

**High Court of Madhya Pradesh, Jabalpur**  
**Bench at Indore**

**BEFORE**  
**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 5<sup>TH</sup> OF AUGUST, 2022**

**Writ Petition No.3101/2022**

Between: -

**Dr. Naved Anwar S/o Late Dr. Abdul Hakim,**  
Ages- 56 years, Occupation- Ex-Service,  
R/o: 16/1, D-1, Manik Bagh Road,  
Indore, District Indore (MP)

.....PETITIONER

(By Mr. Aviral Vikas Khare, Advocate)

**AND**

**The State of Madhya Pradesh,**  
Through Chief Secretary,  
Animal Husbandry & Dairy Department,  
Vallabh Bhawan, Bhopal (MP)

**The Director,**  
Animal Husbandry & Dairy Department,  
Kamdhenu Bhawan, Bhopal (MP)

.....RESPONDENTS

(By Ms. Soumya Maru, Panel Lawyer)

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Reserved on : 12/07/2022

Delivered on : 05/08/2022

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This **petition** coming on for orders this day, the court passed the following:

**ORDER**

Heard finally with the consent of the parties.

This petition has been filed by the petitioner under Article 226 of the Constitution against charge sheet dated 02.12.2021 (Annexure P/1) issued by the Principal Secretary, Animal Husbandry & Dairy Department, Bhopal (respondent No.1) , alleging his negligence by the Borrowing Department i.e. Rustomji Armed Police Training College, Indore (MP) (hereinafter referred to as 'the RAPTC') in the death of a horse '*Cleopatra*' on 20.10.2020. The petition has also been filed against non-confirming of the petitioner's Voluntary Retirement application; and also against non-grant of his retiral benefits.

**2.** In brief, the facts of the case are that the petitioner was appointed on the post of Veterinary Assistant Surgeon vide order dated 08.08.1991 (Annexure P/2), in the Animal Husbandry Department and was posted in District Jhabua. On 18.08.2011 (Annexure P/3), he was posted in the Home Department, on deputation, as Veterinary Officer in RAPTC and looking to his services, his deputation was extended from time to time till 23.02.2021. The petitioner also claims that his services in the RAPTC were also appreciated for which, he was also given a letter of appreciation dated 28/03/2017 which is placed on record as Annexure P/4.

**3.** The case of the petitioner is that his tenure on deputation did not go well with the appointment of the then Additional Director General of Police, RAPTC, Shri Varun Kapoor; and hence vide application dated 07.01.2021 (Annexure P/5), he asked for

cancellation of his deputation, and his next posting to his Parent Department which also resulted in recalling of the petitioner from RAPTC to his Parent Department vide order dated **23.02.2021** (Annexure P/6). However, it is alleged that the petitioner was not relieved from RAPTC only on account of the said ADG, Varun Kapoor. A letter in this regard was also sent by the petitioner with a request for his relieving from RAPTC so that he can join at Dewas.

4. It is further the case of the petitioner that his daughter is residing in Dubai and as she was unwell, on **07.10.2021** (Annexure P/8), the petitioner applied for leave of the parent Department to visit her daughter in Dubai and the Parent Department of the petitioner gave its permission vide order dated 10.11.2021 (Annexure P/9), allowing him to leave India from 24.11.2021 to 08.12.2021, to visit Dubai. However, the same permission was withheld deliberately by RAPTC at the instance of the said ADG, which led the petitioner to apply for voluntary retirement from the services on personal reasons; and for this, the petitioner submitted his application on **15.11.2021 (Annexure P/10)** for Voluntary Retirement by depositing part of his salary, as per Rule 42 (1) (a) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (herein after referred to as, 'the Pension Rules'). Subsequently, the petitioner also came to know that his application to visit Dubai was deliberately delayed as it was sanctioned on **20.11.2021**, i.e., after the petitioner applied for Voluntary Retirement, although it was not communicated to him in time also.

5. It is further the case of the petitioner that after submitting his application for Voluntary Retirement, the petitioner left for Dubai on 24.11.2021 and returned to India on 08.12.2021, and according to the petitioner, in the meantime, on the expiry of stipulated period as provided under Rule 42 of the Pension Rules, the petitioner stood automatically retired; but to his surprise, a charge sheet was issued to him on 02.12.2021, alleging his negligence in the death of a horse 'Cleopatra' on 20.10.2020. The petitioner's defense is that he was on medical leave for a period of twenty eight (28) days from 22.09.2020 to 21.10.2020 vide sanction letter dated 25.10.2021 (Annexure P/11) and had resumed his duties only on 22.10.2020 and as such, on 20.10.2020 i.e. on the date of the incident, he was on medical leave and had no role to play in the death of the aforesaid horse.
6. In the charge sheet, it is alleged that on the prescription of the present petitioner only, an iron injection was administered to the said horse, resulting in his death.
7. Shri Aviral Vikas, learned counsel for the petitioner has submitted that the petitioner's application for Voluntary Retirement has been stalled with *mala fide* intentions by issuing charge sheet to him on 02.12.2021, on account of an incident which took place on 20.10.2020. It is submitted that the petitioner's application for Voluntary Retirement which was submitted on 15.11.2021 (Annexure P/10) could not have been rejected.
8. The case of the petitioner is that he submitted his application

for Voluntary Retirement on 15.11.2021 whereas on 10.11.2021 (Annexure P/9), the Parent Department of the petitioner had already given him a certificate that as on 10.11.2021, no Departmental Enquiry (DE) is pending against him. Thus, counsel for the petitioner has submitted that as provided under Rule 42 of the Pension Rules, till 15.11.2021, there was no DE proposed against the petitioner and as such, as provided under proviso to Rule 42 of the Pension Rules, the respondents could not have denied the petitioner his right to take Voluntary Retirement.

9. In support of his contention, learned counsel for the petitioner has also relied upon a decision rendered by a coordinate bench of this Court in the case of **Ramchandra Chouthé v. State of Madhya Pradesh & others** reported as **1983 MPLJ 749**, wherein it is held that, “retirement of Government Servant becoming effective after expiry of three month’s notice given to him under the New Pension Rules; and disciplinary action after such retirement cannot be taken against him under Rule 19 (2) of the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966”.

10. Reliance has also been placed on a decision rendered by a coordinate bench of this Court at Indore Bench in the case of **Sunil Thomas S/o Late Shri N.T. Thomas v. State of Madhya Pradesh and another**, passed in **Writ Petition No.18906/2018 (s)** dated **31.07.2019**.

11. Ms. Soumya Maru, learned Panel Lawyer for the respondent /

State of Madhya Pradesh, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out, as the DE was already under contemplation, as is apparent from letter dated 23.12.2020 (Annexure R/1).

12. It is further submitted that according to second proviso to Rule 42 (1) (a) of the Pension Rules, a Government servant against whom disciplinary action is under consideration by the Appointing Authority, such Government servant shall not be allowed to retire from the services, without prior permission in writing of the Appointing Authority.

13. In rebuttal, Shri Khare has submitted that no action was taken against the petitioner by the Appointing Authority who has issued the charge sheet at the instance of RAPTC; and thus, it has no legal sanctity.

14. Heard learned counsel for the parties and perused the record.

15. Since the validity of the action taken by the respondent No.1 is under challenge, which, according to the petitioner is not in conformity of second proviso to Rule 42 (1) (a) of the 1976 Rules, it would be appropriate to refer to the aforesaid Rule 42 of the Pension Rules at this stage, which reads as under: -

**“42. Retirement on completion of [20 /25 years] qualifying service.** - [(1) (a) Government servant may retire at any time after completing 20 years qualifying service, by giving a notice in Form 28, to the appointing authority at least one month before the date on which he wishes to retire or on payment by him of pay and allowances for the period of one month or for the period by which the notice actually given by him falls short of one month:

**Provided** that this sub-rule shall not apply to the Government servants mentioned in brackets against each of the following Department, unless they have not completed 25 years qualifying service: -

- (a) Public Health & Family Welfare Department (Medical, Paramedical & Technical Staff);
- (b) Medical Education Department (Teaching Staff, Paramedical & Technical staff);

Provided further that such Government servant shall not be allowed to retire from service without prior permission in writing of the appointing authority under the following circumstances: -

- (i) where the Government servant is under suspension;
- (ii) Where it is under consideration of the appointing authority to institute disciplinary action against the Government Servant;

Provided also that if the appointing authority has not taken the decision under clause (ii) of the second proviso, within six months from the date of notice given by the Government servant with regard to such disciplinary action it shall be deemed that the appointing authority has allowed to such Government servant to retire from service on the date after expiry of the period of six months.]

(b) The appointing authority may in the public interest require a Government servant to retire from service at any time after he has completed 20 years qualifying service or he attains the age of 50 years whichever is earlier with the approval of the State Government by giving him three months notice in Form 29:

**Provided** that such Government servant may be retired forthwith and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing then immediately before his retirement or for the period by which such notice falls short of three months, as the case may be.”

(Emphasis supplied)

**16.** It is apparent from the aforesaid rule, that to dislodge an employee's claim for voluntary retirement, two conditions must be satisfied: (1) where the Government Servant is under suspension;

and (2) where it is under consideration of the *Appointing Authority* to institute disciplinary action against the Government Servant; and further it is also provided that if the Appointing Authority has not taken the decision under Clause (ii) of second proviso within six months from the date of notice given by the Government servant with regard to such disciplinary action, it shall be deemed that the appointing authority has allowed to such Government servant to retire from service on the date after expiry of the period of six months.

**17.** In the present case, apparently although the charge sheet has been issued by the Parent Department i.e. Animal Husbandry & Dairy Department of the petitioner on 02.12.2021 in respect of an incident which took place on 02.12.2020 in which a horse named 'Cleopatra' has died on account of administration of an injection, which according to the respondent (RAPTC) was given to it at the advice of the petitioner, who claims that he was on leave on that day.

**18.** Be that as it may, the charge sheet issued by respondent No.1, who happens to be the Parent Department of the petitioner is also not in accordance with Rule 20 of the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966 (herein after referred to as the Rules of 1966) which provides for provisions regarding officers lent to the Union or any other State Government or any subordinate or local authority etc. The same reads, as under:-



**“20. Provisions regarding officers lent to the Union or any other State Government or any subordinate or local authority, etc. - (1)**

Where the services of a Government servant are lent by one department to another department or to the Union Government or to any other State Government or any authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

**Provided** that the borrowing authority shall forthwith inform the authority which lend the services of the Government servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government servant or the commencement of the disciplinary proceeding as the case may be.

**(2)** In the light of the findings in the disciplinary proceedings conducted against the Government servant;

- (i) if the borrowing authority is of an opinion that any of the penalties specified in clauses (i) to (iv) of Rule 10 should be imposed on the Government servant, it may, after consultation with the lending authority, make such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

- (ii) if the borrowing authority is of the opinion that a penalty specified in Rule 11 should be imposed on any member of class TV Government servant, it may impose such penalty without consulting the lending authority;
- (iii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 10 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority, may, if it is the disciplinary authority pass such orders thereon as it may deem necessary, or, if it is not the disciplinary authority submit the case to the disciplinary authority, which shall pass such orders on the case as it may deem necessary:

Provided that before passing any such order the disciplinary authority shall comply with the provisions of

sub-rules (3) and (4) of Rule 15.”

(Emphasis supplied)

**19.** It is clear as per the aforesaid Rule that it is the borrowing authority who has the power of the Appointing Authority for the purpose of placing a Government Servant under suspension and of the Disciplinary Authority for the purpose of conducting disciplinary proceedings against him. It is also provided in this Rule that the Borrowing Authority is required to inform the Authority who lent the services of the Government Servant of the circumstances to the order of suspension of the Government Servant or commencement of the disciplinary proceedings, as the case may be. But admittedly, in the case on hand, the Borrowing Authority i.e. RAPTC sat over the order dated 15.12.2020 for a period of more than one year and it was not even filed along with the reply filed by the respondent, but in fact, in an additional reply. There is no explanation provided in the reply filed on 15.03.2022, and additional reply filed on 26.04.2022, as to why communication dated 23.12.2020 was not acted upon for more than one year by the Borrowing Department itself and has been brought to light only after the application for Voluntary Retirement was filed by the petitioner under Rule 42 of the Pension Rules.

**20.** This court is of the considered opinion that on a harmonious reading of Rule 42(1)(a) of the Pension Rules and Rule 20 of the Rules of 1966, what can be culled out is that for the purposes of the

application of Rule 42(1)(a) of the Pension Rules, in a case where an application for voluntary retirement has been filed by a person on deputation, the borrowing authority shall be deemed to be the appointing authority for the purpose of Rule 20 of the 1976 Rules. Thus, it is held that the Parent Department, i.e., Animal Husbandry & Dairy Department was not competent to issue the charge sheet to the petitioner for an incident which took place while he was on deputation in RAPTC hence the charge sheet dated 02.12.2021 issued by the parent department is liable to be quashed.

**21.** In such facts and circumstances, Writ Petition No.3101/2022 stands **allowed**; and the charge sheet dated 02.12.2021 (Annexure P/) issued by the Principal Secretary, Animal Husbandry & Dairy Department, Bhopal (respondent No.1) is hereby quashed. Consequently, the petitioner's application for Voluntary Retirement is **allowed** and the respondents are directed to accord the petitioner all such benefits emanating from his retirement as on 15.11.2021. The retiral benefits be paid to him within a period of three months from the date of receipt of certified copy of this order.

**(Subodh Abhyankar)**  
**Judge**