

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.748 OF 2020**

**DISTRICT : Mumbai**

- 1) Shri Avinash Mahadeo Patil )  
Aged 62 years, Occ. Nil, retired as )  
Administrative Officer from the office of )  
Commissioner, Employees State Insurance )  
Scheme, Lower Parel, Mumbai. )  
R/o 21/B, Haji Kasam Chawl, Mazgaon, )  
Mumbai – 10. ) ... **Applicant**

**Versus**

- 1) The Commissioner, Employees State )  
Insurance Scheme, Panchdeep Bhawan, 6<sup>th</sup> )  
Floor, N. M. Joshi Marg, Lower Parel, )  
Mumbai 400 013. )
- 2) The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Public Health Department, Having Office )  
At Mantralaya, Mumbai-400 032. )...**Respondents**

Shri B. A. Bandiwadekar, Advocate for the Applicant.

Smt. Archana B. K. , Presenting Officer for the Respondents

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 25.06.2021.

**JUDGMENT**

1. The Applicant has filed present Original Application for direction to the Respondents to release his retirement dues along with interest which were held up for a long time invoking jurisdiction of

this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly facts giving rise to Original Application are as under.

The Applicant was serving as Administrative Officer on the establishment of Respondent No.1- Commissioner, Employees State Insurance Scheme, Lower Parel, Mumbai. He stands retired on 31.10.2016. At the time of retirement, no Departmental Enquiry (DE) or Criminal Case was pending against him. However, the Department released Provisional Pension and also released some other benefits in contemplation of D.E. It is on the above background, the Applicant has filed present O.A. for direction to the Respondents to release retirement benefits with interest.

3. At the very outset, Shri Bhushan A. Bandiwadekar, learned Counsel for the Applicant made it clear that he is restricting his O.A. for gratuity and as regard other claims, he would seek remedy independently.

4. Shri B.A. Bandiwadekar, learned Counsel for the Applicant submits that since there was no D.E. initiated or pending at the time of retirement, the Respondents cannot withheld gratuity merely on speculation of initiation of D.E. in future. He has further pointed out that it is only on 28.11.2018 the Applicant was served with the charge sheet alleging certain misconduct during the tenure of his service. He, therefore, submits that gratuity can be withheld as contemplated under Section 131(c) of Maharashtra Civil Services (Pension) Rules, 1982 only in case where D.E. is pending on the date of retirement. He, therefore, prayed for direction to the Respondents to release gratuity.

5. Per contra, Smt. Archana B. K., learned P.O. submits that gratuity has been withheld in view of Rule 130(1)(c) of Pension Rules. She fairly admits that on the date of retirement of the Applicant, no

D.E. was initiated against him and all that D.E. was only contemplated. As D.E. was contemplated, the department has granted Provisional Pension.

6. In view of above submission, the small issue arises for consideration as to whether the Respondents are justified in withholding gratuity and the answer is in negative.

7. True, where a Government servant has been charged for misconduct by serving charge sheet in D.E. before his retirement then such D.E. could be continued even after retirement. In the present case, admittedly no D.E. was initiated against the Applicant during his tenure and for the first time, the charge sheet was served upon him after two years on 28.11.2018.

8. One need to consider the provisions and scope as well as applicability of Rules 27 and 130 of 'Pension Rules 1982' which are as under:-

**“27. Right of Government to withhold or withdraw pension.-**

- (1) [Appointing Authority may], by order in writing, 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 Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement:

Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview.:

Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.

- 2(a) The departmental proceedings referred to in sub-rule (1), if Instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government Servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.
- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, -
- (i) shall not be instituted save with the sanction of (Appointing Authority),
  - (ii) shall not be in respect of any event which took place more than four years before such institution, and
  - (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.
- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of and event which took place, more than four years before such institution.
- (4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.
- (5) Where Government decided not to withhold or withdrawn pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (1) of this rule, ordinarily be made at the rate exceeding one-third of

the pension admissible on the date of retirement of a Government servant.

- (6) For the purpose of this rule, -
- (a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and
  - (b) judicial proceedings shall be deemed to be instituted –
    - (i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance is made, and
    - (ii) in the case of civil proceedings, on the date of presenting the plaint in the Court.”

**“130. Provisional pension where departmental or judicial proceedings may be pending.**

- (1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of rule 27, the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.
- (b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date of which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
- (c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, for Imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant].

- (2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

9. Undoubtedly, in terms of Rule 27 as quoted above, even if the DE is not initiated during the tenure of service of the Government servant, later it can be initiated subject to compliance of rigor of Rule 27(2)(b)(i)(ii) of 'Rules of 1982'. In that event, if pensioner is found guilty for grave misconduct or negligence during the period of his service, then the Government is empowered to withhold or withdraw or pension or any part of it permanently or for a specific period as it deems fit. However, in the present case, admittedly, no D.E. was initiated before retirement of the Applicant, so as to have bearing of Rule 27(2)(a) of 'Rules of 1982'.

10. At this juncture, it would be apposite to refer the Judgment of Hon'ble High Court in **2013(6) Mh.L.J. 311 (Manohar B. Patil Vs. State of Maharashtra)**. In that case, the Petitioner was relieved from the employment on 30.04.2010 in view of voluntary retirement, but the charge-sheet in D.E. was issued on 07.09.2011. The Petitioner had challenged the institution of D.E. after retirement. This authority highlights the scope of Rule 27 in the situation where the charge-sheet has been filed after retirement and to that extent important in the present matter. The Hon'ble High Court dismissed the petition in view of provisions of Rule 27 of 'Rules of 1982'. The

following passage from the Judgment highlights the scope and ambit of Rule 27, which is as follows :-

*“On a conjoint reading of sub-rule (1) with sub-rule (2) of Rule 27 of the said Pension Rules, we are of the view that the Pension Rules provide for initiation of departmental proceedings after retirement of a Government servant subject to constraints of sub-clauses (i) and (ii) of Clause (b) of sub-rule (2) of Rule 27 of the Pension Rules. The departmental proceedings can be instituted after retirement only for the purposes of sub-rule (1) of Rule 27 to enable the Government to recover from pension, the whole or part of any pecuniary loss caused to the Government if in the departmental proceedings, the Pensioner is found guilty of grave misconduct or negligence during the period of his service. On conjoint reading of sub-rules (1) and (2) of Rule 27 of the Pension Rules, it is obvious that in the departmental proceedings initiated after retirement, no penalty can be imposed on a Government servant in accordance with the Discipline and Appeal Rules. The departmental inquiry can be initiated after superannuation only for the purposes of withholding the whole or part of the pension.”*

11. It would be also useful to refer the decision of Hon'ble High Court in The Chairman/Secretary of Institute of **Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal Versus Bhujgonda B. Patil : 2003 (3) Mah.L.J. 602**. In that case, the D.E. was initiated during the service but was continued after retirement of the Respondent. In this authority also, the Hon'ble High Court highlighted the scope, ambit as well as limitation of Rule 27 of 'Rules of 1982'. Para No.13 of the Judgment is important, which is as follows :-

**“13.** *All these provisions, read together, would apparently disclose that the departmental proceedings spoken of in Rule 27 of the Pension Rules are wholly and solely in relation to the issues pertaining to the payment of pension. Those proceedings do not relate to disciplinary inquiry which can otherwise be initiated against the employee for any misconduct on his part and continued till the employee attains the age of superannuation. Undoubtedly Sub - rule (1) refers to an event wherein the pensioner is found guilty of grave misconduct or negligence during the period of his service or during his re - employment in any departmental proceedings. However, it does not specify to be the departmental proceedings for disciplinary action with the intention to impose punishment if the employee is found guilty, but it speaks of misconduct or negligence having been established and nothing beyond*

*that. Being so, the proceedings spoken of in Rule 27 of the Pension Rules are those proceedings conducted specifically with the intention of deciding the issue pertaining to payment of pension on the employee attaining the age of superannuation, even though those proceedings might have been commenced as disciplinary proceedings while the employee was yet to attain the age of superannuation. The fact that the proceedings are continued after retirement only with the intention to take appropriate decision in relation to the payment of pension must be made known to the employee immediately after he attains the age of superannuation and, in the absence thereof the disciplinary proceedings continued for imposing punishment without reference to the intention to deal with the issue of payment of pension alone cannot be considered as the proceedings within the meaning of said expression under Rule 27 of the Pension Rules.”*

12. Thus, the conspectus of these decision is that the D.E. is permissible even if instituted after retirement of the Government servant but it should satisfy the rigor of Rule 27(2)(b) of 'Rules of 1982' and where on conclusion, the Government servant (pensioner) found guilty, then the Government is empowered to withdraw or withhold the pension. In other words, it is only in the event of positive finding in D.E, the pension can be withdrawn or withheld.

13. As regard gratuity, the Rule 130(1)(c) says “no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.” Here, the legislature has not used the word “pensioner” and has specifically used the word “Government Servant”, which is significant in the present context. This leads to suggest that Rule 130(1)(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of 'Rules of 1982', in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for



withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, the right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E.

14. The learned P.O. except Rule 130(c) could not point out any provision to substantiate that the gratuity can be withheld where charge-sheet in D.E. has been issued after retirement. Needless to mention, the pension as well as gratuity are the statutory rights of the Government servants, which cannot be taken away in absence of express provision to that effect.

15. Suffice to say, there being no D.E. at the date of retirement of the Applicant, the Gratuity could not have been withheld. Indeed, this aspect is clarified by the Government in G.R. 06.10.1998 reiterating the provision of 'Pension Rules 1982' as under:-

“सेवानिवृत्त झालेल्या कर्मचा-यांचे निवृत्ती वेतन इत्यादि फायदे देण्याच्या बाबतीत शिस्तभंग विषयक प्राधिका-याकडून वित्त विभाग शाससन 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 क्रमांकसेनिवे-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 सेवानिवृत्तीपुर्वी महाराष्ट्र नागरी सेवा निवृत्ती वेतन नियम १९८२ मधील

नियम २७ (६) नुसार विभागीय चौकशीची कार्यवाही सुरु 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.”

16. Thus, despite consistent decision rendered by this Tribunal and G.R. dated 06.10.1998, it is very unfortunate that Respondents have withheld regular Pension, Gratuity and Leave Encashment of the Applicant, which is totally impermissible. D.E. which is initiated after retirement of the Applicant is also not progressing. The Applicant has already submitted his reply and no Enquiry Office is appointed. Apart, the misconduct attributed to the Applicant in charge sheet on 28.11.2018 pertained certain irregularities committed by him during his tenure. Be that as it may, the Respondents cannot withhold gratuity on speculation of initiation of D.E. It is only after the decision in D.E., the Applicant can be subjected to withholding pension as the Government thinks fit.

17. The totality of the aforesaid discussion leads me to conclude that withholding of gratuity is totally impermissible in law. Original Application is, therefore, deserves to be allowed. Hence, the following order:-

### **ORDER**

- (A) Original Application is allowed.
- (B) Respondents are directed to release gratuity and regular pension to the Applicant within a month from today.
- (C) Applicant may avail independent remedy for grant of interest on the delayed payment.

- (D) Respondents are further directed to complete the D.E. initiated by charge sheet dated 28.11.2018 within six months from today.
- (E) After conclusion of D.E., the Respondents may pass further orders regarding pension subject to outcome of D.E.
- (F) No order as to costs.

**Sd/-**

**(A.P. KURHEKAR)**  
**Member-J**

Place : Mumbai  
Date : 25.06.2021  
Dictation taken by : Vaishali Mane  
Uploaded on :  
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