel urges that withholding of petitioner's gratuity and other terminal dues was vitiated.

4. In the Original Application filed before the Maharashtra Administrative Tribunal the prayer made was to restrain the department from conducting an enquiry against the petitioner who had retired voluntarily from service on 14.10.2002 by which date the charge-sheet was not served upon him.

5. From the facts noted herein above it becomes apparent that under communication, in writing, dated 10.09.2001 the memorandum dated 26.07.2001 was issued. The memorandum records that the competent authority had drawn up the charge-sheet to be served upon the petitioner. The person who communicated the

said fact to the petitioner was negligent and did not ensure that under cover of memorandum dated 26.07.2001 the charge-sheet was also enclosed.

6. Whilst it may be true that the requirement of serving charge-sheet along with the statement of imputations serves the purpose of delinquent responding to the charge-sheet but for the purpose of present case suffice it would be highlighting that it is a case of charge-sheet improperly so called being served on the petitioner under cover of memorandum dated 26.07.2001 which was enclosed with the letter dated 10.09.2001. It is also relevant to note that when the letter dated 14.10.2002 was addressed to the petitioner informing that his request to be voluntarily retired was accepted on the condition that enquiry would continue, the petitioner kept quite i.e. accepted the same. The petitioner never responded that since no charge-sheet was served upon him question of he being retired voluntarily with the condition attached was wrong.

7. Clarifying that on 14.02.2012 penalty of 15% cut in pension and recovery of ₹ 22,595 has been inflicted upon the petitioner, which we are not concerned with on account of the same not being under challenge, we dismiss the Writ Petition. Rule discharged.

[R.G. AVACHAT, J.]

[CHIEF JUSTICE]

kbp