

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 661/2003

DIST.: DHULE

Madan s/o Dayaram Borwal,
Age: 63 years, Occu. Retired,
Executive Engineer,
R/o. Abhiyanta Nagar,
Plot No. 19, Wadi-Bhokar Road,
Dhule, Dist. Dhule.

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APPLICANT

VERSUS

1. The State of Maharashtra,
Copy to be served on Presenting
Officer, M.A.T. Mumbai Bench at
Aurangabad.
2. The Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.
3. The Superintending Engineer,
(Gates) Central Design
Organization, Nashik-4.
4. The Maharashtra Public
Service Commission,
3rd Floor, Bank of India
Building, Mahatma Gandhi
Road, Mumbai-1.

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RESPONDENTS

APPEARANCE : Shri S.D. Joshi, Learned Advocate for
the Applicant.

: Shri V.R. Bhumkar, Learned Presenting
Officer for the Respondents.

CORAM:HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)

Date :- 15.12.2016.

ORDER

[Per- Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)]

Heard Learned Advocate Shri S.D. Joshi, for the Applicant and Shri V.R. Bhumkar, Learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant challenging order dated 27.6.2003 imposing the penalty of withdrawal of entire amount of pension and gratuity. The Applicant is seeking release of arrears of pension and gratuity.

3. Learned Counsel for the Applicant argued that a Departmental Enquiry (D.E.) was started against the Applicant on 19.01.1993. During the pendency of D.E., the Applicant retired on superannuation on 28.02.1999. A Criminal Case was also filed against the Applicant. D.E. was

completed and Enquiry Officer submitted his report on 6.2.2001. A show cause notice was issued to the Applicant on 10.09.2001. The Applicant filed his reply on 27.9.2001. Before final order could be passed in the D.E., the Applicant was convicted in Special Case No. 120/1996 by judgment dated 26.12.2001, to imprisonment of seven years and fine. By impugned order dated 27.6.2003, punishment of withdrawal of entire pension and gratuity was imposed upon the Applicant under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned Counsel for the Applicant argued that the Applicant had filed Criminal Appeal No. 2/2002 before Hon'ble Bombay High Court, Aurangabad Bench. By judgment dated 6.5.2011, the Applicant has been acquitted and the judgment of learned Special Judge, Dhule dated 26.12.2001 in Special Case No. 120/1996 qua the Applicant has been quashed and set aside. Learned Counsel for the Applicant argued that now there is no D.E. or Criminal Case pending against the Applicant. He is entitled to get full pensionary benefits from the date of his superannuation. However, though the Applicant has made a representation to the Respondents in the year 2012 to release

his pensionary dues, the Respondents have not taken any steps to do so.

4. Learned Presenting Officer (P.O.) argued that the Applicant has been acquitted in the Criminal Case. However, the D.E. against him was conducted against him on different charges and he can be punished in that D.E. The reliefs sought by the Applicant are, therefore, premature.

5. We are not impressed by the argument of Learned P.O. that D.E. against the Applicant is still pending. In fact, the impugned order dated 27.6.2003 clearly mentioned that the punishment of withdrawal of entire pension and gratuity was imposed on the Applicant in the Departmental Enquiry. Government order dated 27.06.2003, clearly mentions that. Once a final order has been passed, in a D.E., it can be changed only in an appeal or revision. After, the Applicant was acquitted of all criminal charges by Hon'ble High Court, the impugned order dated 27.6.2003 became untenable. The order of Hon'ble High Court was passed on 6.5.2011. No steps have been taken by the Respondents in the matter.

After all these years, it is legally not tenable to take any action against the Applicant in the D.E. The applicant is entitled to get full pensionary benefits from the date of his superannuation i.e. 28.02.1999. Criminal proceedings against him have resulted in his acquittal by order of Hon'ble High Court dated 6.5.2011. The impugned order dated 27.06.2003 has become untenable as the very basis of that order, which was his conviction in the Criminal Case, is knocked down by order of Hon'ble High Court dated 6.5.2011. The Respondents are directed to release all pensionary dues, including his full gratuity, within three months from the date of this order. This O.A. is allowed accordingly with no order as to costs.

MEMBER (J)

Kpb/DB OA No 661 of 2003 Agarwal 2016

VICE CHAIRMAN (A)