

IN THE HIGH COURT OF JUDICATURE OF BOMBAY**BENCH AT AURANGABAD****920 WRIT PETITION NO.10685 OF 2019****BAPUSAHEB BHIMRAO CHAVRE****VERSUS****THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr.Jadhav N.L.

AGP for Respondent Nos. 1, 2, 4 and 5-State : Mrs.R.P.Gaur

Advocate for Respondent No. 3 & 7 : Mr. S.s. Dambe

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.****DATE : 20.08.2022.****PER COURT : (PER -SANDEEP V. MARNE, J.)**

1. By the present petition, the petitioner challenges the order dated 02.08.2019 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No. 325 of 2019. The challenge in the Original Application was to the memorandum of charge sheet dated 21.01.2000. One of the grounds of challenge was that the disciplinary proceedings were not maintainable after the retirement of the petitioner. He had contended in his Original Application that since the disciplinary proceedings were initiated against him while he was in service, upon his retirement, an intimation was required to be given to him for continuing the disciplinary proceedings for the purpose of

imposing penalty of withholding his pension. It was his case that in absence of such intimation, the respondent No. 3 was not justified in proceeding with the inquiry. Another ground raised by him was that the disciplinary proceedings could be continued under the provisions of Rule 27 of the Maharashtra Civil Services (Pension) Rules 1982 ('the Rules of 1982') only in respect of grave charges and that the charges levelled against him are not serious in nature.

2. Instead of deciding these contentions raised by the petitioner, the Tribunal has disposed of the Original Application by directing respondents to conclude the disciplinary proceedings within a period of four months.

3. Mr. Jadhav, appearing for the petitioner submits that the learned Tribunal ought to have considered and decided the points raised in the Original Application. He submits that early finalization of the disciplinary proceeding was not something that he had prayed for before the Tribunal. He invited our attention to the provisions of Rule 27 of Rules of 1982 and some decisions of this Court to buttress his contention that in absence of intimation to retired Government Servant, the disciplinary proceedings cannot be continued. However, considering the ultimate order that we are proposing to pass, the same need no discussion any further.

4. We find that the Tribunal has not considered or decided either of the two points. Petitioner had not approached the Tribunal for early finalization of the disciplinary proceedings. It is axiomatic that the prayers made in the Original Applications are considered and decided by the Tribunal. We are not expected to decide the same on account of failure of the Tribunal to do so. It would therefore be a fit case for remand of the Original Application before the Tribunal for afresh decision by setting aside the order dated 02.08.2019. We accordingly proceed to pass following order :

ORDER

- a. The order dated 02.08.2019 passed by the Tribunal in Original Application No. 325 of 2019 is set aside.
- b. The Original Application No. 325 of 2019 is restored on the file of the Tribunal. The Tribunal shall decide the same on merits by considering all the points raised by the petitioner.
- c. Considering the fact that the petitioner has already retired from service on 30.06.2017 the Tribunal is requested to decide the Original Application as early as possible, preferably within a period of four months. Parties shall appear before the Tribunal on 29.08.2022.
- d. Till disposal of the Original Application by the Tribunal, the interim protection granted by this Court vide order dated 16.09.2019 shall continue to operate.

e. It is made clear that we have not gone into merits of any of the contentions raised by the Petitioner before the Tribunal and all points are left open.

f. Petition is accordingly disposed of. No costs.

(SANDEEP V. MARNE)
JUDGE

(MANGESH S. PATIL)
JUDGE

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