

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.608 OF 2020

DISTRICT: MUMBAI
**SUBJECT: PENSIONARY BENEFITS/
RECOVERY**

- 1) Shri Chandrakant Mahadeo Kadam,)
Retired as Assistant Superintendent,)
Forensic Science Laboratory, Santacruz, Mumbai)
R/at Room No.3, Shramik Chawl,)
Hanuman Nagar Tedki, Pratap Nagar Road,)
Bhandup (W), Mumbai – 400 078.) ... **Applicant**

Versus

- 1) The Director General,)
(Judicial and Technical), Home Department,)
State of Maharashtra, 18th Floor,)
New Administrative Building,)
Opp. Mantralaya, Mumbai- 400 032.)
- 2) The Director,)
Forensic Science Laboratory, Vidyanagari,)
Hans Bhugra Marg, Santacruz (E), Mumbai-98.).. **Respondents**

Shri U.V. Bhosle, learned Advocate for the Applicant.

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

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 09.06.2021.

JUDGMENT

1. The Applicant has challenged order dated 31.12.2018, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant joined Government service as Group 'D' employee in 1982. During the tenure of service he was promoted to the post of Assistant Superintendent. He retired on 31.12.2018 on attaining the age of superannuation. On the date of retirement itself Show Cause Notice was issued to him about seven charges which are as under:-

“ज्ञापन/गोपनीय

विषय:- श्री. चंद्रकांत कदम, सहायक अधिक्षक यांनी या संचालनालयातील ५ वर्षांच्या कालावधीत कामांमध्ये केलेल्या वित्तीय अनियमिततेबाबत.

१. उपरोक्त संदर्भीय विषयाबाबत माझ्या असे निदर्शनास आले आहे की, शासन निर्णयातील घरबांधणी अग्रीम देणेबाबत शासनाच्या विहित अटी व शर्तीना डावलून काही कर्मचा-यांना संपूर्ण सेवेत एकदाच घरबांधणी अग्रीम देणे अनुज्ञेय असताना काहींना दोन वेळा घर बांधणी अग्रीम पारीत झालेला आहे. मागील पाच वर्षांपासून (सहायक अधिक्षक पदाचा कार्यभार घेतल्यापासून) ह्या सर्वांचा तपशिलासह (लेखी) अहवाल मला सादर करावा.
२. माझे हे ही निदर्शनास आणण्यात आले आहे की, घरबांधणी अग्रीम देताना ज्येष्ठता सूचीस डावलून ठराविक कर्मचा-यांना घरबांधणी अग्रीम दिलेला आहे.
३. मागील पाच वर्षांतील वर्षनिहाय मंजूर घरबांधणी अग्रीमची नोंदवही तसेच देयके कर्मचा-यांच्या नस्त्या व संबंधीत कागदपत्रे अद्यावत केलेली नाहीत.
४. मोटर सायकल अग्रीम व संगणक अग्रीम या संबंधातील सर्व कागदपत्रे, देयके व नोंद वह्या हेही अद्यावत केलेल्या नाहीत.
५. लेख शाखेत सहायक अधिक्षक पदाचा गैर वापर करून स्वतःसाठी घरबांधणी अग्रीम मंजूर करवून घेतले व त्याचे व्याज आजच्या दिनांकापर्यंत परतफेड झालेले नाही. स्वतःसाठी मंजूर करून घेतलेल्या घरबांधणी अग्रीम व्याज रु.२ लाख ३० हजार पैकी रु. १ लाख ३० हजार व्याज परतफेड होणे बाकी आहे.

६. माझे निदर्शनास आले आहे की, मराठा का.ऑप बँकेचे ५ लाखाचे कर्जाची परतफेड आजपर्यंत अदा केलेली नाही.
७. वर्ग-चार च्या भविष्य निर्वाह निधी नोंदवहया व त्यांची पासबुके हे अद्यावत केलेले नाहीत. हया सर्वांचा लेखी अहवाल मला सादर करावा.

सदर वर्तणूक ही पूर्णतः कार्यालयीन शिस्तीच्या विरुद्ध आहे. (महाराष्ट्र नागरी सेवा वर्तुणक नियम १९७९) ३ चा (एक)(दोन)(तीन) याचे उल्लंघन केलेले आहे.) व सर्वथा शासकीय कर्मचा-यास अशोभनीय ठरेल असे कृत्य असून कर्तव्यपरायणतेमध्ये उणीव आहेत.

तरी आपणांवर शिस्तभंगाची कार्यवाही का करण्यात येऊ नये? याबाबतचा सविस्तर खुलासा पत्र प्राप्त झाल्याच्या दिनांकापासून ७ दिवसांच्या आत या संचालनालयास सादर करावा अन्यथा आपल्यावर शिस्तभंगाची कारवाई सुरु करण्यात येईल याची नोंद घ्यावी.”

3. The Applicant has submitted his Reply denying allegations and requested to release remaining retrial benefits.

4. On the day of retirement, Respondent No.2 - The Director, Forensic Science Laboratory had issued letter / communication dated 31.12.2018 stating that sum of Rs.1,14,656/- towards interest on Home Loan advance and sum of Rs.3,96,345/- towards his liability as guarantor to one employee while taking loan from Maratha Sahakari Bank Ltd. is outstanding and thus total amount of Rs.5,11,001/- are due against him. In communication it is further stated that he is allowed to retire subject to initiation of D.E. and there shall be recovery of Rs.5,11,001/- from Gratuity.

5. The Applicant has challenged this communication dated 31.12.2018 and sought direction to the Respondent to release regular Pension, Gratuity and Leave Encashment since remaining dues are already paid.

6. Heard Shri U.V. Bhosle, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

7. Undisputedly the Applicant stands retired on 31.12.2018 and no D.E. was initiated against him during the tenure of his service all though one Show Cause Notice was issued belatedly on the date of retirement to which Applicant has submitted his explanation / Reply. However thereafter no further steps were taken to initiate the D.E.

8. Learned P.O. in reference to Reply stated that proposal for initiating D.E. has been submitted to the Government on 31.05.2019 and it is in process, this is the only stand taken by the Respondents in respect of D.E.

9. It is thus explicit that remaining retrial benefits of the Applicant are withheld on basis of contemplated D.E. which is not initiated till date though the period of more than 2 ½ years is over from his retirement.

10. In view of above, very question posed for consideration is as to whether in absence of initiation of D.E. or judicial proceeding, retrial benefits of the Applicant can be withheld and answer is in negative.

11. Firstly let us see the legality of the order dated 31.12.2018, whereby the Applicant was allowed to retire subject to recovery of Rs.5,11,001/-. As per communication dated 31.12.2018 sum of Rs. 1,14,656/- was outstanding to the Applicant towards Home Loan. Secondly the Applicant was guarantor in the matter of one late Mr. Mohan Eknath Khankal who had borrowed from Maratha Sahakari Bank and sum of Rs.3,96,345/- was due against borrower. During the course of hearing Shri U.V. Bhosle has tendered letter of the Applicant dated 09.01.2019 marked by letter 'X'. Wherein he accepts his liability and fairly concedes that he has no

objection to recover interest due on account of Home Loan advance. Thus the Applicant accepted his liability to pay interest due against him and the same is required to be adjusted from his Gratuity.

12. In so far as liability of the Applicant as guarantor is concerned, indeed it was his personnel liability which has nothing to do with retrial benefits and remedy was available to the Bank to take recourse of law by filing civil suit against borrower and guarantor. Respondent No.2 have no right to recover outstanding amount from guarantor much less from his retrial benefits. Suffice to say the direction to that effect in communication dated 31.12.2018 is totally illegal.

13. Apart, during the course of hearing Shri U.V. Bhosle has tendered photocopy of letter issued by Maratha Sahakari Bank Ltd. dated 29.10.2013 wherein it is stated that bank had agreed to accept Rs.1,00,000/- towards outstanding dues against late Mr. Mohan Eknath Khankal and further stated that bank will not raise any claim against Respondent No.2. Thus it appears that bank has already settled the loan account of late Mr. Mohan Eknath Khankal in which the Applicant was guarantor. Be that as it may, at any rate direction for recovery of loan amount from retrial benefits of the Applicant are totally bad in law and it deserves to be quashed.

14. Now reverting back to the claim of the Applicant for regular Pension, Gratuity and Leave Encashment as said above admittedly no D.E. was initiated till the retirement of the Applicant nor till date. True, D.E. can be initiated against Government servant even after retirement in terms of Rules 27 if it is in consonance with Rules 27 (2) of M.C.S. Pension Rules

1982. In other words, subject to limitation provided in Rules 27 only, D.E. can be initiated after retirement. In the event, if the Government servant (Pensioner) is found guilty for mis-conduct or negligence alleged committed during the period of service, then Government is empowered to withheld or withdraw pension or any part of it permanently or specified period as it deemed fit. In the present case, no D.E. being initiated, and therefore, the retrial benefits of the Applicant cannot be withheld on mere speculation of initiation of D.E., Gratuity or Pension can be withheld only in case where D.E. was pending at the time of retirement as contemplated under Rules 131(1)(C) of 'Pension Rules 1982'. Whereas, the Government servant stands retired, he has right of service Pension and Gratuity and such right cannot be kept in abeyance on speculation or possibility of initiation of D.E. in future. In law, all that permissible is to withheld pension, if found guilty in D.E. if it is initiated fulfilling limitation mentioned in Rules 27 of 'Pension Rules 1982'. Thus, in case D.E. is initiated after retirement, then the scope of D.E. and its outcome is very limited and it cannot go beyond withholding pension for specific period or permanently as Government deems fit.

15. Shri U.V. Bhosle has referred to the decision rendered by the Tribunal in **O.A. No.804/2016 Shri Ajit Ramchandra Wakde v/s. The State of Maharashtra and Ors decided on 22.11.2016**, **O.A. No.188/2020 Shri Vilas Ramchandra Walgude V/s. The State of Maharashtra & Ors. decided on 21.07.2020** and **O.A. No. 401/2018 Shri Rajesham Laxmipathi Boga v/s. The Medical Superintendent decided on 09.06.2019** wherein in similar situation, directions were given to release retrial benefits since no D.E. was initiated till date of retirement.

16. In other words, the issue is no more in *res-integra* that Respondents cannot withhold Gratuity, regular Pension and Leave Encashment.

17. Indeed, in this behalf, directions were issued by Government of Maharashtra by G.R. dated 06.10.1988 reiterating 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-यांचे 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-यांचे बाबतीत त्यांच्या 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.”

18. 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.

19. It is nowhere the case of Respondents that Applicant has misused Government money or caused loss to the Government exchequer. The alleged charges as seen from the Show Cause Notice pertains to certain irregularities and there are no such allegation of financial mis-conduct.

20. The totality of the aforesaid discussion leads me to conclude that impugned order dated 31.12.2018 is bad in law and liable to be quashed. Respondents cannot withhold regular Pension, Gratuity and Leave Encashment on speculation initiation D.E. in future. O.A. therefore deserves to be allowed.

ORDER

- (A) The Original Application is allowed.
- (B) Impugned Order dated 31.12.2018 is quashed and set aside.
- (C) Respondents are directed to release Gratuity, regular Pension and Leave Encashment after adjusting interest on home loan due against Applicant within a month from today.
- (D) Respondents are at liberty to initiate D.E. as may be permissible under Rules 27 of 'Pension Rules 1982'.
- (E) No Order as to costs.

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

Place: Mumbai
Date: 09.06.2021
Dictation taken by: N.M. Naik.