

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 931 OF 2018
(Subject – Minor Punishment / Interest on delayed payment)**

DISTRICT : BEED

Manik s/o Patloba Darade,)
Age : 63 years, Occu. : Pensioner,)
R/o Adarsh Colony, Ambejogai,)
Tq. Ambejogai, Dist. Beed.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through, Principle Secretary,)
Public Works Department,)
Mantralaya, Mumbai- 32.)
- 2) **The Executive Engineer,**)
Public Works Department,)
Division Ambejogai, Tq. Ambejogai,))
Dist. Beed.)

.. **RESPONDENTS**

APPEARANCE : Shri V.G. Pingle, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh - Ghate,
Presenting Officer for Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **06.10.2021.**

O R D E R

1. This Original Application has been filed by the applicant Shri Maink S/o Patloba Darade on 04.12.2018 invoking provisions of Section 19 of the Administrative Tribunals Act,

1985. By this Original Application the applicant has challenged the impugned orders dated 15.01.2018 and 31.01.2018 passed by the two respondents, which are pending for decision before appellate authority in departmental appeal filed by the applicant on 18.05.2018.

2. The applicant has narrated his case as follows:-

(a) While applicant was working as Sub-Divisional Engineer, Gangakhed, District - Beed a common Departmental Enquiry was initiated against 8 officers including the applicant on 11.10.2012, i.e. before retirement by superannuation of the applicant, for alleged irregularities found in measurement of work done and quality of construction and repairmen of road from State Higway-2 to Awalgaon totaling 10 Km. of street. It was also alleged that the quality of material/work was also not calculated/considered and omission & commission on part of the applicant was taken as violation of Rule 1(b) of Schedule 14 of Rules of Public Work 1984.

(b) The applicant states that there is no mention of quality of work and loss caused to the Government while ordering departmental enquiry vide order dated

11.10.2012, under provisions of Maharashtra Civil Services (Pension) Rules, 1982.

(c) Applicant claims that he had taken every care to check the quality of work and material, though the material testing Laboratory and has enclosed some documents as Annexure A-2 by way of proof of material testing report. He also states that Rs. 1,26,190/- has been deducted from bills of contractor for inferior quality of works and quality of construction material/s.

(d) The applicant retired on superannuation on 31.03.2013. But, the Enquiry Officer was appointed on 23.05.2013. In the meantime, A.G. Nagpur sanctioned amount of Rs. 5,88,900/- on 06.05.2013 towards payment of DCRG. The applicant represented on 05.01.2014 for release of 90% DCRG amount withholding only 10% as per the provisions of Rule 126(4) of Maharashtra Civil Services (Pension) Rules, 1982.

(e) The applicant further stated that his tenure at Gangakhed was for only two months. He has further claimed that he had represented the said facts before the Enquiry Officer and as evidence towards it, he has

submitted copy of representation dated 28.09.2015 mentioning therein the bill wise checking details of recovery of penalty amount of Rs. 1,26,190/- from the contractors and enclosed the same with the O.A. as Annexure A-5.

(f) The applicant further states that as his representation of release of DCRG amount was not considered, he filed Original Application No. 756/2016 before this Tribunal of release of DCRG amount. This Tribunal passed order on 17.03.2017 directing the respondents to complete the enquiry within two months and thereafter, to take decision regarding release of DCRG within three months. Despite the order of this Tribunal, the respondents neither completed the enquiry nor released the amount of DCRG.

(g) The Enquiry Officer submitted his report on 16.10.2015 and held that the charge No. 1 as proved against the applicant, the Government passed order of penalty of deduction of 6% of pension amount on 15.01.2018 and DCRG amount was not released.

(h) Applicant submitted representation of release of DCRG amount, which was declined by the respondents.

The applicant has mentioned in point no. 8 of the Synopsis filed along with this O.A. that being aggrieved; he had filed Contempt Petition on 17.01.2018. However, no details of the contempt petition have been given, nor is there any mention of the contempt petition in the original application.

(i) Applicant has filed departmental appeal before the Hon'ble Governor of Maharashtra on 17.05.2018 challenging the order of penalty passed on 15.01.2018. However, the appeal is pending for more than 6 months hence; this Original Applicant was filed on 04.12.2018.

3. The applicant has prayed for relief in following terms-

- A) *The original application may be allowed.*
- B) *The impugned punishment order dated 15.01.2018 passed by the respondent no. 1 and order dated 31.01.2018 passed by respondent no. 2 may kindly be quashed and set aside.*
- C) *By issuing an appropriate direction of order the respondents may be directed to calculate interest @ 18% p.a. on delayed payment of DCRG from 06.05.2013 till realization (i.e. 02.08.2018) and pay the arrears of interest on the said amount to the applicant within stipulated period.*
- D) *Any other relief to which the applicant is entitled may be granted."*

4. The applicant has also prayed for Interim Relief in following terms which was not considered by this Tribunal-

“(a) Pending hearing and final disposal of this Original Application the impugned orders dated 15.01.2018 and 31.01.2018 passed by respondent No. 1 and 2 may be stayed and respondents may be directed to release the interest on DCRG amount from 06.05.2013 onwards to applicant.

“(b) Pending hearing and final disposal of this Original Application the Government may kindly be directed to decide the pending appeal filed by applicant on 18.05.2018 with stipulated time frame of three months.”

5. The applicant has given following grounds for relief sought by him.

I) The impugned orders dated 15.01.2019 and 31.01.2018 are contrary to the principles of law and justice and hence deserves to be set-aside.

II) The enquiry officer did not consider the material evidence while recommending the punishment and holding applicant as guilty.

III) The certificate of frequent checking of material and recovery from contractor is not properly weighted by the enquiry officer as well as punishing authorities.

IV) The applicant's tenor at Gangakhed was for 2 months only and same has not been properly considered while holding applicant guilty.

V) The orders of Tribunal and directions to complete enquiry and payment of DCRG amount within time is not followed by the respondents.

VI) The enquiry conducted against the applicant is otherwise bad in law as by hook and crook responsibility of applicant has been fixed.

VII) By withholding 10% amount from DCRG remaining payment ought to have been made to the applicant as per rule 126 (4) of the Maharashtra Civil Service (Pension) Rules, 1982.

VIII) The respondent has invited the interest on DCRG amount (excluding 10% amount) in defiance of the Maharashtra Civil Service (Pension) Rules, 1982. Amount is lying with the respondent since from 06.05.2013 till realization.

IX) The act and attitude of respondents not to release DCRG amount caused loss to the applicant.

X) Departmental enquiry is vitiated by non-observance of principles of natural justice and reason of non-application of mind”

6. Respondent Nos. 1 and 2 have filed affidavit in reply which was taken on record on 23.08.2019 and a copy of the same had been supplied to the applicant. The applicant has filed affidavit in rejoinder to the affidavit in reply which was taken on record on 09.10.2019. As pleadings were complete, the present matter was admitted and kept for final hearing by an Oral Order dated 21.01.2020. The final hearing was initially kept on 28.02.2020, which actually took place on 21.09.2021 delay was primarily due to prevailing pandemic situation of COVID-19. No citations of case laws have been made by the two contesting sides.

7. The respondents have opposed the relief sought by the applicant and placed following main arguments for that purpose as stated in the affidavit in reply and also during the final hearing :-

- (a) A common departmental enquiry was initiated against the applicant and 9 other delinquents under rule 8 of M.C.S. (Discipline & Appeal) Rules, 1979 vide order dated 11.10.2012. The article of charges served on the applicant vide order dated 11.10.2012 reveal that the applicant, while working as a Sub Divisional Engineer, Sub Division Gangakhed, Dist. Parbhani for

the period between 5.6.2006 to 5.8.2006 committed irregularities in the work of road project by omitting to obtain the requisite quality control test report of building material and also failed to ascertain and verify the quality of materials and deliberately paid the bills to the Contractors without conducting the tests to verify the quality of material used in the road work project thereby violated the rule 1(b) of Schedule 24 of the Public Works Manual, 1984.

- (b) During the enquiry, the applicant had full opportunity to adduce evidence in his favour and to cross examine the witnesses, who deposed during the course of the enquiry. The Enquiry Officer conducted the enquiry in free, fair and impartial manner by appreciating the documents on record, evidence adduced and affording full opportunity of hearing to the applicant in consonance with principles of natural justice, and therefore, any allegations of prejudice caused to the applicant due to procedural impropriety while conducting the enquiry, is without any basis.

- (c) Frequent test reports submitted by the applicant (i.e. the delinquent) do not bear the date, name of the office, number, as was required. It was not possible to ascertain the date on which the tests were exactly conducted. The applicant is taking the defense of making recovery of some small insignificant amount from the bills of the Contractors.
- (d) The quantum of punishment of reduction of 6% amount of pension for the period of one year inflicted upon the applicant vide order dated 15.1.2018 is mild; as such, allegations of penalty being disproportionate to the misconduct committed by the applicant is also without any substance and merit.
- (e) The departmental enquiry has been conducted and completed and punishment inflicted upon the applicant by following the relevant provisions of M.C.S. (Discipline & Appeal) Rules, 1979 in letter and spirit. The allegation that the same is vitiated by non-observance of principles of natural justice and also for reason of non-application of mind is misconceived and totally meritless.

- (f) As the departmental enquiry was pending against the applicant on the date of his retirement, his final pension and gratuity amount was withheld as per the provisions of rule 130 (c) of M.C.S. (Pension) Rules, 1982.
- (g) The applicant has already filed appeal before His Excellency the Governor of Maharashtra under rule 18 of M.C.S. (Discipline & Appeal) Rules, 1979 on 17.8.2018 and the same is pending for final decision. Therefore, the present O.A. is not maintainable.

8. The applicant countered the arguments put forward by the respondents stating following main grounds for the same in rejoinder affidavit and during final arguments:-

- (1) The amount of D.C.R.G. Rs. 5,88,900/- was sanctioned by the Accountant General, Maharashtra-II, Nagpur by the order dated 6.5.2013; and the applicant by his application dated 5.1.2014 had requested the respondent authorities to disburse the said D.C.R.G. amount to him in view of the provisions of rule 126 (4) of M.C.S. (Pension) Rules, 1982. However, the respondent

authorities have neither released the said amount nor replied to his said request in their affidavit in reply. He further submitted that the D.C.R.G. amount was disbursed to the applicant by the respondent authorities on 2.8.2018, after conclusion of the D.E. and inflicting punishment vide order dated 5.1.2018 i.e. by delay of more than 5 years. Rule 126 of M.C.S. (Pension) Rules, 1982 provides of withholding of 10% amount or Rs. 1000/- whichever is less, so far as D.C.R.G. is concerned and the balance amount is required to be paid to the delinquent employee. The respondent authorities have violated this provision in the matter of disbursement of D.C.R.G. and delayed the payment without assigning any valid reason. Therefore, the applicant is entitled to get interest on the D.C.R.G. amount.

(2) Pendency of the departmental appeal does not come in the way of seeking relief from this Tribunal and the departmental appeal is pending from about 3 years.

9. Analysis of facts :-

(a) The original applicant has made reference to the Department Enquiry having been conducted in violation of principles of natural justice. However, he has not

submitted any specific ground to establish that there was any procedural defect or shortcoming in respect of conducting the same as per relevant provisions of MCS (Discipline & Appeal) Rules, 1979.

(b) The applicant has contended that he had a short tenure of only two months during which the alleged irregularities took place, he had obtained quality control reports for the construction materials from the material testing laboratories and also inflicted penalties on the contractors whenever material supplied by the contractor and work done by them was found to be of inferior quality. In response to this claim of the applicant, the respondents has advanced arguments that the quality testing reports lacked in necessary details and therefore, have no value. The applicant has not adduced any further details to substantiate his claims in respect of charges of violations of rule 1(b) of Schedule 24 of the Public Works Manual, 1984.

(c) Further, the applicant has not been able to substantiate his claims that the quantum of punishment of reduction of 6% amount of pension for the period of one

year inflicted upon the applicant vide order dated 15.1.2018 is disproportionately high.

(d) The applicant has also claimed that as per rule 126 (4) of MCS (Pension) Rules 1982 he was entitled for provisional gratuity which is full gratuity minus 10% of gratuity amount or Rs. 1000/-, whichever is less. He has claimed payment of interest on delayed payment of provisional gratuity amount to him. However, on perusal of provisions of rule 126 (1) of MCS (Pension) Rule 1982 it is clear the cited rule 126 (4) is applicable in cases in which it is not possible for the Head of Office to forward pension papers referred to in rule 123 to the Audit Officer within period prescribed in sub-rule (4) of that rule, or when the pension papers have been forwarded to the Audit Officer within the prescribed period but the Audit Officer may have returned the pension papers to the Head of Office for eliciting further information before issue of pension payment order and order for payment of gratuity.

(e) On the other hand, the respondents have contended that the rule 130 (1) (c) of MCS (Pension) Rules, 1982 provides for withholding of gratuity during pendency of

departmental proceedings. The argument of the respondents made in this regard seems to have merit as the provisions of rule 130 (1) (c) of the MCS (Pension) Rules, 1982 reads as quoted below-

“No gratuity shall be paid to the government servant until conclusion of the departmental or judicial proceedings and issue of final orders thereon.”

10. After considering facts on record and rival contentions, I conclude that the Original Application No. 931 of 2018 is devoid of merit and accordingly, I pass following orders :-

ORDER

[A] The Original Application No. 931 of 2018 is, hereby, dismissed for reason of being devoid of merit.

[B] No orders as to cost.

(BIJAY KUMAR)
MEMBER (A)

PLACE : AURANGABAD.

DATE : 06.10.2021.