

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.200 OF 2021

DISTRICT: THANE

- 1) Shri Suhas Ramachandra Bagde,)
Age 59 yrs., Occupation: Retired Govt. Officer,)
R/o. Flat No.701, Angelika, Building No.15,)
Highland Residency, Kolsheth Road, Dhokali,)
Thane (W), 400607.)
- 2) Shri Nandkumar Jagannath Mahajan,)
Age 58 yrs, Occupation: Retired Govt. Officer,)
R/o. L4/14, Sector 15, Kharghar, Navi Mumbai)
410 210.)
- 3) Shri Sureshkumar Ramachandra Nalavade,)
Age 58 yrs, Occupation: Retired Govt. Officer,)
R/o. Plot No.18, Balaji, Sagar Park, Lane No.2)
Behind Hotel Sarvodaya, Nagar Road,)
Vadgaon Sheri, Pune 411 014.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through its, Principal Secretary,)
Department of Industries, Energy and Labour)
Mantralaya, Mumbai-32.)
- 2) The Chief Electrical Inspector,)
Department of Industries, Energy and Labour)
Office at: 3rd Floor, Administrative Building)
Ramkrishana Chemburkar Marg, Chembur (E))
Mumbai-400 071.)
- 3) The Superintending Engineer,)
Department of Industries, Energy and Labour)
Office at: 3rd Floor, Administrative Building)
Ramkrishana Chemburkar Marg, Chembur (E))
Mumbai-400 071.)

- 4) The Accountant General (A&E)-1,)
Maharashtra State, 101, Maharshi Karve Road,)
Mumbai – 400 020.)...**Respondents**

Shri S. D. Patil, learned Advocate for the Applicants.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 07.03.2022.

ORDER

1. This Original Application is filed by the Applicants for direction to release withheld retiral benefits with interest.
2. Shortly stated facts giving rise to present Original Application are as under:-

Applicant No.1- Shri Suhas Bagade stands retired from the post of Superintendent Engineer on 31.05.2019. Applicant No.2 –Shri Nandkumar Mahajan stands retired from the post of Electrical Inspector on 31.05.2020. Whereas, Applicant No.3 – Shri Sureshkumar Nalavade stands retired as Superintendent Engineer on 30.11.2020. On the date of retirement, there was no legal hurdle in the nature of pendency of departmental enquiry (D.E.) or criminal prosecution against them. Despite this position, the retiral benefits were not paid within time, and therefore, they have approached this Tribunal for directions to release withheld retiral benefits along with interest.

3. Claim of Applicant No.1- Shri Suhas Bagade.

His retiral benefits were paid but belatedly. Therefore, he is claiming interest on belated payment of Leave Encashment, Gratuity, Group Insurance Scheme amount, Pension and Commutation of pension. Beside, and Luggage Allowance.

4. Claim of Applicant No.2- Shri Nandkumar Mahajan.

He is claiming direction for releasing Gratuity, Commutation of Pension, Luggage Allowance with interest and also claims interest on Leave Encashment, GIS for belated payment.

5. Claim of Applicant No.3 –Shri Sureshkumar Nalawade

The Applicant is claiming Gratuity, Commutation of Pension and Luggage Allowance with interest and also claims interest on belated payment of Leave Encashment, GIS amount for the belated period.

6. Heard Shri S.D. Patil, learned Counsel for the Applicants and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

7. Insofar as the claim made by Applicant No.1- Shri Suhas Bagde is concerned, in Affidavit in Reply all that it is stated that payment has been delayed due to some procedural formality and due to Covid-19 pandemic situation. Admittedly, there was no legal hurdle in the nature of pendency of D.E. or criminal prosecution against him on the date of retirement. He retired on 31.05.2019 when there was no emergence of Covid-10 situation, therefore, it is explicit that the Applicant is deprived of retiral benefits for long period due to sheer laxity and lapses on the part of department.

8. As regard Applicant No.2 Shri Nandkumar Mahajan, in Affidavit in Reply, it is stated that there was some move for registration of crime under Section 176 of IPC against the Applicant in view of the order passed by learned J.M.F.C. Chandwad, Dist. Nashik in Criminal Case No.313/2014 on 08.06.2017. It appears that learned Magistrate has directed to lodge complaint against Shri Mahajan after obtaining sanction in terms of Section 197 of the Code of Criminal Procedure, 1973. However, admittedly no such sanction was accorded. Indeed, the Law and Judiciary department by its letter dated 20.05.2020 informed the department that there is no sufficient evidence of grant of sanction for offence under Section 176 of IPC as proposed by the department.

This being the position, there was no legal hurdle against him to withhold the retiral benefits as no FIR or criminal prosecution or D.E. was initiated or pending at the date of retirement. Despite, this position, he was not paid Gratuity, Commutation of Pension and Luggage Allowance. He was paid Leave Encashment, GIS amount belatedly, and therefore, claims interest on the said amount.

9. Whereas in respect of Applicant No.3 – Shri Nalawade, perusal of Affidavit in Reply reveals that one open enquiry proposal of ACP was pending before the Government, and therefore, no objection certificate was not issued by the department. Shri A. J. Chougule, learned P.O. submitted that the proposal was forwarded to Law and Judiciary department but nothing happened thereafter. As such, in the matter of Shri Nalawade also on the date of retirement neither there was any D.E. nor any criminal prosecution initiated against him in the court of law so as to withhold the retiral benefits. Mere pendency of some proposal cannot be the ground to withhold the retiral benefits. Shri S. D. Patil, learned Counsel for the Applicant submits that as per instruction, the Government has already closed the proposal of open enquiry.

10. Needless to mention, the retiral benefits namely Gratuity and Regular pension can be withheld only in the case where D.E. or criminal prosecution is pending on the date of retirement as specifically provided under Section 130(1)(c) of 'Pension Rule'.

11. At this juncture, it would be apposite to refer Rule 120, 121 and 122 of Maharashtra Civil Services (Pension) Rules, 1982 which are as under :-

“120. Preparation of pension papers

- (1) *Every Head of Office shall undertake the work of preparation of pension papers in Form 6 in respect of Non-gazetted Government servant as well as Gazetted Government servant, whose pay and allowances are drawn by him on establishment bills, two years before the date on which they are due to retire on superannuation ;*

or on the date on which they proceed on leave preparatory to retirement whichever is earlier.

- (2) The Audit Officer shall undertake the work of preparation of pension papers in Form 6, two years before the date on which a Gazetted Government servant, other than mentioned in sub-rule (1) above who is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.
- (3) The time schedule and procedure prescribed in these rules shall be followed by the Audit Officer on whom the responsibility for preparation of pension papers in respect of Gazetted Government servants under sub-rule (2) has been entrusted.
- (4) In the case of a Government servant holding a lien, or a suspended lien on a Non-gazetted post and holding a Gazetted post in a temporary or officiating capacity at the time of retirement and whose pay and allowances are not drawn by the Head of Office on establishment bills, the Head of Office shall send the service book of the Government servant concerned to the Audit Officer two years in advance of the date of retirement of such Government servant or as soon as possible if such Government servant is promoted to officiate in a Gazetted post only during the last year of his service after verifying that the certificate of verification relating to non-gazetted service has been recorded and that the service book is complete in all respects.

121. Stages for the completion of pension papers

(1) The Head of Office shall divide the period of preparatory work of two years referred to in rule 120 in the following three stages:-

(a) First Stage - Verification of service :- (i) The Head of Office shall go through the service book of the Government servant and satisfy himself as to whether the certificates of verification for the entire service are recorded therein.

(ii) In respect of the unverified portion or portions of service, he shall arrange to verify the portion or portions of such service, as the case may be, with reference to pay bills, a quittance rolls or other relevant records, and record the necessary certificates in the service book.

(iii) If the service for any period is not capable of being verified in the manner specified in sub-clause (i) and sub-clause (ii), that period of service having been rendered by the Government servant in another Office or Department, a reference shall be made to the Head of Office in which the Government servant is shown to have served during that period for the purpose of verification.

(iv) If any portion of service rendered by a Government servant is not capable of being verified in the manner specified in sub-clause (i) , or sub-clause (ii), or sub-clause (iii), the Government servant shall be asked to file a written – statement on plain paper stating that he had in fact rendered that period of service, and shall , at the foot of the statement, make and

subscribe to a declaration as to the truth of that statement, and shall, in support of such declaration, produce all documentary evidence and furnish all information which is in his power to produce or furnish.

(v) The Head of Office shall, after taking into consideration the facts in the written-statement and the evidence produced and the information furnished by that Government servant in support of the said period of service, admit that portion of service as having been rendered for the purpose of calculating the pension of that Government servant.

(b) Second Stage – Making good omission in the service book :-
 (i) The Head of Office while scrutinizing the certificates of verification of service, shall also identify if there are any other omissions, imperfections or deficiencies which have a direct bearing on the determination of 'Pensionable Pay' and the service qualifying for pension.

(ii) Every effort shall be made to complete the verification of service, as in clause (a) and to make good omissions, imperfections or deficiencies referred to in sub-clause (i) of this clause. Any omissions, imperfections or deficiencies including the portion of service shown as unverified in the service book which it has not been possible to verify in accordance with the procedure laid down in clause (a) shall be ignored and service qualifying for pension shall be determined on the basis of the entries in the service book.

(iii) Calculation of Pensionable Pay :- For the purpose of calculation of pensionable pay, the Head of Office shall verify from the service book the correctness of the pay drawn or to be drawn during the last ten months of service. In order to ensure that the pay during the last ten months or service has been correctly shown in the service book, the Head of Office may verify the correctness of pay for the period of twenty-four months only, preceding the date of retirement of a Government servant, and not for any period prior to that date.

(c) Third Stage – Obtaining Form 5 by the Head of Office :- Eight months prior to the date of retirement of the Government servant, the Head of Office shall obtain Form 5 from the Government servant, duly completed.

(2) Action under clauses (a), (b) and (c) of sub-rule (1) shall be completed eight month prior to the date of retirement of the Government servant.

122. Completion of pension papers

The Head of Office shall complete Part I 1 (and Part-III) of Form 6 not later than six months before the date of retirement of the Government servant.”

12. As such, the responsibility has been fixed upon the Head of Office to undertake the work of completion of pension papers well in advance

as to submit the same to the concerned Authority so that pension and other retiral benefits are paid to a Government servant within prescribed period. However, in the present case, no such steps are taken. It clearly exhibits lapses and negligence on the part of concerned which deprived the Applicants from utilizing their retiral benefits.

13. The Applicant No.1 Shri Bagde's claim is restricted to interest on belated payment. He claims interest on Leave Encashment being paid after 14 months. He retired on 31.05.2019 and in terms of Rule 68 of Maharashtra Civil Services (Leave) Rules, he was entitled for Leave Encashment within one month in terms of G.R. dated 20.06.1996 issued by Finance Department. However, it was paid belatedly on 31.07.2020. Whereas, Gratuity amount was required to be paid within three months from the date of retirement in terms of Rule 129 (a) of 'Pension Rules'. However it was belatedly paid on 01.09.2019. Whereas, GIS amount which was required to be paid within three months from the date of retirement in terms of G.R. dated 27.05.1992, it was paid belatedly on 02.12.2020. As regard Pension and Commutation of Pension which was required to be paid within six months, it was also paid belatedly. Therefore, in terms of Section 129 (b) of 'Pension Rules', the Applicant's claim for interest for belated payment beyond six months at the rate applicable to GPF cannot be denied.

14. As regard claim of Applicant No.2 Shri Mahajan, he was not paid Gratuity which was required to be paid within three months from the date of retirement. Besides, he was not paid Commutation of Pension, and he is deprived of using the amount of Commutation of Pension for a long time. Therefore, his claim for interest on belated payment of Gratuity and Commutation of Pension cannot be denied. Insofar as amount of GIS, it was also paid belatedly which was required to be paid within 3 months from the date of retirement but paid on 19.02.2021.

15. Now coming to the claim of Applicant No.3 – Shri Nalawade, in his matter also the Gratuity, Pension and Commutation of Pension is not paid till date, and therefore, the Respondents cannot avoid liability to

pay interest for belated period till the date of payment. Insofar as Leave Encashment is concerned, it was required to be paid within a month from the date of retirement in terms of G.R. dated 20.06.1996 but paid belatedly.

16. The totality of the aforesaid discussion leads me to sum up that the Applicants are deprived of retiral benefits discussed above due to sheer lapses and negligence on the part of department. There was no legal hurdle for withholding the said benefits. Original Application is, therefore, deserves to be allowed with suitable directions. Hence the following order :-

ORDER

- (A) Original Application is partly allowed.
- (B) The Respondents are directed to pay interest on belated payment of retiral benefits of Leave Encashment, Gratuity, GIS, Pension and Commutation to the Applicant No.1 at the rate applicable to GPF and shall calculate the period for which the payment is delayed and accordingly, shall pay interest within a month from today.
- (C) The Respondents are further directed to release Gratuity, Regular Pension and Commutation of Pension to the Applicant No.2 and shall pay interest thereon for the period for which it is belated at the rate applicable to GPF within a month from today.
- (D) The Respondents are further directed to pay Gratuity, Pension and Commutation of Pension to the Application No.3 along with interest at the rate applicable to GPF for which it is belated within a month from today.
- (E) Insofar as Luggage Allowance is concerned, the Applicant No.1 – Shri Bagde has already received the same during pendency of this O.A. However, the Luggage Allowance of Applicant No.2 Shri Mahajan and Applicant No.3 Shri Nalawade is not paid. It be processed and paid as per their entitlement within a month from today.

(F) The Respondents are at liberty to fix the responsibility for the said lapses for delaying payment and may recover the same from the concerned.

(G) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 08.02.2021
Dictation taken by: Vaishali S.Mane