

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 431 of 2017 (S.B.)

Dayaram Rajaramji Nikule,
Aged about 79 years, Occ. Retired,
R/o Plot no.12, Gurukrupa, Ram Mandir
Main Road, Ayodhya Nagar, Nagpur-24.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home,
Mantralaya, Mumbai-400 032.
- 2) The Director General of Police,
Maharashtra State, Mumbai.
- 3) The Special Inspector General of Police,
Nagpur Range, Nagpur.
- 4) The Special Inspector General of Police,
SRPF, Nagpur.
- 5) The Commandant, SRPF, Group IV,
Nagpur.
- 6) The Accountant General (Accounts) II,
Nagpur, Maharashtra.

Respondents

Shri P.J. Mehta, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J)**

JUDGMENT

(Delivered on this 5th day of April,2018)

Heard Shri P.J. Mehta, Id. counsel for the applicant and
Shri V.A. Kulkarni, Id. P.O. for the respondents.

2. The applicant joined the services of respondents as Junior Clerk in 1958 and was promoted as Senior Clerk on 14/10/1980. It is his case that he has made a complaint about serious irregularities committed by one Shri Pansare and prayed for his inquiry and therefore he was targeted and harassed. The applicant in this case is claiming following reliefs :-

“(1) Direct the respondent to immediately start the pension payable to the applicant w.e.f. 01/05/1996.

(2) Direct the respondents to immediately release all the retirement benefits, including arrears of pension, gratuity, leave encashment, commutation value, etc., due and payable to the applicant from the date of his actual retirement i.e. from the date of his superannuation 01/05/1986.

(3) Direct the respondents to pay the interest over the delayed payment of the pension, gratuity, etc., from the date of his superannuation till its actual realization.

(4) Direct the respondents to pay the difference of the amount in the pay scale applicable to the applicant since 01/01/1986 till 16/04/1986 along with interest accrued thereupon till date of its realization.

(5) Direct the respondent to pay compensation to the applicant for the unreasonable delay caused in issuing the order of his superannuation and unreasonable delay in releasing his retirement benefits.

(6) Declare that the applicant was in service till his actual date of retirement as no order of his voluntary retirement was issued till his actual date of retirement i.e. 01/05/1996 and it be treated as period spent on duty and thereafter declare that the applicant shall be entitled for all the consequential benefits arising out of his retirement from 01/05/1996.”

3. The respondents resisted the applicant's claim. According to the respondent no.5, the applicant submitted application for voluntary retirement from 10/07/1986. The said application was not in prescribed format of notice of voluntary retirement, but a conditional application and therefore it was not entertained. However, the applicant filed writ petition no.1728/1987 before the Hon'ble High Court seeking directions for declaration that he stood retired voluntarily w.e.f. 10/07/1986 and relying his statement the Hon'ble High Court passed an order on 18/07/1988 and the applicant was allowed to retire voluntarily unconditionally w.e.f. 10/07/1986. The Hon'ble High Court only directed to release all retiral benefits to the applicant, but not ancillary reliefs claimed by the applicant. Being aggrieved by the said order the applicant filed Review Petition No.130/1990 and the same was also dismissed. The applicant

thereafter filed SLP against the said order of rejection of review before the Hon'ble Apex Court and the Hon'ble Apex Court also dismissed the SLP on 27/07/1990.

4. As regards the retiral benefits, it is stated that number of letters were issued to the applicant from time to time such as on 22/10/1988, 25/10/1988, 27/10/1988, 14/12/1988, 06/01/1989, 20/07/1993, 25/04/1994, 07/01/1995 and 25/01/1995. The applicant however did not respond. He was not inclined to furnish the compliances which were required for finalising the pension and other benefits. It is further submitted that the Hon'ble Supreme Court decided C.A.No. 763/1993 filed by the applicant on 18/03/1994 and has clearly stated that the applicant stood voluntarily retired w.e.f. 10/04/1986 and therefore the applicant cannot again allowed to reopen the issue.

5. The applicant as well as the respondents have placed on record the various orders passed by the Hon'ble High Court and the Hon'ble Apex Court. The order passed in writ petition no.1728 of 1987, dated 12/07/1988 is at P.B. page nos. 37 to 39 (both inclusive) and the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in the said writ petition has observed that the petitioner (applicant) seeks voluntary retirement unconditionally and therefore the rule is made absolute in terms of his prayer. Admittedly, the

applicant has filed review petition against this order and review petition also stood dismissed vide order dated 27/06/1990. The order in review petition no. 97/1990 in writ petition no.2817/1988 is at Annex-A-19. The order of the Hon'ble Apex Court in SLP no.17188/1990, dated 14/01/1991 is at Annex-A-13 from which it seems that the SLP filed by the applicant was dismissed. The applicant also filed SLP (civil) no.20729/1994 which was disposed of on 12/12/1994 (Annex-A-16). Vide this order the respondents were directed to grant retiral benefits within two months.

6. From the aforesaid circumstances, it is clear that Hon'ble High Court has observed that the applicant's stands retired voluntarily w.e.f. 10/07/1986 and said fact has been confirmed by the Hon'ble Apex Court. In such circumstances, the applicant's claim that the respondents be directed to start the pension payable to the applicant w.e.f. 1/5/1996 and to pay difference of the amount in the pay scale from 1/1/1986 to till 16/4/1986 and the further declaration as per prayer clause no.6 is not tenable. As per the prayer clause no.6 the applicant is claiming declaration that he was in service till actual date of retirement as no order of his voluntary retirement was issued till actual date of retirement i.e. 1/5/1996. He is claiming the period till 1/5/1996 as duty period and also consequential benefits accordingly from 1/5/1996. Once the applicant has declared before the Hon'ble

High Court that he shall be allowed to retire voluntarily w.e.f. 1/5/1996 and the said request has been accepted by the Hon'ble High Court and accordingly the order was passed which was confirmed by the Hon'ble Apex Court, the applicant cannot re-open the issue saying that he shall be declared retired w.e.f. 1/5/1986.

7. So far as the pension and pensionary benefits are concerned, the respondent no.5 has given details as to for how many times the applicant was called to fulfil the formalities for compliance for getting pension. Para-7 and 8 of the reply-affidavit is clear in this regard. In the rejoinder-affidavit filed on 21/11/2017 before this Tribunal, the applicant admitted that he received the communication mentioned in para-7 of the reply-affidavit. According to him since the matter was subjudice, he did not comply with those letters. This clearly shows that the respondent authority is not at fault. In para-4 of the rejoinder-affidavit, the applicant has stated that the date of voluntarily retirement, i.e., 10/07/1986 as held by the Hon'ble Apex Court in C.A. 763/1993 filed by the applicant is factually incorrect as on the said date the applicant was on duty and did not even submit his application for unconditional voluntary retirement. The applicant therefore wants to challenge the order passed by the Hon'ble Apex Court also stating that it is factually incorrect. This Tribunal cannot go beyond the order passed by the Hon'ble Apex Court in

C.A.no.767/1993 (Annex-A-16). For getting the retiral benefits as per the order of Hon'ble High Court and Hon'ble Apex Court the applicant must co-operate the respondent authorities. The applicant however did not take cognizance of the various letters issued by the respondent authorities whereby they wanted to release the benefits admissible to the applicant including the pension. The applicant is therefore responsible for not getting the reliefs. In view of the discussions in forgoing paras, I pass the following order :-

ORDER

The O.A. is partly allowed. The applicant is directed to comply with the directions as per the letters mentioned in para nos.7 & 9 and other paras of the reply-affidavit filed by respondent no.5. for the said purpose the applicant shall approach the office of respondent no.5 to the Commandant, SRPF, Group IV, Nagpur as early as possible and in any case on or before 20th April, 2018. The respondents shall take necessary steps to grant benefits to the applicant as per the directions of the Hon'ble High Court and the Supreme Court, as already discussed, within further span of three months from the date of applicant's appearance before respondent no.5. No order as to costs.

Dated :- 05/04/2018.
dnk.

(J.D. Kulkarni)
Vice-Chairman (J).