

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.929/2017.

(S.B.)

Ashok Pandurang Deshpande,
Aged about 67 years,
Occ-Nil, since retired,
R/o House No.4, Mayur Housing Society,
Near house of Rajabhau Thakre,
Date College Road, Yavatmal.

Applicant.

-Versus-

- 1) The Executive Engineer,
Special Project, Public Works Division,
PWD Campus, Yavatmal.

- 2) The State of Maharashtra,
Through its Secretary,
Department of Public Works,
Mantralaya, Mumbai-400 032.

Respondents

Miss Diwita Pagey, the learned counsel for the applicant.
Shri A.M. Ghogre, the learned P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

ORAL ORDER

(Passed on this 17th day of January 2019.)

Heard Miss Diwita Pagey, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

2. The applicant has already filed additional affidavit on record on 4.1.2019. The learned P.O. has filed a pursis, opposing calculation given by the applicant. From the affidavit of the applicant, it seems that the amount of gratuity Rs. 5,45,000/- was due for payment on 1.10.2009, since the applicant retired on superannuation on 30.9.2009. The applicant, however, received the amount of gratuity on 1.6.2018 and, therefore, there is a delay of 8 years and 8 months and the applicant has calculated 12% p.a. interest on that amount, amounting to Rs. 5,20,462.80.

3. So far as the pension is concerned, it is stated that the pension commuted is Rs. 5,40,918/-which was due on 1.10.2009. But the payment has been received on 28.1.2018 and, therefore, there is a delay of 106 months. The applicant has calculated the interest at the rate of 12% p.a. on the said amount, amounting to Rs.5,73,373.08. As also stated, this calculation is disputed by the learned P.O.

4. Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982 states as under:-

“If the payment of gratuity has been authorized after three months from the date when it is issued, became due and it clearly established that the delay in payment was attributable to the administrative lapses, interest falling rate of amount of gratuity in respect of period beyond three months shall be paid beyond three months shall be paid:-

- (i) beyond 3 months and upto one year---7% p.a.
- (ii) beyond one year ---10% p.a.

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.

In the present case, admittedly no provisional gratuity has been paid to the applicant.

5. From the admitted facts on record, it seems that the applicant has retired on superannuation on 30.9.2009 and the inquiry was initiated against him just one day prior to his retirement. The Inquiry Report was submitted on 27.11.2015 and the applicant was

found not guilty. However, he was exonerated from the departmental enquiry on 16.9.2017.

6. It is also material to note that, since the respondents were not taking any action on the Inquiry Report in the departmental enquiry, the applicant was required to file O.A. No. 822/2012 before this Tribunal and in the said O.A. on 21.2.2013, this Tribunal directed the State Government to take a decision on the representation filed by the applicant and also directed that the departmental enquiry against the applicant vide order dated 12.7.2010 needs to be conducted expeditiously and concluded at an early date. In spite of such order dated 21.2.2013, the departmental enquiry was not expeditiously conducted and even though, the Inquiry Officer found the applicant not guilty on 27.11.2015, the said report was accepted on 16.9.2017 and the applicant was exonerated. From all these facts, it is clear that the applicant cannot be held guilty for prolonging the departmental enquiry. At least from 27.11.2015, the applicant should have been granted all his retiral benefits, since on that date, the Inquiry Officer found him not guilty. Such a report should have been accepted immediately and by exonerating the applicant, the department should have paid him immediately. Considering this aspect, I am of the view that the applicant is entitled to claim 10%

amount as per Rule 129-A of the M.C.S. (Pension) Rules, 1982, at least from 27.11.2015 till the applicant receives the said amount.

Hence, I proceed to pass the following order:

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to pay interest at the rate of 10% on the amount of gratuity of Rs. 5,45,000/- from 27.11.2015 till 1.6.2018.
- (iii) The respondents are also directed to pay interest on the amount of commutation of pension of Rs. 5,40,918/- at the rate of 10% p.a. from 27.11.2015 till the applicant received the amount on 2.8.2018.
- (iv) The amount of interest shall be paid within two months from the date of this order.
- (v) O.A. is accordingly disposed of with no order as to costs.

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

Dt. 17.1.2019.
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