

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 229 OF 2021

DIST. : AURANGABAD

Balbir Singh s/o Jagannath Prasad Tyagi,
Age : 68 years, Occu.: Retired as,
Sectional Engineer,
R/o. Plot no. 609, Aashiyana Pam Court,
Ramnagar, Ghaziabad, Dist. Ghizabad
State - Uttar Pradesh.

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APPLICANT

VER S U S

1. The State of Maharashtra
Through the Secretary,
Soil and Water Conservation
Department, Maharashtra State,
Mantralaya, Mumbai - 32.
2. The Regional Soil and Water
Conservation Officer,
Old High Court Building Campus,
Aurangabad.
- (3. The Commissioner,
Soil and Water Conservation
Department, Walmi Area,
Paithan Road, Aurangabad.) (**Deleted**)
3. District Soil and Water
Conservation Officer,
Near Ghati Hospital, Jalna,
Tq. & Dist. Jalna.

...RESPONDENTS

APPEARANCE :- Shri K.G. Salunke, learned Advocate for
the applicant.
: Shri N.U. Yadav, learned Presenting
Officer for the respondents.

**CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman**

DATE : 17th APRIL, 2023

ORAL - ORDER

1. Heard Shri K.G. Salunke, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents.

2. The applicant has preferred the present Original Application seeking directions against the respondents for release of regular pension and pensionary benefits in his favour. The grievance of the applicant is that only on the ground that some measurement books are not handed over or deposited by the applicant with the respondents the regular pension and the pensionary benefits are not extended to the applicant. According to the applicant he is not in possession of any measurement book as is alleged by the respondents.

3. The respondent authorities have resisted the contentions raised in the Original Application and the prayers made therein on the sole ground that despite repeated notices given to the applicant he has not deposited the measurement books which according to the respondents are in possession of the applicant. The respondents have, therefore, prayed for dismissal of the application.

4. Before advertng to the contentions raised on behalf of the parties and the arguments advanced in support of their contentions few facts are necessary to be noted, which are thus:-

The applicant was working in the Soil and Water Conservation Department of the State. The applicant retired as Sectional Engineer on attaining the age of superannuation on 31.12.2012. Prior to his retirement the Departmental Enquiry was initiated against the applicant and the applicant was under suspension at the relevant time. In the Departmental Enquiry conducted against the applicant the following punishment is imposed on him:-

“१. -- -- -- --

२. श्री. बी.जे. त्यागी, तत्का. शाखा अभियंता यांना देय असलेल्या सेवानिवृत्ती उपदानाच्या रकमेतुन शासन नुकसानीची रक्कम रुपये रु. १५,३८,२६३/- एकरकमी वसूल

करावी. उर्वरित वसूलीची रक्कम त्यांच्या सेवानिवृत्ती वेतनाच्या दरमहा ३० टक्के प्रमाणे वसूली पूर्ण होईलपर्यंत कपात करण्यात यावी. तसेच निवृत्ती वेतनाच्या २५ % रक्कम कायमस्वरूपी कपात करण्यात यावी.

३. -- -- -- --”

5. The aforesaid order has been challenged by the applicant before this Tribunal and the Original Application filed in that regard is pending for consideration before the Division Bench. As has been submitted by the learned Counsel appearing for the applicant, the applicant is receiving the provisional pension, however, proposal for regular pension has not yet been processed and the amount of gratuity is also not paid to the applicant. According to learned counsel, the leave encashment amount is paid to the applicant by the respondents. As I noted hereinabove for not releasing the regular pension in favour of the applicant and not releasing other permissible retiral benefits to the applicant, the only ground is that the applicant has not deposited the measurement books which are alleged to be in his custody. The applicant has denied the allegation raised against him that the measurement books are in his custody. He has taken a specific plea that he has deposited the measurement books with the office and none of the measurement book is with him. Some documents are produced by him evidencing that the office has acknowledged receipt regarding receipt of said

measurement books returned by the applicant. According to the applicant, the said measurement books are again shown to be in the custody of the applicant in the further correspondence of the respondents.

6. As against it, the respondents have raised the plea that unless the measurement books are deposited by the applicant, his pension papers for regular pension cannot be processed. The learned Presenting Officer has brought to my notice that even prior to the date of retirement of the applicant the office has issued notices against the applicant calling upon the applicant to return/deposit the measurement books, which are with him. The learned Presenting Officer submitted that it's the property of the Government and a valuable document, which has to be preserved for certain period as a record in the office. The respondents are firm on their stand that unless each and every measurement book as is alleged to be in the custody of the applicant is deposited by him, the case of the applicant will not be processed for regular pension and the amount of gratuity would also not be paid.

7. During the course of the argument on a query made by me it is informed that the measurement books pertain to the works allegedly carried out in the years 2008, 2009 and 2010. As is

revealing from the documents also the measurement books must be pertaining to the year 2010 and prior to that. To the another query made by the Tribunal as to for how much period the measurement books are required to be preserved by the office, the learned Presenting Officer has submitted that the period for maintaining and preserving such record is 10 years. The relevant para in the PWD manual is also read out by the learned P.O. In the PWD manual entire process has been prescribed for destruction of such documents. According to the learned Presenting Officer, even for destruction the measurement books must be in custody of the respondents and their destruction has to be certified from the Audit Department.

8. The provisions in the P.W.D. manual and the submissions made on behalf of the respondents may not be disputed. The only question is, in the worst case if the concerned measurement books are not produced by the applicant what will be the consequences thereof. It is not in dispute that the measurement books, which are allegedly in the custody of the applicant, are prior to year 2010. It is thus evident that the period of 10 years for preservation of such documents has expired. It is not the case of the respondents that the works to which the measurement books relate is still going on or

payments in that regard are yet to be made. On the contrary, some evidence has been submitted by the applicant showing that the works to which the measurement books are alleged to be related, the full payment has already been made. Nothing specific has been stated by the respondents that for want of these measurement books what prejudice has been caused during last 13 years and is likely to be caused in future. It is also not the case of the respondents that some dispute relating to the work to which the measurement books are allegedly related is not yet finalized and unless these measurement books are deposited, the said dispute may not be solved. Further nothing has been pointed out as to whether the applicant is likely to derive any undue advantage by keeping these measurement books in his custody.

9. In the aforesaid circumstances, it appears to me that it would be too unjust and improper to withhold the regular pension of the applicant, who has retired about 11 years back on the alleged ground. Since no such case is made out by the respondents, which may justify their action of withholding the regular pension for not depositing the measurement books by the applicant, I am inclined to accept the request of the applicant. Moreover, the applicant today has submitted an

undertaking on affidavit undertaking therein that if any such contingency arises in future and any liability is saddled on the respondents on the ground that the measurement books are not available, the applicant will deposit the amount of monetary loss with the Government from his pension amount.

10. For the reasons discussed above, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The respondents are directed to process the case of the applicant for regular pension and to pay admissible retiral benefits to the applicant, which are not yet paid, within 12 weeks from the date of this order.
- (ii) It is clarified that the respondents are not precluded from effecting recoveries directed against the applicant in the Departmental Enquiry held against him, if the same are not stayed by any competent Court/Tribunal
- (iii) The Original Application stands allowed in the aforesaid terms without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 17.4.2023