

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 115/2018

Dr. Arun Ramchandra Thosar,
Aged about 65 years, Occ –Retired,
R/o Ganesh Nagar, Dabki Road,
Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Public Health Department,
10th floor, G.T. Hospital,
Mumbai-400 001.
- 2) The Director of Health Services,
State of Maharashtra, Arogya Bhavan,
St. George Hospital Campus, P.Dimelo Road,
Near V.T. Station, Mumbai-400 001
- 3) The Deputy Director of Health Services,
Akola Circle, Lady Hardings Hospital
Campus, Akola,
- 4) The Superintendent,
General Hospital, Khamgaon,
Distt. Buldana-444303.

Respondents

Shri N.W. Almelkar, Ld. counsel for the applicant.

Shri M.I. Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 18th January 2022.

Heard Shri N.W. Almelkar, learned counsel for the
applicant and Shri M.I. Khan, Ld. P.O. for respondents.

2. Facts leading to this application are as follows:-

When the applicant was working as Senior Surgeon at Akola, additional charge of Civil Surgeon was kept with him from 16.5.2003 to 2.7.2003. During this period, certain purchases were made for the hospital. It was alleged that towards these purchases, excess payment was made. On this allegation, the applicant was placed under suspension on 13.12.2006. His suspension continued till 20.11.2008. The Enquiry Officer exonerated him. He retired on superannuation on 31.8.2010. However, retiral benefits were not paid to him because departmental enquiry was pending with the Disciplinary Authority. The Disciplinary Authority disagreed with the findings of the Enquiry Officer and held the applicant to be guilty. He imposed punishment of withholding 25% amount of pension on permanent basis, and recovery of Rs. 1,14,719/-. The applicant challenged the said order before this Tribunal by filing O.A. No.499/2014. By judgment dated 3.3.2015, the said O.A. was allowed and order of Disciplinary Authority was quashed and set aside. Operative part of the order dated 3.3.2015 reads as under:-

“The respondents to decide the period of suspension according to law and release outstanding terminal benefits to the applicant within three months. The aspect of interest is kept open.”

Judgment in O.A. No.499/2014 was challenged in the High Court by filing writ petition. The said writ petition was dismissed. There was no further challenge to the judgment dated 3.3.2015 passed in O.A. No.499/2014. Thus, it had attained finality. Still the applicant did not receive retiral benefits. Therefore, he filed Contempt Petition No. 5/2017 before this Tribunal. The applicant then made representation dated 23.11.2017 (Annexure A-2) to the respondents. On 4.8.2018, the Contempt Petition was disposed of with a direction to the respondents to decide the representation dated 23.11.2017 within three weeks from the date of the order. The applicant still did not receive the amounts of retiral benefits with interest for delayed payment. His prayer for payment of retiral benefits with interest on account of delay was ultimately rejected vide communication dated 9.1.2019 made by respondent No.3 and addressed to respondent No.1. Hence, this application for direction to the respondents to make payment to the applicant as per chart given in para 6.4 of the application.

3. Reply of respondent No.3 is at pages 22 to 27. Reply of respondent Nos. 1, 2 and 4 is at pages 44 to 50.

4. Annexure R-1 is G.R. dated 25.7.2017. It states-

“निर्णय:- डॉ. अरुण रामचंद्र ठोसर, तात्कालीन जिल्हा शल्य चिकित्सक, सामान्य रुग्णालय, अकोला यांच्याविरुद्धचे दिनांक २६.६.२०१४ चे अंतिम शिक्षेचे आदेश

दिनांक ३०.६.२०१७ अन्वये रद्द केले असल्याने त्यांचे निलंबन समर्थनिय ठरत नाही. सबब डॉ. अरुण रामचंद्र ठोसर, तात्कालीन जिल्हा शल्य चिकित्सक, सामान्य रुग्णालय, अकोला यांचा दिनांक १३.१२.२००६ ते २०.११.२००८ हा "निलंबन कालावधी" महाराष्ट्र नागरी सेवा (पदग्रहण अवधी -इ) नियम १९८१ मधील नियम ७२ (३) अन्वये सर्व प्रयोजनार्थ "कर्तव्य कालावधी" म्हणून नियमित करण्यात यावा. सदर कालावधीत त्यांना देण्यात आलेल्या निर्वाह भत्त्याची रक्कम समायोजित करून उर्वरित वेतन व भत्ते त्यांना अदा करण्यात यावेत.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

(स.नु.गावित)

अवर सचिव, महाराष्ट्र शासन

5. Annexure R-2 to R-5 is official correspondence among the respondents which culminated in the department coming to the conclusion that the applicant was not entitled to get interest, because retiral benefits were paid pursuant to final order passed by this Tribunal (in O.A. No.499/2014) and after regularisation of suspension period of the applicant by the Government by G.R. dated 25.7.2017. The respondents, in their reply have taken identical stand.

6. Following admitted facts may be reiterated. This Tribunal quashed and set aside the order of Disciplinary Authority imposing punishment on the applicant in departmental enquiry. While passing this judgment, the Tribunal directed the respondents to take decision about period of suspension and release outstanding terminal benefits within three months. However, issue of payment

of interest (for delay in making payment) was kept open. By G.R. dated 25.7.2017, period of suspension of the applicant was directed to be treated as period on duty. These two circumstances taken together would lead to the conclusion that the applicant would be entitled to get interest on account of delay in receiving amount of retiral benefits.

7. Rule 129 (a) of the M.C.S. (Pension) Rules, 1982 provides for grant of interest on gratuity, if the payment is delayed beyond the period of three months and Rule 129 (b) of the M.C.S. (Pension) Rules, 1982 provides for grant of interest on pension, if the payment is delayed beyond six months, if the delay is not attributable to the employee.

8. The applicant has relied on the judgment dated 21.4.2015 passed by this Tribunal in O.A. No. 195/2014. This judgment refers to the following—

<u>Provision / GR dated</u>	<u>Particulars</u>
1) Rule 129 (a)	: Interest on gratuity.
2) Rule 129 (b)	: Interest on pension
3) G.R. 6.5.1991	: Interest on DCRG
4) G.R. 22.11.1994	: Interest on omnibus claim & arrears of pay & DA
5) G.R. 24.5.1995	: Interest on family pension.
6) G.R. 28.12.1995	: Interest on DCRG

- 7) G.R. 20.6.1996 : Earned leave and encashment.
8) G.R. Sept. 2008 : Interest on GIS.

9. In the instant case, the applicant was not at all responsible for delay in getting retiral benefits. He cannot be held responsible for delay simply because departmental enquiry went on against him and for a period of time, during its pendency, he was placed under suspension. Reason for arriving at this conclusion is, this Tribunal quashed and set aside the order in departmental enquiry and the Government ordered that the period of suspension of the applicant be treated to be the period on duty for all purposes.

10. For all these reasons, the application will have to be allowed. Hence, the following order:-

ORDER

- (i) The O.A. is allowed.
- (ii) The respondents are directed to pay to the applicant interest from the date it has become due till the date of actual payment under each head at the rate applicable to the GPF at the relevant point of time.

- (iii) This order shall be complied with within three months from today.
- (iv) No order as to costs.

(M.A.Lovekar)
Member (J)

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