

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.39/2013.

Dr. Bhimrao Parasramji Kolhe,
Aged about 71 years,
Occ- Retired Doctor,
R/o Plot No.16, Rajabaksha,
Temple Layout, Medical Square,
Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Public Health,
Mantralaya, Mumbai-32.
2. The Director of Health Services,
Having its office at St. George Hospital,
Govt. Dental College Building,
D. Mello Road, C.S.T.,
Fort, Mumbai.
3. The Deputy Director of Health Services,
Nagpur Circle, Mata Kacheri, Nagpur.
4. The District Health Officer,
Zilla Parishad, Nagpur.
5. The District Health Officer,
Zilla Parishad, Gadchiroli.

Respondents

Shri V.K. Gulhane, Learned counsel for the applicant.
Shri S.C. Deshmukh. P.O. for the respondent Nos. 1 to 3.
Shri Majid Sheikh, Ld. Counsel for the respondent No.4.
None for the respondent No.5.

Coram:- Justice M.N. Gilani,
Member (J).

Dated:- 24th June, 2014.

Order

Heard Both sides.

2. The applicant entered the services of the respondents in the year 1976 and on attaining the age of superannuation retired w.e.f. 31.12.2000. In this O.A., he is concerned about the interest on the delayed payment of gratuity and pension.

3. Despite the fact that the applicant retired on 31.12.2000, he was denied retiral benefits and aggrieved by that, he approached this Tribunal by filing O.A. No. 240/2006. During the pendency of this O.A., gratuity, pension, and other retiral dues were settled. In that view of the matter, the O.A. became infructuous. As regards issue of interest, this Tribunal granted liberty to the applicant to approach the concerned department for deciding the issue of interest on delayed payment of gratuity and pension. Accordingly, the applicant approached the concerned department. His representation came to be rejected on 1.8.2013 and, therefore, this O.A.

3. It is the case of the applicant that owing to the administrative lapse of the concerned department, delay in payment of gratuity and pension has occurred and, therefore, he is entitled for interest on the said amount.

4. The respondent Nos. 1 to 3 resisted the application, mainly on the ground that there was no administrative lapse. Lapse, if

any is attributable to the applicant because of failure on his part to complete various formalities. It is pointed out that, the applicant while serving as Medical Officer retained temporarily an amount of Rs. 7,850/-. The amount of Rs. 484/- is the interest on the said amount which the applicant is liable to deposit with the respondents. Further, he was supposed to produce the certificate of passing of Marathi/Hindi examination or the exemption certificate from passing the said examination. On account of non production of said certificate as well as no enquiry certificate, delay in finalizing pension case has occurred. It is also the case of the respondents that because of incident of temporary misappropriation of amount of Rs. 7,850/-, initially the department had proposed regular enquiry against him.

5. On careful scrutiny of the reply submitted by the respondent Nos. 1 to 3 and separate reply submitted by the respondent No.4, I am of the view that mainly delay occurred due to administrative lapse solely attributable to the respondents. The reasons like non production of certificate of passing language examination, the department proposing some enquiry, non-deposit of Rs. 484/- towards interest etc, in fact were not the hurdles in finalizing the pension case of the applicant, so also making payment of gratuity amount.

6. Rejoinder filed by the respondent No.4 is accompanied with relevant documents and according to me they are

decisive. Before retirement of the applicant i.e. on 13.11.2000, proposal was submitted by the respondent No.3 to the respondent No.2 for sanctioning pension case of the applicant. It may be noted that while moving this proposal, deficiencies like absence of certificate of passing of language examination, non-payment of interest of Rs. 484/- etc. did not exist. The proposal was examined by the respondent No.2 and vide communication dated 15.1.2001, it was sent back to the respondent No.3 with a remark that unauthorized absence of the applicant between 25.5.1993 and 3.10.1993 was condoned by the Government and this is required to be noted in his service book. Surprisingly, after 15.1.2001 and till 5.7.2002, nothing happened relating to pension case of the applicant. Perusal of correspondence dated 5.7.2002 between the respondent No.5 and the respondent No.4 shows that there was move in the department to initiate departmental enquiry against the applicant and because of that the proposal for paying him provisional pension was mooted. On 14.4.2004, the respondent No.3 did not agree to the proposal of holding departmental enquiry and advised recovery of interest of 8 to 10 months on the temporary misappropriated amount of Rs. 7,850/-. At this stage, it was expected of the concerned department to prapre a proposal for granting regular pension and other retiral dues to the applicant. Unfortunately, nothing happened. On 1.11.2004, the service book of

the applicant was sent to Pay Verification Unit. At the same time, the department indulged in making correspondence with the applicant on the payment of amount of Rs. 484/- which was followed by C.E.O. directing recovery of the said amount from the retiral dues of the applicant. Documents further reveal that on 17.5.2005, issue of applicant non passing language examination was raised. The respondent No.4 then submitted to the respondent No.3 the statement of marks of S.S.C. examination of the applicant with the proposal to grant him exemption from passing language examination. Ultimately, the same was granted, but only on 19.9.2009 i.e. after four years. Meanwhile, the department entered into correspondence with the applicant about payment of Rs. 484/- and this went on till the year 2009. The payment of retiral dues saw the light of the day only on 25.11.2011.

7. Mr. S.C. Deshmukh, learned P.O. pointed out that since the provisional pension was paid to the applicant and he continued to receive the same, he is not entitled to the interest and therefore, the enquiry as contemplated under Rule 129 (B) (2) of the M.C.S. (Pension) Rules, 1982 (in short Pension Rules) about the issue of administrative lapse etc., does not arise.

8. There are two exceptions under which the payment of interest can be denied. Firstly, if delay in payment of pension is

attributable to the failure on the part of the Government servant to comply with the procedure laid down in Chapter-X of the Pension Rules. Secondly, as suggested by the learned P.O., when the provisional pension was paid to the Government servant.

9. Perusal of Rule 118 of the Pension Rules reveals that in the matter of finalizing the pension case of the Government servant who is about to retire, onerous responsibility has been cast on the Head of the Department. Every head of the office is required to undertake the work of preparation of pension papers in particular form and this preparation should begin two years before the date of retirement. Duty is also cast on the audit officer. Rule 121 of the Pension Rules lays down the complete guidelines as to in how many stages work is to be completed and before how much period it should begin. As per Rule 122, it is expected of the Head of the Department to complete the pension papers of the Government servant at least six months before his retirement and, thereafter, the papers are required to be forwarded to the audit officer. There is nothing on record to point out that the precautionary measures well in time and as contemplated under Chapter X of the Pension Rules were undertaken by the concerned department. On the contrary, an attempt has been made to show lapse on the part of the applicant like non-production of the certificate of passing of language examination etc. Truly speaking, this

issue ought not to have been allowed to be cropped up at a late stage, since the applicant was entitled to be exempted from passing such examination. As regards issue of recovery of Rs. 484/- towards interest, the same could have been ordered to be recovered from the pension amount without wasting time in directing the applicant to deposit the said amount. It is pertinent to note that when for the first time i.e. in November 2000, the proposal was sent by the respondent No.3 to the respondent No.2, no hurdle like non passing of language examination or recovery of Rs. 484/- as interest were in existence. This insignificant issue cropped up after about four years of retirement of the applicant.

9. As regards entitlement of the applicant to claim interest despite the fact that he was paid provisional pension, I am of the view that the second proviso to Rule 129 (B) of the Pension Rules is not applicable to the case of the applicant. This is for the reason that, when the applicant retired, no disciplinary or judicial proceedings were initiated against him. The question of payment of provisional pension or withholding gratuity would only arise when disciplinary or judicial proceedings are pending against a Government servant who retired on superannuation. In the event no disciplinary or judicial proceedings are pending, the Government servant is entitled for regular pension and this appears to be the true import of Rule 130 of the

Pension Rules. Therefore, when no any disciplinary or judicial proceedings were pending against the applicant, when he retired, it was clearly wrong on the part of the concerned department to deny him gratuity as well regular pension. Viewed accordingly, the applicant becomes entitled to claim interest on difference in amount between provisional pension and regular pension. So also he is entitled for interest on the delayed payment of gratuity in terms of Rule 129 (A) of the Pension Rules.

10. Annexure R-1 is the order passed by the respondent No.1, denying interest on the delayed payment of gratuity and pension. The reasons cited are, the applicant did not pay the amount of interest i.e. the amount of Rs. 484/- as well as did not produce the certificate of passing language examination or certificate of exemption. If the reasons are viewed in the light of the provisions contained in Chapter ~~X~~q reference of which has already been made in the preceding paras of this order, it appears that they did not stand to any reason. It is pertinent to note that the applicant was entitled for exemption from passing the said examination and if at all it was a hurdle, this should have been got cleared well in advance and in any event before the applicant reached the age of superannuation. The recovery of Rs. 484/- could not have been the cause, since this meagre amount could have been ordered to be recovered either from gratuity

or pension amount or from any other retiral dues. Material available on record reveals that till November 2004, that means after more than four years of retirement of the applicant, issue of recovery of Rs. 484/- and till the year 2005, issue of non passing of language examination, did ever exist. I, therefore, have no hesitation in concluding that on account of administrative lapse there was huge delay in paying the amount of gratuity and pension and this makes the applicant entitled to the interest on the said amount.

11. The incidental question that crops up is the period from which interest is to be allowed. The relevant dates are 31.12.2000 on which date the applicant retired and 18.11.2011, the date on which payments were made (Annexure R-4-17). As per Rule 129 (A) and 129 (B) of the Pension Rules, gratuity amount of pension has to be paid within three months and six months respectively of the retirement of a Government servant. Even assuming that there were some genuine administrative difficulties or just a lack of promptness, but short of culpable lapse and for that giving indulgence of nine months in addition to statutory period, the applicant becomes entitled to claim interest on delayed payment of gratuity w.e.f. 1.1.2002, and interest on delayed payment of pension w.e.f. 1.4.2002. This follows that at what rate interest should be ordered. As provided under Rule 129 (A), rate of interest has to be allowed on the delayed payment at the rate

applicable to the GPF deposits. It would be proper to quantify it to 8% per annum.

12. For the reasons stated aforesaid, O.A. is allowed in the following terms:

(a) It is declared that the applicant shall be entitled to interest at the rate of 8% p.a. on the amount of gratuity w.e.f 1.1.2002 till the date of payment. Further, he shall be entitled to receive interest at the same rate on the difference in amount between the provisional pension and regular pension and this shall be w.e.f. 1.4.2002 till the date of actual payment.

(b) The entire amount computed/worked out as stated above be paid to the applicant within six months from the date of this order.

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

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