# IN THE HIGH COURT OF JUDICATURE OF BOMBAY
# BENCH AT AURANGABAD

## WRIT PETITION NO.6820 OF 2022

Toliram s/o Phulaji Rathod,
Age 63 years, Occu. Pensioner,
(Retired Executive Engineer)
R/o N-4, F-115, CIDCO,
Aurangabad, District Aurangabad … Petitioner

**VERSUS**

The State of Maharashtra
through the Secretary,
Public Works Department,
Madam Kama Road,
Hutatma Chowk, Mantralaya,
Mumbai – 32
(Copy to be served on G.P.,
High Court of Bombay,
Bench at Aurangabad) … Respondent

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Mr. Sujeet D. Joshi, Advocate for Petitioner
Mr. P.K. Lakhotiya, A.G.P. for respondent - State

.......

**WITH**

## WRIT PETITION NO.6821 OF 2022

Toliram s/o Phulaji Rathod,
Age 63 years, Occu. Pensioner,
(Retired Executive Engineer)
R/o N-4, F-115, CIDCO,
Aurangabad, District Aurangabad … Petitioner

**VERSUS**

The State of Maharashtra
through the Secretary,
Public Works Department,
Madam Kama Road,
Hutatma Chowk, Mantralaya,
Mumbai – 32
(Copy to be served on G.P.,
High Court of Bombay,
Bench at Aurangabad) … Respondent

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Mr. Sujeet D. Joshi, Advocate for Petitioner
Mr. P.K. Lakhotiya, A.G.P. for respondent - State

.......

**WITH**

**WRIT PETITION NO.6822 OF 2022**

Toliram s/o Phulaji Rathod,
Age 63 years, Occu. Pensioner,
(Retired Executive Engineer)
R/o N-4, F-115, CIDCO,
Aurangabad, District Aurangabad … Petitioner

**VERSUS**

The State of Maharashtra
through the Secretary,
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Mr. Sujeet D. Joshi, Advocate for Petitioner
Mr. P.K. Lakhotiya, A.G.P. for respondent - State

.......

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.

DATE: 25th JULY, 2024.

JUDGMENT (PER : CHIEF JUSTICE) :

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, all the three Writ Petitions have been taken up for final disposal.

2. Since all these petitions involve a common issue, as to whether the charge sheets served upon the petitioner are liable to be quashed in view of the provisions contained in Rule 27(2)(b)(ii) of the Maharashtra Civil Services (Pension) Rules, 1982, hence they have been heard together and are being decided by this common judgment which follows.

3. The petitioner, who retired from the post of Executive Engineer in the Public Works Department of State of Maharashtra on 31/5/2017, by instituting these petitions, challenges the common judgment and order dated 4/5/2022, passed by the Aurangabad Bench of Maharashtra Administrative Tribunal (hereinafter referred to as the Tribunal), whereby Original Applications No.935/2019, 936/2019 and 937/2019 have been dismissed and the

prayers made therein for quashing the charge sheets issued against the petitioner has not been acceded to.

4. Shri Sujeet Joshi, learned counsel representing the petitioners has vehemently argued that, the Tribunal, while passing the impugned judgment dated 4/5/2022, has not construed the provisions contained in Rule 27(2)(b)(ii) and Rule 27(6)(a) of the Pension Rules, 1982 correctly, and hence, the judgment and order passed by the Tribunal is liable to be quashed. His further submission is that as a matter of fact the charge sheets which were challenged by the petitioner for filing the Original Applications before the Tribunal are liable to be quashed for the reason that such charge sheets could not have been issued as per the provisions contained in Rule 27(2)(b)(ii) of the Pension Rules, 1982, as the events in respect of which the charge sheets were issued had admittedly taken place more than four years from the date of institution of enquiry against the petitioner.

5. It has further been argued by learned counsel for the petitioner that in terms of the provisions contained in Rule 27(2)(b)(ii), the departmental proceedings against a retired employee cannot be instituted in respect of alleged

irregularities said to have taken place more than four years before such institution. Drawing our attention to Rule 27(6)(a) of the Pension Rules, 1982, it has been argued on behalf of the petitioner that, departmental proceedings under Rule 27 are to be deemed to be instituted on the date on which statement of charges are issued to the employee concerned or the pensioner concerned. It has further been contended that since in this case, the charge sheets though drawn on 28/4/2017, were served to the petitioner after two years from the date he retired, there is no institution of the departmental proceedings in the eye of law before the petitioner retired, i.e. before 31/5/2017. In this view, the submission is that, on the basis of the charge sheets the departmental proceedings against the petitioner cannot be permitted to be carried out any further. In support of his submissions, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Banarsi Debi & Laxmi Niwas Moody Vs. Income Tax Officer, District IV, Calcutta & Others*** reported in AIR 1964 SC 1742.

6. Per contra, learned A.G.P. has vehemently opposed

the prayers made in the Writ Petitions and has submitted that, Rule 27(6)(a) of the Pension Rules, 1982 clearly provides that the departmental proceedings shall be deemed to be instituted on the date on which the charge sheet is issued. According to him, the phrase appearing in sub-rule (6) of Rule 27 is 'issued' and not 'served'. The learned A.G.P. has stated that, admittedly the petitioner retired from service of the State Government on 31/5/2017 and charge sheets were issued on 28/4/2017 i.e. before he retired.

7. Further submission made by the learned A.G.P. is that merely because the charge sheets are said to have been served upon the petitioner after retirement, it cannot be construed that the departmental proceedings were not instituted against the petitioner before he retired for the simple reason that, in fact, the charge sheets were already issued on 28/4/2017 before the date of retirement of the petitioner, i.e. before 31/5/2017. Contention raised by the learned A.G.P. representing the respondent State is that, departmental proceedings ordinarily are said to be initiated/ instituted when a charge sheet is issued and in this respect, the date of service of charge sheet cannot be deemed to be

the date on which the departmental proceedings are instituted.

8. On the aforesaid counts, it has been contended by the learned A.G.P. that the Tribunal, while passing the impugned judgment dated 4/5/2022, has not committed any illegality or error and accordingly, no interference in the said judgment is called for by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. We have heard the learned counsel for the respective parties and have also perused the record available before us on the Writ Petition.

10. Certain facts which are not in dispute need to be noted before we delve into respective submissions advanced by learned counsel representing the respective parties.

11. Admittedly, the petitioner, while working on the post of Executive Engineer with the Public Works Department of the State Government, retired on 31/5/2017. The charge sheets which are available on record, clearly bear the date 28/4/2017.

12. It is stated that the said charge sheets dated 28/4/2017 were served upon the petitioner on 2/4/2019 i.e. after a period of about two years from the date the petitioner retired.

13. Rule 27(2)(b) of the Pension Rules, 1982 provides that the departmental proceedings, if not instituted while the Government servant is in service, whether before his retirement or during his re-employment, shall not be in respect of any event which takes place more than four years before such institution.

14. It is not in dispute that the illegalities which are the subject matter of the charge sheets pursuant to which departmental proceedings were initiated against the petitioner related to the period more than four years before the initiation of the enquiry i.e. before 20/4/2017. However, what needs to be noted at this juncture is that the charge sheets against the petitioner were issued on 28/4/2017, i.e. before the date of his retirement which is 31/5/2017. Rule 27(2)(2(b) of Pension Rules is extracted hereinbelow :-

> **"27. Right of Government to withhold or withdraw pension :-**

> (1) Appointing authority may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also under the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.
>
> Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.
>
> 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 appointing authority.
>
> (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.

15. Rule 27(6) of the Pension Rules provides that, the proceedings shall be deemed to be instituted on the date on which the charge sheet is issued to the Government servant

or the pensioner. Rule 27(6)(a) is also extracted hereinbelow:-

> "(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 which date;

16. Thus, the question which falls for our consideration is as to whether in the instant case, the departmental proceedings would be deemed to have been instituted on 28/4/2017 when the charge sheets were issued on 2/4/2019 when the charge sheets are said to have been served upon the petitioner. If we come to the conclusion that the departmental proceedings shall be deemed to be instituted against the petitioner in the instant case on 2/4/2019, the bar of Rule 27(2)(b)(ii) will come into play since the irregularities in respect of which charge sheets have been issued and charges are framed against the petitioner, relate to a period more than four years before such institution. However, if we hold that the departmental proceedings in the instant case would be deemed to have been instituted on

28/4/2017 i.e. before the petitioner retired, the bar of Rule 27(2)(b)(ii) of the Pension Rules, 1982 will have no bearing.

17. As noted above, Rule 27(6)(a) states that the departmental proceedings shall be deemed to be instituted on the date of issuance of charge sheet. It clearly does not state that the departmental proceedings shall be deemed to be instituted on the date the charge sheet is served upon the Government servant. In service jurisprudence, the phrases 'issued' and 'served' have often been subject matter of discussion by Hon'ble Supreme Court in various judgments. In the case of ***Delhi Development Authority Vs. H.C. Khurana,*** reported in AIR 1993 SC 1488, the submission that the word 'issued' shall mean 'service' on the employee, was not accepted. It has clearly been opined by the Hon'ble Supreme Court in the said judgment that the word 'issued' merely means that decision to initiate departmental proceedings is taken and translated into action by despatch of the charge sheet leaving no doubt that the decision has been taken. The Hon'ble Supreme Court has further observed that 'issue' of charge sheet in the context of decision to initiate the disciplinary proceedings mean framing of the charge

sheet and taking of necessary action to despatch the charge sheet to the employee to inform him about the charges framed against him and further requiring his explanation. The Hon’ble Supreme Court has clearly held that ‘issue’ would not mean the factum of ‘service’ of charge sheet on the employee concerned. The Hon’ble Supreme Court has further observed that, meaning of the word ‘issued’ has to be gathered from the context in which it is used, and accordingly the Apex Court concluded that, ‘issue’ of a charge sheet would mean its despatch to the Government servant and this act is complete, the moment steps are taken for the said purpose for framing the charge sheet and despatch it to the Government servant. It has clearly been held by the Hon’ble Supreme Court that, the fact of actual ‘service’ of charge sheet on the Government servant is not a necessary part of the requirement of ‘issuance’ of charge sheet.

18. Paragraphs 13, 14, and 15 of the judgment in the case of Delhi Development Authority (supra) are apposite to be quoted here, which run as under:

> “13. It will be seen that in Jankiraman also, emphasis is on the stage when a decision has been taken to initiate the disciplinary proceedings' and it

was further said that 'to deny the said benefit (of promotion), they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee'. The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in 'this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the chargesheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision. Obviously, the contrary view cannot be taken.

14. 'Issue' of the chargesheet in the context of a decision taken to initiate the disciplinary proceedings must mean, as it does, the framing of the chargesheet and taking of the necessary action to despatch the chargesheet to the employee to inform him of the charges framed against him requiring his explanation; and not also the further fact of service of the chargesheet on the employee. It is so, because knowledge to the employee of the charges framed against him, on the basis of the decision taken to initiate disciplinary proceedings, does not form a part of the decision making process of the authorities to initiate the disciplinary proceedings, even if framing the charges forms a part of that process in certain situations. The conclusions of the Tribunal quoted at the end of para 16 of the decision in Jankiraman which have been accepted thereafter in para 17 in the manner indicated above, do use the word 'served' in conclusion No.(4), but the fact of 'issue' of the chargesheet to the employee is emphasised in para 17 of the decision. Conclusion No.(4) of the Tribunal has to be deemed to be accepted in Jankiraman only in this manner.

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the 'word issue'

> given in the Shorter Oxford English Dictionary include 'to give exit to; to send forth, or allow to pass out; to let out; .... to give or send out authoritatively or officially; to send forth or deal out formally or publicly-, to emit, put into circulation'. The issue of a chargesheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the chargesheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'chargesheet has already been issued to the employee', in para 17 of the decision in Jankiraman."

19. Even otherwise, institution of disciplinary proceedings against any Government servant means a decision taken by the appointing/ disciplinary authority to initiate the departmental proceedings. The occurrence of the word 'issued' in Rule 27(6)(a) of the Pension Rules, 1982 has, thus, to be construed accordingly. If the law laid down by the Hon'ble Apex Court in case of Delhi Development Authority (supra) is borne in mind, the act of 'issuance' of charge sheet would only mean a decision to institute the proceedings, framing of charge sheet and its despatch to the Government servant. It would not in any circumstance, mean to 'serve' the charge sheet upon the Government servant.

20. Reliance placed by learned counsel for the

petitioner on the judgment in the case of **Banarsi Debi (supra)** is highly misplaced for the simple reason that the issue which was under consideration before the Hon'ble Supreme Court in the said case related to interpretation of the expression 'issued' occurring in Section 34(1) of the Indian Income Tax Act, 1922. It is well settled principle of law that for construing a Taxing Statute, the doctrine of strict interpretation is to be applied. In any case, the meaning ascribed to the word 'issued' occurring in a Taxing Statute, in our opinion, cannot be borrowed for interpreting such expression occurring in Rule relating to institution of departmental proceedings against a Government servant.

21. The law laid down by the Hon'ble Supreme Court in the case of **Delhi Development Authority (supra)** is in relation to the institution of disciplinary proceedings against a Government servant and accordingly, for construing the correct meaning of the expression 'issued' occurring in Rules regulating conditions of service of a Government servant, the interpretation adopted by the Hon'ble Supreme Court in the case of **Delhi Development Authority (supra)** has to be borne in mind.

22. If, thus, we consider the submissions made by learned counsel for the petitioner that the charge sheets against him were barred by the provisions of Rule 27(2)(b)(ii) of Pension Rules, 1982, we do not find ourselves in agreement with such submissions. The charge sheets against the petitioner were issued on 28/4/2017 before the petitioner retired i.e. before 31/5/2017 and accordingly, the date of issuance of charge sheet is the date of institution of departmental proceedings in terms of the provisions of Rule 27(6)(a) of the Pension Rules, 1982. The date of service of charge sheets, in our opinion, cannot be said to be the date of institution of the departmental proceedings; it has to be necessarily, the date of issuance of the charge sheets.

23. For the reasons aforesaid, we have no hesitation to hold that departmental proceedings against the petitioner in the instant case will be deemed to have been instituted on 28/4/2017. In other words, the departmental proceedings were instituted against the petitioner before he retired i.e. before 31/5/2017. Accordingly, Rule 27(2)(b)(ii) of the Pension Rules, 1982 will have no application in the instant case and hence, the charge sheets issued against the

petitioner which were challenged before the Tribunal are not barred by the said provision.

24. In view of the discussions made and the reasons given above, we do not find any good ground to interfere with the impugned judgment and order dated 4/5/2022, passed by the Tribunal.

25. The Writ Petitions, thus lack merit, which, resultantly are dismissed.

26. Rule stands discharged.

27. No order as to costs.

**(KISHORE C. SANT, J.)** **(CHIEF JUSTICE)**

fmp/-