

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO.722 OF 2016

Samadhan s/o Kisanrao Ingle,
Aged about 67 years,
Occupation – Retired Municipal Employee,
R/o. “Shree Krupa” Bodde Colony,
Khamgaon, District Buldhana

...PETITIONER

VERSUS

1. State of Maharashtra,
Department of Urban Development,
Through its Principal Secretary,
Mantralaya, Mumbai – 32
2. Director of Municipal Administration,
State of Maharashtra,
Government Transport Service Building,
3rd Floor, Sir Pochkhanwala Marg,
Worli, Mumbai – 30
3. Regional Director of Municipal Administration,
C/o Office of Divisional Commissioner,
By-pass Road,
Camp, Amravati
4. Collector,
Collectorate Compound,
Urban Development Branch,
Buldhana

5. Municipal Council,
Khamgaon, through its Chief Officer,
At/PO : Khamgaon,
District Buldhana
6. Standing Committee of
Municipal Council,
through its Chairman,
Municipal Council, Khamgaon,
At/PO – Khamgaon,
District Buldhana
7. Shri Prashant Sharad Khandkekar,
Ex-Chief Officer of Municipal Council,
Khamgaon, presently working as
Zonal Officer – “A”,
Office of the Municipal Corporation of
Pimpri-Chinchwad,
Bhed Chowk, Nigadi,
Pune – 411 044 and
R/o. A-202, Yashodhan Society,
Hagwane Nagar,
Londhava, Pune - 48

...RESPONDENTS

Shri A.R. Patil, Advocate for the petitioner.
Ms. N.P. Mehta, A.G.P. for respondent Nos.1 to 4/State.
Shri D.M. Kale, Advocate for respondent No.5.
Shri N.S. Khubalkar, Advocate for respondent No.7.

**CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.**

DATE OF RESERVE : JULY 07, 2022.

DATE OF PRONOUNCEMENT : JULY 20, 2022

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. The petitioner has challenged the order of respondent No.5-Chief Officer, Municipal Council dated 31/12/2015 imposing recovery of Rs.25,00,010/- (Rs. Twenty five lacs and ten).

3. The petitioner was working as a Tax Superintendent with the respondent No.5-Chief Officer, Municipal Council. He was appointed on 16/04/1968 and retired on 30/06/2007. As per the contention of the petitioner, he had rendered blemish-less service throughout his career. He was also appreciated for his work. Despite inadequate staff being deputed in his department, he had performed his duty with utmost honesty and integrity.

4. On 30/06/2007, he retired from service due to superannuation. After eight years of his retirement i.e. on 31/12/2015, a notice was issued to him by respondent No.5-Chief Officer, Municipal Council calling the petitioner to deposit Rs.25,00,010/-. Before this notice show cause notice was also issued to him on 17/06/2011. He replied the said notice on

20/06/2011. The respondent No.5-Chief Officer, Municipal Council had held that the explanation given by the petitioner was not satisfactory and hence charge-sheet was issued to him on 29/06/2011 under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as “the said Rules” for short).

5. It is alleged against the petitioner in the charge-sheet that he had not recovered taxes in respect of open plots within municipal council limits. It is further alleged that he had not brought the said fact to the notice of the higher authority regarding recovery of taxes and caused loss to the Municipal Council. As per the contention of the petitioner alleged notice and show cause notice was issued on 17/06/2011, after four years of retirement from service. The enquiry which was initiated against him was invalid and bad in law in absence of valid sanction. Charges leveled against him were vague in nature and baseless. As the enquiry was initiated against him his partial pensionary benefits were withheld. The petitioner further came with the case that the charges leveled against him were baseless as the information collected by him under the Right to Information Act, 2005 vide

letters dated 25/06/2012 and 01/08/2012 showed that recovery of taxes had been made from the layout of Charanjeet Singh Juneja and Purushottam Cotton and Ginning Press which clearly indicated that the taxes had been recovered. The petitioner contended that respondent No.7 had issued show cause notice to him due to previous dispute between him and one councillor. The Enquiry Officer had conducted the enquiry without affording him fair opportunity. An opportunity of cross-examination of witnesses, oral hearing was not given to him thus the enquiry was completed without giving him fair opportunity which is against natural justice.

6. By filing this writ petition, the petitioner has prayed that show cause notice and the enquiry initiated against him be set aside and the directions be issued to the respondents to release his pensionary benefits. He has also prayed that the order of imposing recovery of Rs.25,00,010/- be quashed and set aside.

7. In response to the notice, respondent No.7 has taken the stand that the action has been taken as per the legal provisions. There was no malafide intention. He denied action was due to political pressure. Similar stand was taken by respondent Nos.5, 6

and 7. It is the contention of respondent Nos.5, 6 and 7 that as there was no recovery of tax by the petitioner and he had not brought the said fact to the notice of the superior officer, action was taken against him. Due to the inaction on the part of the petitioner monetary loss was caused to respondent No.5-Municipal Council to the tune of Rs.25,00,010/-. Respondent No.4 stated that no relief is claimed against respondent No.4, hence he has nothing to say about it.

8. Heard Shri A.R. Patil, learned Counsel for the petitioner. He submitted that the action of respondent No.5-Chief Officer, Municipal Council itself is invalid and liable to be set aside. He further submitted that the show cause notice was given after four years of his retirement and enquiry was conducted without valid sanction. In the light of the provisions of Rule 27(2)(b)(i) and (ii) of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as the "Pension Rules" for short) in absence of the sanction, enquiry was invalid and liable to be set aside. He further submitted that the charges leveled against the petitioner are vague one. In support of his contention he placed reliance on *Gopal s/o Digambarrao Baride Vs. The Municipal Council, Beed*

2015 (4) ALL MR 14 wherein this Court had held that the sanction of the Government is a mandatory requirement for a Disciplinary Authority to initiate the proceedings in view of Rule 27. Without that sanction the proceedings would be without jurisdiction as the petitioner was no longer in service having retired.

9. Learned Counsel for the petitioner further submitted that admittedly in the present case, the requirement of Rule 27(2)(b)(i) of the Pension Rules i.e. prior sanction from the Government to proceed against the petitioner is absent. He further submitted that the show cause notice was served upon the petitioner after four years of service and, therefore, Rule 27(2)(b)(ii) applies. He submitted that the requirements of Rule 27(2)(b)(i) and (ii) of the Pension Rules are not complied with. The enquiry is invalid, illegal and liable to be set aside.

10. On the other hand, Shri D.M. Kale, learned Counsel for respondent No.5-Chief Officer, Municipal Council submitted that before initiating the enquiry on 29/06/2011 it was informed to the petitioner that respondent No.5-Chief Officer, Municipal Council was initiating the enquiry which itself is sufficient to show that

there was a compliance in view of Rule 27(2)(b)(i) and (ii) of the Pension Rules. He further submitted that action taken against the petitioner is as per the legal provisions and due to the inaction on the part of the petitioner, the Municipal Council suffered loss, hence writ petition deserves to be dismissed.

11. Heard Ms. N.P. Mehta, learned Assistant Government Pleader for respondent Nos.1 to 4/State and Shri N.S. Khubalkar, learned Counsel for respondent No.7.

12. After hearing both the sides, question raised is whether the action initiated against the petitioner by respondent No.5-Chief Officer, Municipal Council is justified and legal? Admittedly, the petitioner was appointed on 16/04/1968 and retired on 02/06/2007 as Tax Superintendent. It is also an admitted position that on the allegation that as he had not recovered the tax amount from various land owners and had not informed the Superior Officers, action was initiated against him.

13. Learned Counsel for the petitioner has canvassed that after four years of retirement show cause notice was issued which is

illegal and not as per the provisions of the said Rules. It is submitted that the Chief Officer, Municipal Council illegally withheld partial pensionary benefits. Action was taken in absence of valid sanction. The enquiry was conducted without fair opportunity to the petitioner. Thus the order of withholding the pensionary benefits and imposing recovery of Rs.25,00,010/- is arbitrary and unjust. Whereas Shri D.M. Kale, learned Counsel for the Chief Officer, Municipal Council vehemently submitted that the said action is as per the provisions of the said Rules. The order dated 29/06/2011 itself is a sanction. The writ petition is devoid of merits.

14. The case of the petitioner is that the entire proceedings are vitiated as there was no valid sanction. It is apparent from the record that the petitioner was appointed on 16/04/1968 and retired on 02/06/2007. It is also a part of record that during his service career he was appreciated for his work by issuing the Appreciation Certificate dated 06/05/2003. There were no previous complaints against the petitioner. First show cause notice was issued to the petitioner on 17/06/2011 and the charge-sheet was issued on 29/06/2011. As per the Chief Officer, Municipal

Council a letter was addressed to the petitioner on 29/06/2011 informing him that the action would be initiated against him and this itself was the sanction. Thus the action was taken as per the provisions of the said Rules. In the light of the action taken partly pensionary benefits of the petitioner are withheld as well as the recovery of Rs.25,00,010/- is imposed on the petitioner. The real controversy revolved is whether the action of the departmental proceedings could have been initiated without sanction. Another question that arises is whether such action could be taken after four years of retirement in the light of the provisions laid down under Rule 27(2)(b)(i) and (ii) of the Pension Rules which reads as under:

“27. Right of Government to withhold or withdraw pension.

(1)

(2) (a).....

(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 [Appointing Authority],

(ii) shall not be in respect of any event which took place more than four years before such institution.”

15. Admittedly, in the present case, the petitioner retired from service on 02/06/2007 and show cause notice was issued to him on 17/06/2011. Rule 27 of the Pension Rules confers the Power on the Government to withhold the pensionary benefits. Procedure is laid down under the Pension Rules indicating as to when such orders can be passed.

16. The relevant Rule 27(6) of the Pension Rules states about commencement of departmental proceeding.

Rule 27(6) of the Pension Rules which reads thus -

“27. (6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and

(ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

Thus initiation of the departmental proceedings would commence from the date of issuance of a show cause notice to the delinquent. This aspect is dealt by this Court in the case of *Ratnakar Bhagwanrao Mahajan Vs. District and Sessions Judge, Jalna and anr. 2009 (2) Mh.L.J. 312* wherein it is observed that it would be clear that initiation of the departmental proceedings would commence from the date of issuance of regular show cause notice by the Disciplinary Authority.

17. In the instant case, the petitioner retired from service on 02/06/2007 and show cause notice was issued on 17/06/2011 which is after four years of his retirement. Under Rule 27(2)(b)(ii) of the Pension Rules there exists a statutory power to the institution of any departmental proceedings against Government servant in respect of an event which took place more than four years before such institution. In the present case admittedly the show cause notice was issued after four years of retirement. Even the charge-sheet nowhere shows actual period of incident. The

institution of proceedings was more than four years after the retirement. This action initiated against the petitioner in the light of the provisions of Rule 27(2)(b)(ii) of the Pension Rules is contrary to the provisions.

18. The petitioner has also challenged the departmental proceedings on the ground that it was initiated in absence of sanction. Learned Counsel for the petitioner submitted that there was no sanction at all. He placed reliance on *Gopal s/o Digambarrao Baride (supra)* wherein it is held that in the case of an employee who retires, proceeding could still be initiated as set out in Rule 27(2)(b) if the predicates are satisfied. One of the predicates, as pointed out earlier is that the departmental proceedings cannot be initiated without the sanction of the Government. The expression “save with the sanction of the Government” must be read to mean a mandatory requirement for a Disciplinary Authority to initiate the proceedings. Without that sanction the proceedings would be without jurisdiction considering that the employee is no longer in service. It is further held that admittedly the requirement of Rule 27(2)(b)(i) of the Pension

Rules that prior sanction from the Government to proceed against the petitioner is absent and hence the enquiry proceedings initiated against the petitioner is without any lawful authority and contrary to the very scheme of Rule 27 of the Pension Rules.

19. Learned counsel for respondent No.5-Chief Officer, Municipal Council submitted that the letter informing the petitioner dated 29/06/2011 about the initiation of the proceedings itself is sanction. Admittedly, there is no written order showing that the sanction was accorded. Departmental enquiry was initiated without sanction. Whether the said letter can be said to be sanction. Valid sanction should be given in respect of facts constituting the offence/misconduct charged. It is not that sanction order should be elaborate. An order of sanction should precede the charge-sheet indicating application of mind to the aspect that an enquiry was proposed to be held after retirement of the delinquent. Ultimately, the object of grant of sanction is that the authority giving the sanction should be able to consider material before it comes to the conclusion that necessary action in the circumstances is warranted. Rule 27(2)(b)(i) states that there should be a valid sanction before initiating the action. Rule 27(6) stipulates that

departmental proceedings are deemed to have been instituted on the date when statement of charges is issued to the pensioner. It is thus clear that the order of sanction should be prior to issuance of the charge-sheet. As the petitioner is not in service, absence of sanction would vitiate the proceedings.

20. Thus in the present case, admittedly there was no previous sanction. In view thereof and law laid down by this Court in the case of ***Gopal s/o Digambarrao Baride*** (*supra*) the departmental proceedings initiated against the petitioner are not legal.

21. The petitioner has also challenged the proceedings on the ground that the charges leveled against him are vague in nature. On perusal of charge it reveals that period and particulars of the charges are not mentioned. It is generally stated that the petitioner had not performed his duty, not recovered tax and hence he had committed misconduct. It is vaguely stated that there is a dereliction in duty. It is well settled that if a person is not apprised of the charges upon which it is proposed to take action, he would

not be in a position to defend himself. The first thing necessary in the departmental enquiry is that the ground on which it is proposed to take action against the officers/employee has to be stated in the charge. It is mandatory that the charges must be accompanied by the statement of an allegation. The ground on which proposed action is to be taken have to be reduced in the form of a definite charge or charges which have to be communicated to the person charged together with a statement of allegations on which each charge is based and other circumstances which are proposed to be taken into consideration in passing orders have also to be stated. It is rested on a principle that reasonable or adequate opportunity for defending oneself is to be given. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly defend himself. The whole object of furnishing the statement of allegation is to give necessary particulars and details which would satisfy the requirements of giving a reasonable opportunity to put up a defence. It is held by the Hon'ble Apex Court in the case of ***Sawai Singh Vs. State of Rajasthan, AIR 1986 SC 995*** that if the charges are vague and it is very difficult for any accused to meet the charges fairly, the evidence adduced per-functionary and did not at

all bring home the guilt of the accused is entitled to be exonerated of the offence charged with. Non-allegation by the delinquent either before the enquiry officer or before the High Court that the charges were vague does not by itself exonerate the department to bring home the charges. It is further held by the Hon'ble Apex Court that the application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principles of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with and so on.

22. Thus the charges involving the consequences must be specific. Admittedly, a departmental enquiry is not like a criminal trial as was noted in catena of decisions by the Apex Court. There is no such rule that misconduct has to be proved beyond reasonable doubt. But in the departmental enquiry, the consequences like loss of job, loss of benefits, loss of promotional benefits, there must be

fair opportunity to the delinquent in respect of an order involving the action against an employee. There must be clear charges consistent with the requirements of the situation.

23. Admittedly, in the charge-sheet which was served upon the petitioner there are no particulars with regard to the date and time of alleged misconduct. The requirements of Rule 27(2)(b)(i) of the Pension Rules as regards prior sanction of the Government to proceed against the petitioner is also absent. The action taken against the petitioner by issuing show cause notice which amounts to initiation of the departmental enquiry was after four years after retirement in contravention of Rule 27(2)(b)(ii) of the Pension Rules. The charges on which enquiry was conducted were vague and caused prejudice to the petitioner. In view thereof and also in the light of the law laid down by this Court in the cases of ***Gopal s/o Digambarrao Baride*** (*supra*) and ***Ratnakar Bhagwanrao Mahajan*** (*Supra*), the departmental proceedings against the petitioner are not tenable. In the result the enquiry proceedings initiated against the petitioner are held to be illegal and contrary to the provisions of the Pension Rules, hence the writ petition deserves to be allowed.

24. We, therefore, pass the following order :

(a) The writ petition is allowed.

(b) The show cause notice dated 17/06/2011 and the inquiry report dated 30/12/2011 is hereby quashed and set aside.

(c) Respondent No.5-Chief Officer, Municipal Council is directed to release the remaining pensionary benefits of the petitioner within a period of eight weeks from today.

(d) The order passed by respondent No.5-Chief Officer, Municipal Council, Khamgaon dated 31/12/2015 imposing recovery of Rs.25,00,010/- is hereby quashed and set aside.

25. Rule is accordingly made absolute. There will be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)