

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.952 OF 2019

**DISTRICT: SOLAPUR
SUBJECT: INTEREST ON DELAYED
PAYMENT**

- 1) Shri Nagnath Panchaya Swami,)
Age: 59 years, Occupation – Retired,)
Residing at – Yantriki Vasahat, Link Road,)
Opp. Water Tank, Pandharpur,)
Dist. Solapur 413 304.) **... Applicant**

Versus

- 1) The Executive Engineer,)
Mechanical Division, Gurunanak Chowk,)
Ujani Vasahat, Solapur 413 003.)
- 2) The Accountant General 1,)
Maharashtra, 101, Maharshi Karve Road,)
Mumbai-400 020.) **..Respondents**

Shri A.R. Joshi, learned Advocate holding for Shri V.V. Joshi, learned Advocate for the Applicant.

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

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

DATE : 30.07.2021.

JUDGMENT

1. The Applicant has claimed interest on delayed payment of retiral benefits invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. The Applicant stands retired on 31.05.2018 as Operator (Class IV) from the establishment of Respondent No.1 – Executive Engineer, Mechanical Division, Solapur. However his retiral benefits were not paid without any reason. There was no legal hurdle to release his retiral benefits. Therefore he was constrained to file O.A. No.437/2019 for direction to release retiral benefits. O.A. was disposed of on 03.05.2019 with direction to release retiral benefits within a month. Thereafter, only retiral benefits were released belatedly.

3. Now, the Applicant has claimed interest on delayed payment on Pension, Leave Encashment, Gratuity and Group Insurance Scheme amount. Admittedly, these retiral benefits were not released within prescribed period as provided under Rules / G.R.

4. Though enough time was granted for Respondents to file Reply, Respondents failed to file reply and ultimately matter was proceeded for hearing without Reply.

5. It is on the above background, Heard Shri A.R. Joshi, learned Advocate holding for Shri V.V. Joshi, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

6. All that, learned P.O. submits that the Applicant is first required to give representation to the Government for interest and thereafter only he can approach the Tribunal which is totally misconceived. There is nothing on record that delay occurred because of any non-compliance from the side of the Applicant.

7. At the very outset, it needs to be stated that, in terms of Rule 120 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity), the obligation is cast upon the Head of Office to undertake the work of preparation of pension papers two years before the date on which employee is due to retire on superannuation. In this behalf, Rule 120 reads 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 the 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."

8. Thus, duties are cast on Head of the Office to initiate the process for preparation of pension well in advance so that the Government servant should get his retiral benefits without loss of time. The Applicant retired on 31.05.2018 but no such steps in advance were taken for preparing pension papers. Indeed he was constrained to file O.A. No.437/2019 and it is only after passing of the order by the Tribunal Respondents woke-up and released retiral benefits belatedly.

9. Needless to mention that retiral benefits are not bounty. At this juncture, material to note that the Hon'ble Supreme Court in **2008 (3) SCC 44 (S.K. Dua Vs. State of Haryana)** held that in case of delay in payment of retiral benefits to Government servant is entitled to interest on the basis of statutory rules occupying the field and further held that even in absence of statutory Rules, administrative instructions or guidelines, an employee can claim interest under Part III of Constitution relying on Articles 14, 19 and 21 of the Constitution. In deed Government of Maharashtra had issued various G.R. acknowledging the liability to pay retiral benefits within stipulated time and entitlement of employee if it is delayed due to administrative lapses.

10. The Applicant has claimed interest on the delayed payment of Pension which was paid in August 2019, Leave Encashment which was paid on 28.06.2019, Gratuity which was paid on 08.07.2019 and Group Insurance Scheme amount which paid in August 2019. Thus, these payments were made belatedly.

11. As regard pension in terms of Rule 129 (B) of the M.C.S. (Pension) Rules, 1982 interest is required to be paid if pension is paid beyond six months. In present case the Applicant retired on 31.05.2018 but pension was started in August 2019.

12. As regard Leave Encashment which was required to be paid within a month as specified by G.R. dated 20.06.1996 issued by Finance Department, Government of Maharashtra, was paid on 28.06.2019 belatedly.

13. In so far as Gratuity is concerned it was to be paid within three months from the date of retirement as provided under Rule 129 (A) of M.C.S. (Pension) Rules, 1982. Where delay is attributable due to administrative lapses employee is entitle to the interest as applicable to Government Provident Fund (G.P.F.). In present case Gratuity has been paid on 08.07.2019. Therefore Respondents are liable to pay interest for belatedly.

14. Lastly it comes to Group Insurance Scheme amount which was required to be paid within three months, in terms of G.R. 27.05.1992, however it has been paid in August 2019, belatedly.

15. As such admittedly Respondents have released retiral benefits belatedly. Delay is caused due to sheer administrative lapse on the part of Respondents. Admittedly there was no hurdle in grant of retiral benefits since there was no D.E. or any prosecution against him. Despite issuance

of various G.Rs. Respondent No.1 did not bother to take necessary steps and to release retiral benefits within stipulated period.

16. In view of above, the Applicant is entitled to grant of interest on delayed payment on Pension, Leave Encashment, Gratuity and Group Insurance Scheme amount as discussed above. Hence, I proceed to pass following order.

ORDER

- A. O.A. is allowed.
- B. Respondents are directed to pay interest on the delayed payment on Pension, Leave Encashment, Gratuity and Group Insurance Scheme amount as per the rates prescribed for the period it was delayed beyond stipulated period. Interest accordingly be calculated and be paid to the Applicant within a month from today.
- C. No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 30.07.2021
Dictation taken by: N.M. Naik.