

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.577/2014.

Pramod Namdevrao Singalwar,
R/o Plot No. 25, Hariom Colony,
Shankarnagar,
Amravti Distt.
Amravati.

-----**Applicant.**

Versus

State of Maharashtra,
Through it Secretary,
Revenue , Department
Mantralaya, Mumbai

2. The Divisional Commissioner,
Amravati Division, Amravati,
Distt. Amravati.
3. The Accountant General,
[Accounts and Entitlement] –II,
Pension Wing, M.S, Nagpur.
4. The District Treasury Officer,
Amravati, Distt. Amravati.

----- **Respondents.**

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1. Shri V.A. Kothale, Advocate for the applicant.
 2. Shri A.P. Potnis, Presenting Officer for the Respondents.
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CORAM : Justice M.N. Gilani : Member (J)

DATE : 23rd March, 2015

ORDER

To release the retiral benefits and interest on account of the delayed payment, this O.A. has been filed. The applicant entered in the service of the Respondent No. 2 as Talathi and then reached to the level of Tahsildar. On 31/7/2012 he attained the age of superannuation. His grievance is that for no reason retiral benefits due to him have been withheld and therefore he has filed this O.A. claiming following reliefs :-

- “ (i) Order respondents to release all retiral dues along with compensation of Rs.3 lakhs separately for its non payment along with order to respondents to release gratuity of Rs.4,18,440/- referred in Annexure A-5, regular pension with effect from February 2013 onwards and unpaid difference by deducting provisional pension from regular pension paid for first 6 months from August, 2012 to January 2013 and 18% interest on all retiral dues remain unpaid to the applicant till realization.
- (ii) Saddle the interest and damages due to be payable to the applicant on unpaid retiral dues personally upon the officials in terms of

respondent no.2 and 4 by ordering respondent no. 1 to initiate departmental enquiry for their act of dereliction of duty regarding causing loss to the applicant due to delayed pension.”

2. The Respondent No. 2 filed affidavit-in-reply. It is stated that, after retirement of the applicant his pension case accompanied by 'No Enquiry and No Due' certificates was submitted to the Respondent No. 3. Thereafter, it was learnt by the Collector, Yavatmal that during applicant's tenure as Tahsildar at Mahagaon, he committed financial irregularities. It was found that an amount of Rs.47,27,690/-, without obtaining sanction from the Taluka Committee, was disbursed by the applicant and it was further noticed that beneficiaries were fictitious. This was followed by an appointment of an Enquiry Committee. It is further submitted that the report submitted by the Committee revealed that during applicant's tenure, as Tahsildar, Mahagaon, an amount of Rs. 47,27,690/- was misappropriated. The Respondent No. 2 on 30/8/2014, directed the Collector, Yavatmal to initiate departmental enquiry against the applicant. In pursuance of the order passed by this Tribunal in O.A. No. 38/2014, the pensionary benefits had

been released in favour of the applicant. Now, it is the stand of the Respondent No. 2 that neither 'No Due' nor 'No Enquiry' certificate ought to have been issued in favour of the applicant. Because of contemplated enquiry, the Respondent No. 2 had sent request letter to Respondent No. 3 for releasing provisional pension in favour of the applicant, till finalization of the enquiry. However, in view of the order passed by this Tribunal, the Respondent No. 4 was constrained to release the regular pension.

3. It is submitted that the applicant has already received following payments :-

- a) Rs.1,48,721/- towards provident fund.
- b) Rs.1,06,616/- towards group insurance scheme.
- c) Rs.4,18,440/- leave encashment.

4. The Respondent No. 3 has clarified its stand by filing affidavit-in-reply. It is stated that, it is the duty of the concerned department to forward the pension proposal in full and final shape. In para 7, it is further stated that :-

“ However, once a proper No Enquiry Certificate is issued by the Head of the Office and pensionary authorities issued the benefits cannot be withheld except under Rule 27 of M.C.S. (Pension) Rules. As there is no evidence that a recourse to Rule 27 has been taken in this case, the Treasury Officer, Amravati, has been requested vide this Office letter of 20/10/2014 to honour the authorities already issued by this Office on 26/2/2013. As regards amount of Rs.54,538/-, clarification is given in para 8 and 9. Contents therein are reproduced below :-

Para 8: “ The contention of the applicant that the arrears of 5th Pay Commission amounting to Rs.54,538/- was not credited into his General Provident Fund A/c is also unfounded. In fact, the department had credited twice an amount of Rs.54,538/- in the year 2010-11. Hence, at the time of authorizing final withdrawal payment an amount of Rs.100000/- was withheld and the balance amount of Rs.145721/- was authorized vide this Office authority of 16/8/2012.

Para 9 : Thereafter, the withheld amount was also released vide this Office authority of 26/11/2012 amounting to Rs.108185/- after carrying out the adjustment of Rs.54538/- which was credited twice by the department and allowing the due interest. Hence, the action taken by this Office is consistent with the

M.C.S. (Pension) Rules, 1982 and MGPF Rules, and no action is pending in this Respondent Office.”

5. Admittedly, on 31/7/2012, the applicant was not facing any departmental or judiciary proceedings. In that view of the matter, question of resorting to Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules) did not arise. No doubt, after retirement of the applicant the alleged misappropriation committed by him came to surface. In view of that Rule 27 of the Pension Rules is attracted. It empowers the Govt. to 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 Govt. provided a pensioner, in any departmental or judicial proceedings, is found guilty of grave misconduct or negligence during the period of his service.

6. The Govt. of Maharashtra on 6/10/1998 issued G.R., reiterating the provisions of Rule 27. It is categorically stated that :-

“ सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग

शासन परिपत्रक क्रमांक.सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार कार्यवाही होत नाही असे शासनाच्या निर्देशनास आले आहे. त्यामुळे अशा प्रकरणामध्ये सेवानिवृत्त कर्मचा-याचे महाराष्ट्र प्रशासकीय न्यायाधिकरण तसेच लोकआयुक्तांकडे निवृत्ती वेतन इत्यादि फायदे न मिळालेबाबत तक्रारी येतात. सदर प्रकरणामध्ये वित्त विभाग शासन निर्णय क्रमांक.सेनिवे-१०९४ /१५५ /सेवा - ४, दिनांक २४ एप्रिल १९९५ अन्वये शासनाला व्याजाचा खर्च विनाकारण करावा लागतो. तेव्हा सर्व शिस्तभंग विषयक प्राधिका-यांना पुन्हा निर्देशित करण्यात येते की, वित्त विभाग शासन परिपत्रक क्रमांक. सेनिवे-४, दिनांक २५ मार्च १९९१ नुसार सेवानिवृत्त होणा-या शासकीय कर्मचा-याचे बाबतीत त्याच्या सेवानिवृत्तीपूर्वी महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील नियम २७ (६) नुसार विभागीय चौकशीची कार्यवाही सुरू करण्यात आली नसेल म्हणजेच आरोपपत्र देण्यात आले नसेल किंवा आधीच्या तारखेपासून निलंबनाधीन ठेवण्यात आले नसेल तर सेवानिवृत्तीचा दिनांकाला त्याचेविरुद्ध विभागीय चौकशी प्रलंबित आहे असे म्हणता येत नाही व त्यामुळे अशा कर्मचा-यांना सेवानिवृत्ती विषयक सर्व फायदे वेळेवर अदा करणे अपेक्षित आहे. ” (emphasis supplied)

7. Admittedly, till date, no departmental enquiry has been initiated against the applicant. In that view of the matter only course of action open for the respondents is to take recourse to Rule 27 of the Pension Rules. That means they are supposed to

[Provided that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter :

Provided further that no interest shall be payable in the case in which a provisional gratuity is sanctioned.]

10. Obviously, the gratuity amount became due after 3 months of the date of retirement of the applicant. Even if further 3 months' period is added as grace period, it shall become payable on 1/2/2013. As such, the interest at the rate mentioned in Rule 129-A(1) of the Pension Rule shall be payable on the unpaid amount of gratuity from 1/2/2013. On perusal of the reply and having regard to the facts and circumstances of the case, the delay in payment of gratuity amount can only be attributable to administrative lapse. Reeling under wrong impression that the department has an authority to withdraw gratuity or pensionary benefits, in absence of pendency of departmental or judiciary proceedings against the pensioner on the date of his retirement, is nothing but an administrative lapse.

11. As regards the last installment of GPF amount of Rs.54,358/-, parties are at dispute. In this regard, the respondents will have to be directed to re-check the payment and in the event payment is found to have not been made they shall ensure its payment within reasonable period of time.

12. In the affidavit there is a mention of pensionary arrears of Rs.3,42,520/-. The Id. Counsel for the applicant states that this amount has been received by the applicant.

13. For the reasons afore stated the O.A. stands disposed of with the following directions :-

- (a) The respondents are directed to pay the balance amount of gratuity (according to the applicant it is Rs. 4,18,358/-) within 3 months from the date of passing of this order.
- (b) The respondents are further directed to compute the interest on the unpaid amount of gratuity at the rate specified in Rule 129-A(1) of the Pension Rules. The interest shall be reckoned from 1/2/2013 till date of actual payment.
- (c) The respondents shall ensure the payment of principle amount as well as interest within 6 months from the date of passing of this order.

- (d) As regards the last installment of GPF amounting to Rs. 54,358/-, the respondents shall re-check the payment record and in the event it has not been paid they shall ensure its payment within 3 months from the date of passing of this order.
- (e) Needless to observe that, as and when occasion arises, the respondents shall be at liberty to pass order under Rule 27.
- (f) No costs.

(Justice M.N. Gilani)
Member (J)

Skt.