

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 205 OF 2021
(Subject – Pension and Retirement Benefits)**

DISTRICT : AHMEDNAGAR

Ramesh S/o Yadav Gunjal,)
Age : 62 years, Occu. : Retired,)
R/o. Vadaje Mala, Janata Raja Maindan,))
Sangamner, Taluka Sangamner,)
District Ahmednagar.) **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Revenue & Forest Department,)
Madam Kama Marg, Hutatma Rajguru))
Chowk, Mantralaya, Mumbai-32.)
- 2. The Collector Ahmednagar,**)
G.P.O. Road, Hatampural,)
Collector Office, Ahmednagar,)
Dist. Ahmednagar.) **...RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicant.

: Shri M.P. Gude, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **24.08.2022.**

O R D E R

1. The present Original Application is filed seeking multiple reliefs of releasing of retirement benefits including Leave

Encashment, Gratuity and finalization of pension order as per 7th Pay Commission, interest on delayed payment and regularization of suspension period from 28.09.2016 to 31.05.2017 as duty period as per the Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 and seeking pay and allowances.

2. The facts in brief giving rise to this application can be summarized as follows :-

(a) The applicant was initially appointed as Talathi on 14.08.1978. He was promoted to the cadre of Circle Officer on 04.02.2016. He stood retired on superannuation on 31.05.2017 while under suspension.

(b) It is submitted that while working on the post of Circle Officer, the applicant was placed under suspension vide order dated 14.10.2016 (Annexure A-2) in the background that offence came to be registered against him under Prevention of Corruption Act. The said suspension was not revoked till his retirement on superannuation on 31.05.2017. Special Case No. 61/2017 was filed against the applicant in respect of the said crime registered under

the Prevention of Corruption of Act and it was pending before the Additional Sessions Judge, Kopergaon. The applicant was acquitted in the said Special Case No. 61/2017 vide judgment and order dated 27.03.2018 (Annexure A-3). The State preferred application seeking leave to appeal before the Hon'ble High Court. The Hon'ble High Court vide order dated 06.11.2019 (Annexure A-4) was pleased to grant leave to the State in application No. 170/2018 and as such, the Criminal Appeal against the acquittal order of the applicant is pending before the Hon'ble High Court.

(c) After the applicant was acquitted in Special Case No. 61/2017, he submitted representation dated 21.08.2019 (Annexure A-5) to the respondent No. 2 i.e. the Collector, Ahmednagar seeking to treat the suspension period as duty period and also to pass the final order in Departmental Enquiry initiated against him. The respondent No. 2 vide it's order dated 29.08.2019 (Annexure A-6) rejected the said representation of the applicant stating that the Criminal Appeal against the order of acquittal is pending before the Hon'ble High Court and also referring to Circular dated 18.11.1997 and Department Manual Instructions.

(d) It is further submitted that thereafter, the applicant submitted application dated 05.03.2020 (Annexure A-7) to the respondent No. 2 seeking regularization of suspension period and release of retirement benefits. The respondent No. 2 rejected the said application vide order dated 14.07.2020 (Annexure A-8) stating pendency of Criminal Appeal and referring to the Government Circular dated 18.11.1997. The applicant preferred Departmental Appeal bearing No. 11/2020 against the said order dated 14.07.2020 (Annexure A-8) before the Divisional Commissioner, Nashik. The said Departmental Appeal is dismissed by the said authority vide order dated 01.04.2021 (Annexure A-9). Thereafter, the applicant submitted application to the respondent No. 1 i.e. the State of Maharashtra Revenue and Forest Department seeking regularization of suspension period and retirement benefits. The respondent No. 1 vide order dated 16.10.2020 (Annexure A-10) rejected the said application giving reference of Rule 27 and Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. However, the respondent No. 1 in identical case of Shri R.A. Suradkar, retired Naib Tahsildar against whom the offence was registered under

the Prevention of Corruption Act and who was acquitted by the Sessions Judge, Shrirampur on 18.11.2013 and the Criminal Appeal was also filed against the acquittal and in spite of that, the respondent No. 1 had regularized the suspension period and paid him all the benefits as per the Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 vide order dated 13.06.2019 (Annexure A-11) subject to decision in pending Criminal Appeal.

(e) It is further submitted that apart from the criminal prosecution, the applicant was simultaneously served with the memorandum of article of charges on 01.03.2018 (part of Annexure A-12 collectively) and the Departmental Enquiry was conducted against him. The applicant submitted his final written statement on 13.07.2018 (part of Annexure A-12 collectively) and sought exoneration in view of the acquittal in criminal prosecution. However, there is no progress in the said Departmental Enquiry and the same is pending since 2018.

(f) In the circumstances as above, it is submitted that the applicant after his retirement on superannuation was

granted only provisional pension vide order dated 07.05.2018 (Annexure A-1). The applicant is deprived of all other retirement benefits and when the applicant is acquitted in the criminal prosecution, he is entitled for all the retirement benefits and regularization of suspension period in accordance with relevant rules. The respondents ought to have completed the Departmental Enquiry initiated against him. The respondent authorities can release all the benefits subject to decision of the Criminal Appeal seeking requisite undertaking from the applicant. Hence, the present Original Application.

3. The Original Application is resisted by filing affidavit in reply on behalf of respondent No. 2 by one Mrs. Madhuri Sampatrao Andhale, working as the Tahsildar (Revenue), in the office of the District Collector, Ahmednagar, Dist. Ahmednagar, thereby she denied all the adverse contentions raised in the Original Application. It is specifically submitted that the representations made by the applicant seeking regularization of suspension period and release of pensionary benefits in view of the acquittal of the applicant in criminal prosecution are rightly rejected by the respondent authorities in view of pendency of the Criminal Appeal before the Hon'ble High Court. The Divisional

Commissioner, Nashik also rightly upheld the decision of the respondent No. 2 in that regard. In these circumstances, the applicant at this stage of the matter is only entitled for provisional pension as contemplated under Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 (wrongly mentioned as Rule 30). The Departmental Enquiry initiated against the applicant is kept pending because of the pendency of the criminal appeal. The matter is sub-judice before the Hon'ble High Court Bench at Aurangabad by way of Criminal Appeal and therefore, there is no merit in the present Original Application and the same is liable to be rejected.

4. The rejoined affidavit on behalf of the applicant is filed denying all the adverse contentions raised in the affidavit in reply.

5. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on the other hand.

6. Upon perusal of the rival pleadings, it is evident that the applicant is acquitted in Special Case No. 61/2017 by judgment and order dated 27.03.2018 (Annexure A-3) of the offences

punishable under Sections 7 and 13 of Prevention of Corruption Act, 1988. Criminal Appeal filed by the State against the said order of acquittal is pending before the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad. The Departmental Enquiry in respect of the said allegations is initiated against the applicant by filing memorandum of charges. There is no further progress in the said Departmental Enquiry. In view of the same, it is to be seen as to whether the respondents have illegally withheld the regular pension and pensionary benefits payable to the applicant after his retirement on superannuation.

7. In this regard, the applicant has placed reliance on the similarly situated employee's case, who has been granted pension and pensionary benefits. In this regard the applicant has placed reliance on the Government Order dated 13.06.2019 (Annexure A-11) i.e. the case of Shri R.A. Suradkar, the then Naib Tahsildar (Santa Gadgebaba Yojana, Tahsil office, Newasa, Dist. Ahmednagar). In this case, he was charged for having committed offence under Section 7, 12, 13(1)(D) read with 13(2) of the Prevention of Corruption Act, 1988 arising out of Crime No. 26/2010 dated 06.04.2010 registered against him. He was also put under the suspension by order dated 09.06.2010. He was acquitted in the Special Case No. 17/2011 by the order

dated 18.01.2013. The State filed Criminal Appeal bearing No. 801/2014 against the order of acquittal. During pendency of the said appeal, however, pension and pensionary benefits were granted to said Shri R.A. Suradkar, subject to decision in Criminal Appeal.

8. Learned Advocate for the applicant further placed reliance on the decision of the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad in **W.P. No. 6650 of 2020** in the matter of **Ashfakali Khan Abdulali Khan Vs. The State of Maharashtra and Ors.**, decided on 25.10.2021. In the said case also the applicant was acquitted of the offences punishable under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 vide judgment dated 19.07.2019 in Special case (ACB) No. 07/2007 and the Criminal Appeal challenging the said acquittal was pending before the Hon'ble High Court. In the said citation case, the pensionary benefits were withheld. After advertng to the provisions of Payment of Gratuity Act, 1972 and Maharashtra Civil Service (Pension) Rule, 1982, the petitioner therein was granted pension and pensionary benefits subject to seeking an affidavit/undertaking from the petitioner that if he suffers an adverse order in the pending proceedings for challenging the acquittal and his acquittal is converted into

conviction, he shall return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment.

9. On the other hand, learned Presenting Officer submitted that the applicant is involved in a serious criminal case and he is not entitled for relief of pension and pensionary benefits, as the Criminal Appeal is in continuation of the original criminal prosecution lodged against the applicant.

10. Learned Advocate for the applicant along with rejoinder affidavit placed reliance on the decision of the co-ordinate Bench of this Tribunal at Mumbai dated 28.10.2021 in O.A. No. 31/2021 in the matter of Shri Pandurang Baburao Borate Vs. The State of Maharashtra and Anr. The applicant therein was acquitted of the prosecution lodged against him under Prevention of Corruption Act, 1988. No final order was passed in Departmental Enquiry. In the said case, the applicant's retirement dues were not paid on the ground that the Government had filed appeal against the acquittal before the Hon'ble High Court, which is sub-judice and therefore, the decision in respect of retirement benefits would be taken only

after decision in appeal. In the said case also, the O.A. was allowed and the benefits were granted to the applicant therein.

11. In view of above, the present case would revolve around Rule 27 (1) and (4) of the Maharashtra Civil Services (Pension) Rules, 1982, which is as under :-

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

(1) [Appointment Authority may], be order in writing, withhold or withdraw a pension or any part of it whether permanently or for a specified period, and also order 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 withdraw, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

(2)

- (3)
- (4) *In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.”*

Perusal of the said Rule 27 would not indicate that even during pendency of the Criminal Appeal after acquittal of the Government servant alleged grave misconduct, the retirement benefits can be withheld. Moreover, the applicant has demonstrated that the respondent No. 1 in case of the Government servant Shri R.A. Suradkar, the then Naib Tahsildar released the pension and pensionary benefits by issuing Government Order dated 13.06.2019 (Annexure A-11) subject to decision in Criminal Appeal. Moreover, in the decision of the Coordinate Bench of this Tribunal in O.A. No. 31/2021, the pensionary benefits were released during pendency of the Criminal Appeal. Further as per the decision of the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad in the matter of **Ashfakali Khan Abdulali Khan** (cited supra), pension and pensionary benefits were released by seeking requisite

undertaking from the petitioner therein of refund of amount, in case decision in Criminal Appeal goes against the applicant therein. The case of the present applicant certainly falls in the category of the said case and the ratio will be aptly applicable. In view of the same, the impugned decision of the respondent No. 2 withholding pension and pensionary benefits even after acquittal of the applicant in a Criminal Case is not legal and proper. Moreover, when the applicant is acquitted of the Criminal Case, he will also be entitled for release of entire admissible pay and allowances for the period of suspension by treating the same as duty period under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 205/2021 is partly allowed in following terms :-

- (A) The Respondents are directed to release pension and pensionary benefits including Gratuity and Leave Encashment as per 7th Pay Commission to the Applicant as per his entitlement within a period of three months from today on furnishing bond/undertaking that if criminal appeal is allowed, and he is asked to refund gratuity, he would refund the same

without raising any grievance in lump sum or installments, if permitted or by deduction from monthly pension payable to him.

- (B) The Respondents are further directed to treat the suspension period from 28.09.2016 to 31.05.2017 as duty period and shall pass necessary orders.
- (C) The Applicant is at liberty to redress his grievance about interest by independent action, as permissible in law.
- (D) No order as to costs.

PLACE : AURANGABAD.
DATE : 24.08.2022.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 287 of 2022 VDD Suspension