

(2025) 10 BOM CK 1101
In the Bombay High Court
Case No : Writ Petition No. 8617 Of 2025

Somshekar Kashinath Babaladi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 17-10-2025

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9, 9(2)

Citation : (2025) 10 BOM CK 1101

Hon'ble Judges : N.R. Borkar, J;M.S. Karnik, J

Bench : Division Bench

Advocate : Vishal P. Shirke, Yogeshwar S. Bate, Akanksha Mishra, Rahul Tiwari

Final Decision : Allowed

Judgement

N.R. Borkar, J

1. The Petitioner takes exception to Order dated 31.07.2024 passed by the Ld. Central Administrative Tribunal (for short 'Tribunal') in Original Application No. 145 of 2014. The Tribunal dismissed OA filed by the Petitioner challenging the Order dated 06.08.2013 issued by the Respondent no.1. By the impugned order, the petitioner was subjected to a permanent penalty entailing the forfeiture of his entire monthly pension along with his entire gratuity.

2. The Petitioner is a retired Superintendent of Central Excise, Thane II Commissionerate. Respondent no.1 is the Secretary of the Minister of Finance, Department of Revenue. The Respondent no.2 is the Commissioner of Central Excise, Thane II.

3. The brief facts giving rise to the present petition are that the Petitioner belongs to the caste 'Hindu Golla' and according to the Petitioner the same is recognized as a Nomadic Tribe in the State of Karnataka. In 1973-74, the Petitioner enrolled his name in the Regional Employment Exchange at Dharwad. Thereafter, vide Order dated 10.06.1976, the Petitioner was selected and appointed on the post of Inspector of Central Excise. Upon joining the said post,

the Petitioner was asked to submit an Attestation Form, wherein he has stated that he does not belong to a Scheduled Tribe (ST), instead he belongs to a Nomadic Tribe. In 1979, a list of seniority of Inspectors was published, wherein the caste of the Petitioner was indicated as 'ST' and subsequently, on 26.06.1991, the Petitioner was promoted to the post of Superintendent of Central Excise Department, on the basis of considering his caste as ST.

4. In June, 2004, the Petitioner opted for voluntary retirement on the ground of his wife's ill health. Thereafter, on 23.06.2004 and 13.09.2004, the Respondents informed the Petitioner that the Joint Commissioner (P&V), Central Excise, Mumbai-I had observed that the caste of the Petitioner is shown as 'Hindu Golla' in his service book, whereas, there is no mention of his caste status as ST. Accordingly, clarification was sought from the Petitioner along with his caste certificate. Soon thereafter, the voluntary retirement application of the Petitioner was accepted and he was released vide Order dated 30.09.2004. However, it was mentioned in the said release order that the Petitioner 'may' produce his caste certificate for taking necessary actions for his pensionary benefits and other emoluments due after voluntary retirement. Consequently, the pension, gratuity and leave encashment of the Petitioner was withheld, despite the absence of any criminal or disciplinary proceedings pending against him. Subsequently, provisional pension was sanctioned and arrears were paid on 01.10.2006.

5. Thereafter, on 02.09.2008, Respondent no.1 issued a Memorandum of Charge-sheet to the Petitioner, thereby alleging that the Petitioner fraudulently claimed and availed the benefits of Reservation available to candidates belonging to the Scheduled Tribe, in the year 1976 for his appointment and in 1991 for his promotion. Accordingly, an Inquiry was conducted and vide Inquiry Report dated 12.04.2012, it was observed that the inquiry proceedings against the Petitioner were initiated more than four years after the event that led to the inquiry, therefore, it is in contravention to the period specified in Rule 9 of CCS (Pension) Rules, 1972. However, considering the merits of the case, the Inquiry Officer by the Report held that the charge against the Petitioner was proved.

6. Subsequently, as regards contravention of Rule 9, the Disciplinary Authority sought advice from UPSC and as such it was advised that the case of the Petitioner is a case of continuous cause of action. Consequently, the provisional pension of the Petitioner was withheld from the Month of August, 2013 onwards. Thereafter, in accordance with the advice of the UPSC, Respondent No.1 passed Order dated 06.08.2013, thereby imposing the penalty of permanent forfeiture of the Petitioner's entire monthly pension and entire gratuity. Being aggrieved by the said Order, the Petitioner filed OA No. 145 of 2014 dated 14.02.2014 before the Tribunal and vide impugned Order dated 31.07.2024 the same was dismissed. The Tribunal dismissed the OA of the Petitioner on three grounds. The first being, the VRS Application of the Petitioner was accepted 'conditionally' w.e.f. 30.09.2004, therefore, the Memorandum of Charge-sheet dated 02.09.2008 was issued well before the expiry of the four-year period provided in

Rule 9 (2)(b)(ii) of the CCS (Pension) Rules, 1972. Secondly, placing reliance on the case of *Sadanand Raghunath Gharat vs. UOI & Ors.* whereby in a similar circumstance the OA was rejected and thirdly, placing reliance on the case of *Chairman & Managing Director Food Corporation of India vs. Jagdish Balaram Bahira* whereby the action to withdraw the benefits availed on the basis of the false claim of caste was held as legal.

7. The Counsel for the Petitioner submits that at the time of the Petitioner's appointment, he had submitted his caste certificate as belonging to the Hindu Golla, Nomadic Tribe issued by the Mamlatdar in the year 1964. It is also submitted that upon joining, the Petitioner was mandated to fill an Attestation form, wherein he had stated that he is not a member of SC/ST but belongs to the Nomadic Tribes, Golla. Therefore, it is submitted that the Respondents were in the know about the caste status of the Petitioner and that the Respondent department in its own wisdom considered him as belonging to ST. It is submitted that, admittedly, the charge-sheet pertaining to the events of 1976 and 1991 was issued to the Petitioner under the provisions of Rule 9, however, the same does not fall within the prescribed limit of four years and is thus violative of Rule 9. It is submitted that the acceptance of the Petitioner's VRS Application w.e.f. 30.09.2004 was in no way 'conditional', as it vaguely requested that the Petitioner 'may' produce his caste certificate for taking necessary actions with regards to his pensionary benefits. It is submitted that even if it is assumed that the VRS application was conditionally accepted on 30.09.2004, the Memorandum of Charge-sheet was issued belatedly on 02.09.2008, which is in any case beyond the period of four years. It is therefore submitted that the acceptance of VRS w.e.f. 30.09.2004 cannot be considered as an 'event' as postulated in Rule 9 (2)(b)(ii). It is submitted that the Petitioner undertakes to receive only 50% of the arrears of pension payable to him till date since August, 2013 and that he shall not claim the remaining 50% of the arrears of pension due to him. The Petitioner further undertakes that he shall not make any claim for payment of interest on the arrears of pension and gratuity payable to him. The Petitioner further seeks gratuity as due and payable to him as well monthly pension from the month of August, 2025 onwards.

8. The Counsel for the Respondents submit that an Inquiry with regards to the caste claim of the Petitioner was initiated vide letter dated 23.06.2004, subsequent to which the Petitioner knowingly submitted his Application for VRS on 29.06.2004. It is submitted that the VRS Application of the Petitioner was conditionally accepted vide Release Order dated 30.09.2004, on the ground that he may produce his caste certificate, which was already called for vide office letter dated 27.08.2004 by the Respondents. It is therefore submitted that the cause of action arose when the caste certificate was called for and the Petitioner failed to produce the same in 2004. It is submitted that in 2005, the Respondents sought clarification from the District Social Welfare Officer, Gulbarga, with regards to the caste status of the Hindu Golla caste. The same was clarified vide letter dated 29.06.2005, that the Hindu Golla caste belongs to

OBC and not ST. It is therefore submitted that the Memorandum of Charge-sheet dated 02.09.2008 is within the prescribed time frame under Rule 9. It is further submitted that the Petitioner was well aware that he does not belong to the ST category, despite of which he availed the promotion in 1991 under the ST category vacancy.

9. Heard the learned counsel. Perused the impugned order and the materials on record.

10. Before delving into the issue at hand, it is vital to shed a light on the provision of Rule 9(2)(b)(ii) of Central Civil Services (Pension) Rules, 1972. The same is reproduced hereunder;

"Rule 9 (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 the President,

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

In view of the above provision and while keeping in mind the facts and circumstances of the present Petition, we are of the opinion that the said Rule serves as a protective barrier against the initiation of disciplinary proceedings against former Government servants/employees related to events occurring beyond a period of four years preceding their commencement. This rule fortifies the principle of fairness and safeguards the legitimate expectation of finality in service records. Accordingly, we observe that any disciplinary action initiated without adhering to the sanction requirement or beyond the stipulated four-year limitation would be liable to be quashed as arbitrary and illegal.

11. In the present case, we observe that Respondent no. 1 issued a Memorandum of Charge-sheet dated 02.09.2008 to the Petitioner, thereby alleging that the Petitioner fraudulently claimed and availed the benefits of Reservation available to candidates belonging to the Scheduled Tribe, twice during his employment. Firstly, in the year 1976 for the purpose of his appointment to the post of Inspector of Central Excise and secondly, in 1991 for the purpose of availing promotion on the basis of vacancy in the ST category. It is not disputed that the Petitioner had submitted his caste certificate at the time of his appointment as well as stated that he does not belong to SC/ST Category, but belongs to Nomadic Tribes, Golla, in his Attestation form upon joining the Respondent department. There is no suppression or misrepresentation on the part of the petitioner. The attestation form clearly mentioned that the petitioner belongs to N.T.. The Petitioner never claimed or projected himself to belong to ST. For whatever reasons, if the department proceeded on the footing that the petitioner belongs to ST, the petitioner cannot be held to be responsible. If the department in its own wisdom considered the petitioner as belonging to ST by

conferring the benefit on the petitioner firstly in 1976 at the time of his appointment and secondly in 1991 at the time of his promotion, the petitioner cannot be made to suffer for the mistake on the part of the department at such a belated stage. The respondents realized for the first time in 2004 that the petitioner was granted the benefits to which he was not entitled to. The VRS application was accepted on 30.09.2004 and the charge-sheet was issued on 02.09.2008. Having accepted the VRS, may be conditionally, the necessary consequence is that the petitioner stood retired and after sometime started receiving provisional pension. The respondents have, in our opinion, completely proceeded on wrong premise that the cause of action is continuous for the purpose of Rule 9. For the event that took place firstly in 1976 and then in 1991, despite all available records and without there being any misrepresentation on the part of the petitioner, it would be unfair to make the petitioner suffer for no fault of his and fault if any, lies completely with the respondents in overlooking the records. Therefore, for the purpose of Rule 9, the event will have to be regarded as having taken place in 1976 and 1991. The Inquiry Officer in its report clearly observed that the inquiry is in contravention of Rule 9. No doubt on merits, the Inquiry Officer held the charges as proved. Therefore, we are of the considered opinion, in the facts and circumstances of the present case that the disciplinary proceedings instituted against the petitioner are in the teeth of Rule 9(2)(b)(ii). In such circumstances, the respondents had no authority to institute the disciplinary proceedings.

12. Considering the overall circumstances, so also considering the current age of the petitioner, we are inclined to allow the present Petition. The Additional Affidavit/Undertaking dated 14.08.2025 submitted on record by the Petitioner is accepted. Accordingly, the impugned Order dated 31.07.2024 of the Tribunal is quashed and set aside. The Original Application No.145 of 2014 is allowed in terms of this order. The Respondents are directed to disburse 50% amount of the arrears of pension payable to the Petitioner till 14th August 2025 since August, 2013 along with the amount of gratuity due and payable to him within a period of 3 weeks from today. The Respondents are further directed to pay monthly pension regularly to the Petitioner from the month of August, 2025. No order as to costs.