

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1003 OF 2017

DISTRICT : SOLAPUR

Shri Ravindra Sidram Hingmire.)
Age : 58 Yrs., Occu.: Retired,)
R/at Plot No.26, Konark Nagar,)
Near Bharti Vidya Peeth, Vijapur Road,)
District : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. The Collector, Solapur.)...**Respondents**

Mr. J.N. Kamble, Advocate for Applicant.

**Ms. S.P. Manchekar, Chief Presenting Officer holding for Shri
A.J. Chougule, Presenting Officer for Respondents.**

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 02.01.2020

JUDGMENT

1. The Applicant has challenged the impugned order dated 07.09.2017 whereby the period from 14.02.2014 to 31.05.2014 was treated as *dies-non* and for direction to the Respondents to release the retiral benefits with interest.

2. The uncontroverted facts giving rise to this application can be summarized as under :-

(i) The Applicant was working as Senior Clerk in Entertainment Tax Department, Collector Office, Solapur. He was due to retire on 31.05.2014 on attaining the age of superannuation.

(ii) However, he had submitted an application for voluntary retirement w.e.f. 31.01.2014. Initially, the Collector, Solapur by order dated 31.01.2014 accepted notice of voluntary retirement. But subsequently, by letter dated 11.02.2014, the Collector informed to the Applicant that in view of proposed departmental enquiry (DE) about the alleged misconduct, his notice of voluntary retirement is rejected.

(iii) The Applicant has filed O.A.No.357/2014 for declaration that he be declared voluntarily retired w.e.f.31.01.2014 but it was dismissed by the Tribunal on 07.10.2016.

(iv) In the meantime, the Applicant was served with charge-sheet under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) on 30.06.2014.

(v) The Applicant, therefore, challenged the initiation of DE by filing O.A.No.1072/2014 on the ground that DE after retirement is not permissible without prior sanction of Government.

(vi) O.A.No.1072/2014 was allowed by this Tribunal on 16.11.2016.

(vii) The Respondents have filed Writ Petition (Stamp) No.2637/2018 against the order passed by this Tribunal in O.A.1072/2014 and Writ Petition is still subjudice before the Hon'ble High Court.

(viii) The Applicant made an application dated 09.01.2017 to the Collector, Solapur to treat the period from 01.02.2014 to 31.05.2014 as duty period.

(ix) The Collector by impugned order dated 07.09.2017 treated the absence period from 01.02.2014 to 13.02.2014 as duty period for all purposes, but in so far as the period from 14.02.2014 to 31.05.2014 is concerned, it was treated as *dies-non* with the finding that the Applicant himself abstain from work in this period, and therefore, it cannot be treated as duty period.

3. This O.A. was filed on 31.10.2017 challenging the impugned order dated 07.09.2017 as well as for direction to release the retiral benefits with interest. However, during the pendency of this O.A, the retiral benefits were released. As the retiral benefits were released belatedly, the Applicant has claimed interest thereon. The details of payment of retiral benefits is as under :-

Sr.No.	Particulars	Amount	Date of receipt
1.	Encashment of leave salary	3,50,800/-	01.07.2018
2.	Gratuity	2,19,250/-	04.06.2018
3.	Duty Payment 01.02.2014 to 13.02.2014	17,741/-	12.06.2018
4.	Commutation of Pension	3,40,683/-	20.07.2018
	Total	9,28,474/-	

4. Shri J.N. Kamble, learned Advocate for the Applicant sought to assail the impugned order dated 07.09.2017 whereby the period from 14.02.2014 to 31.05.2014 was treated as *dies-non*. He sought to contend that the Respondents have not informed or instructed the Applicant to resume duty, and therefore, there was no reason to treat the absence from 14.02.2014 to 31.05.2014 as *dies-non*. Thus, according to him, it is because of failure of Respondents to ask the Applicant to join duty, he did not join, and therefore, the Applicant cannot be blamed for non-resuming duty. As regard retiral benefits, he submits that though the Applicant stands retired on superannuation on 31.05.2014, the

retiral benefits i.e. gratuity, leave encashment, etc. were paid after four years, and therefore, the Applicant is entitled to interest thereon.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer holding for Shri A.J. Chougule, learned Presenting Officer submits that in view of rejection of notice of voluntary retirement by order dated 11.02.2014 which was admittedly served upon the Applicant on 13.02.2014, it was incumbent for the Applicant to resume duty with immediate effect i.e. from 14.02.2014 and having not done so, the Applicant's absence from 14.02.2014 to 31.05.2014 was rightly treated as *dies-non*. As regard belated payment of retiral benefits, she submits that in view of initiation of DE, the payment of Leave Encashment and Gratuity was paid later on. She has further pointed out that though the charge-sheet issued in DE was quashed by the Tribunal on 16.11.2016, the Respondents have challenged the Judgment passed by this Tribunal in O.A.1072/2014 by filing Writ Petition before Hon'ble High Court and the same is subjudice.

6. In view of submissions advanced at the Bar, the following points arise for consideration.

(a) Whether the impugned order dated 07.09.2017 treating the Applicant's absence from 14.02.2014 to 31.05.2014 as *dies-non* suffers from any illegality and needs interference by this Tribunal.

(b) Whether the Applicant is entitled to interest on belated payment of retiral benefits.

7. **As to point No.(a) :**

As stated above, though the Applicant was due to retire on 31.05.2014 on attaining the age of superannuation, he had submitted an application for voluntary retirement on 31.12.2013 seeking voluntary retirement w.e.f.31.01.2014 and initially, he was allowed to retire by

communication dated 31.01.2014 (Page No.18 of Paper Book). However, material to note that immediately thereafter, the Collector, Solapur by communication dated 11.02.2014 informed to the Applicant that in view of contemplated DE, his request for voluntary retirement is rejected. There is no denying that the communication dated 11.02.2014 was served upon the Applicant on 13.02.2014. As such, the Applicant had knowledge that permission seeking voluntary retirement is rejected, and therefore, he was expected to resume duty immediately from next day i.e.14.02.2014. However, admittedly, he did not join the duty and abstain himself on duty. True, he was served with charge-sheet dated 30.06.2014 but it was subsequent development after his retirement on 31.05.2014. This being the position, the initiation of D.E. and challenge to the same in O.A.1072/2014 has nothing to do with the absence. Indeed, the Applicant has also challenged rejection of voluntary retirement by filing O.A.No.357/2014 and the same was dismissed on 07.10.2016. Suffice to say, the stand taken by Collector, Solapur that his request for voluntary retirement was legally rejected has been upheld by the Tribunal. It is on this background, one need to consider whether the Applicant is entitled for pay and allowances for the period from 14.02.2014 to 31.05.2014 and the answer is in obvious negative.

8. Once the rejection of voluntary retirement was communicated to the Applicant on 13.02.2014, he was bound to resume the office but he abstained himself and failed to resume the duty. The submission advanced by the learned Advocate for the Applicant that the Respondents were required to issue notice of joining to the Applicant is fallacious and misconceived. Once the permission for voluntary retirement was rejected and communicated to the Applicant, he was bound to resume the duty and to continue the work till his retirement i.e. upto 31.05.2014. However, he chooses to abstain from the work, and therefore, he should thank himself and must suffer its consequences.

9. The Collector, Satara in impugned order rightly observed that the notice of rejection of voluntary retirement was served upon the Applicant

on 13.02.2014 but failed to resume office, and therefore, not entitled to Pay and Allowances for the period from 14.02.2014 to 31.05.2014. Before passing order, the Collector had issued Show Cause Notice to the Applicant and considered his reply given to Show Cause Notice. There is compliance of principles of natural justice. The said period was of willful abstention from the work, and therefore, it was rightly treated as *dies-non*. I, therefore, see no illegality in the impugned order.

10. **As to point No.(b) :**

Now the question comes whether the Applicant is entitled to interest on the delayed payment of retiral benefits. He stands retired on 31.05.2014. After retirement, admittedly, the provisional pension was granted but gratuity and leave encashment was withheld because of initiation of D.E. under Rule 8 of 'Rules of 1979' by issuance of charge-sheet dated 30.06.2014. Thus, on the date of retirement, there was no initiation of D.E. As the D.E. was initiated after retirement without prior approval of Government, the Applicant has challenged the initiation of D.E. in O.A.No.1072/2014, which was allowed on 16.11.2016. The Review Application No.07/2017 along with M.A.100/2017 filed by the Respondents against the Judgment in O.A.1072/2014 was also dismissed by the Tribunal on 29.06.2017. This being the position, there was no justification to withhold the payment of leave encashment and gratuity. Admittedly, the other benefits i.e. GPF, GIS was released soon after retirement. Besides, the provisional pension was also sanctioned.

11. True, the Respondents have challenged the decision of this Tribunal passed in O.A.1072/2014 quashing initiation of D.E. by filing Writ Petition (Stamp) No.2637/2018 and the same is subjudice before the Hon'ble High Court. The Respondents sought to justify the delay in payment of gratuity and leave encashment in view of challenge to the decision of this Tribunal quashing the D.E. True, where the D.E. is initiated, the Government servant is not entitled to gratuity till the conclusion of D.E, as provided under Rule 130(1)(c) of 'Pension Rules

1982'. The Respondents seems to have withheld the payment of gratuity because of initiation of D.E. on 30.06.2014. However, once the D.E. was quashed by Judgment dated 16.11.2016, there was no reason much less justifiable to withhold the payment of gratuity. Only because the Respondents belatedly filed the Writ Petition challenging the order passed by this Tribunal for quashing the D.E, that can hardly be the ground to keep the payment of gratuity in abeyance indefinitely. Admittedly, there is no stay to the order passed by this Tribunal by Hon'ble High Court in Writ Petition (Stamp) No.2637/2018.

12. As stated above, the Applicant stands retired on 31.05.2014 and on the date of retirement, there was no initiation of D.E. in the eye of law. Furthermore, the charge-sheet issued on 16.11.2016 has been quashed by this Tribunal in O.A.1072/2014 by Judgment dated 16.11.2016. As a result of which, the Applicant's claim for gratuity which was payable on the date of retirement stands fortified, and therefore, the Respondents are liable to pay interest thereon, as contemplated under Section 129A(1) of 'Pension Rules 1982'. As per Section 129A(1) of 'Pension Rules 1982', the Applicant is entitled to interest, as record clearly establishes the delay in payment is due to administrative lapse on the part of Respondents. Rule 129A(1) of 'Pension Rules 1982' is as follows :-

“129A(1) Where the payment of retirement gratuity or death gratuity, as the case may be, has been delayed beyond the period of three months from the date of retirement or death, and it is clearly established that the delay in payment was attributable to administrative lapse, an interest at rate applicable to General Provident Fund deposits shall be paid on the amount of gratuity, in respect of period beyond three months:

Provided that, no interest shall be payable if the delay in payment of such 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 where a provisional gratuity is paid.”

13. In the present case, withholding of gratuity is certainly administrative lapse on the part of Respondents, as the Applicant's entitlement to the gratuity within a period of three months from the date of retirement stands fortified in view of quashing of D.E. in O.A.1072/2014. In other words, in view of quashing of D.E, the Applicant was restored back to its earlier position of entitlement to gratuity within a period of three months from the date of retirement. It is only in case where the initiation of D.E. held legal and if the Applicant would have found guilty for the charges framed in D.E, in that event only, the gratuity would become payable on the date of conclusion of D.E. subject to final order in D.E. As such, the Respondents cannot deny interest to the Applicant on gratuity.

14. In this behalf, it would be apposite to refer the decision of Hon'ble Bombay High Court in **2014(2) Mh.L.J. 344 (State of Maharashtra & Ors. Vs. Satyadeo Nandakishore Awashti)** where in similar situation, the Government servant was held entitled to interest under Section 129A & B of 'Pension Rules 1982' in view of exoneration of charges in D.E. The Hon'ble High Court held that, once the employee is exonerated, he is entitled for pensionary amount with interest because this exoneration brings the position back. Para Nos.2, 3 and 4 of the Judgment are material, which are as follows :-

"2. There is no serious issue with regard to the fact that the respondent employee was exonerated from the charges. It was the reason for not granting the retirement benefits i.e. pension and gratuity at the relevant time. Once the employee is exonerated, the pensionary benefits and the interest because of delay on the amount so not paid, in our view, just cannot be denied, because natural consequences about the situation would be that there are no charges and/or enquiry and the person, who is retired, is entitled for the pensionary benefits in accordance with law. The denial of the pensionary benefits/amount to the respondent - employee just cannot be overlooked merely because the Department/petitioner decided to grant benefits/pension from the date of order of exoneration. It is settled that the pensionary benefits is a constitutional right of employee, who has worked till the date of retirement. The petitioner - Department if failed to make payment on due date, there are provisions which itself permit the employee to claim interest. There is nothing on record to show that enquiry was delayed at the instance of respondent-employee. Even otherwise, once the respondent-employee is exonerated, we are inclined to

observe that he is entitled for pensionary amount with interest because this exoneration brings the position back and it is required to be concluded that the petitioner - Department has not paid the amount on due date.

3. *No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and/or issue of final orders thereon. But, once the employee is exonerated, there is no question of detaining the said amount also. But the fact of not making full payment/retirement benefits because of alleged departmental enquiry should not be read against the employee, specially when he is exonerated from all the charges. The gratuity with interest, therefore, in such situation cannot be denied.*

4. *The learned Assistant Government Pleader appearing for the petitioners has strongly relied upon Rule 129-A and 129-B of the Maharashtra Civil Services (Pension) Rules, 1982 and also a judgment of the Division Bench of this Court in the case of Prabhakar s/o Marotirao Dalal Vs. State of Maharashtra and another, reported in 2009 (1) Mh.L.J. 209. We are inclined to observe that though the judgment referred to above dealt with the same provisions, the facts were totally different. That was the case of non-grant of gratuity because of pending of enquiry. That was not a case of exoneration. The rule, so cited above itself, in our view, needs to be considered in a situation where the employee's pensionary benefits are detained for want of enquiry and if exonerated, the interest shall be liable to be paid to the employee in accordance with the provisions from the applicable date. The grant of provisional pension in no way concludes the rights of the employee, once he is exonerated from the charges. Pending enquiry and/or departmental proceeding, the object of granting provisional pension itself, is subject to final decision. Once the decision is in favour of employee and against the action of employer to initiate such departmental enquiry and it has finalized the pension after passing final order, that itself in no way sufficient to deny the rights of a legal entitlement of the employee from the date of retirement. The interest on delayed payment of gratuity and/or pensionary benefits and/or pension amount, in our view, is a consequential order, basically when there is no denial to pay balance pension and/or gratuity amount."*

15. As such, it is no more *res-integra* that once the D.E. is quashed or Government servant is exonerated from the charges he is entitled to interest on delayed retiral benefits with retrospective effect i.e. from three months from the date of retirement. In the present case, the Applicant stands retired on 31.05.2014, and therefore, he is definitely entitled to interest on gratuity from 01.09.2014 [Date on which it was payable] till the date of payment.

16. Besides, the Applicant has also claimed interest on delayed payment of leave encashment salary and pay and allowances for the period from 01.02.2014 to 13.02.2014 being paid belatedly i.e. after four years. In so far as leave encashment salary is concerned, it was required to be sanctioned and paid immediately after retirement of the Applicant and the same could not have been withheld on account of proposed initiation of D.E. As stated above, only gratuity can be withheld till the conclusion of D.E. in terms of Section 130(1)(c) of 'Pension Rules 1982'. Suffice to say, there was absolutely no reason much less justifiable to withhold the payment of leave encashment. The Applicant retired on 31.05.2014, and therefore, leave encashment ought to have been paid at the most within three months latest by the end of 31.08.2014. However, the same was paid on 01.07.2018 as per the submission advanced by the learned Advocate for the Applicant. As such, there is delay of near about four years for payment of leave encashment salary, which is certainly attributable to the administrative lapse or negligence.

17. Similarly, there is inordinate delay for about four years in the payment of pay and allowances for the period from 01.02.2014 to 13.02.2014 amounting to Rs.17,741/-. The said amount was also required to be paid to the Applicant immediately after retirement or latest within three months i.e. by the end of 31st August, 2014. However, the same was paid on 12.06.2018 as pointed out by the learned Advocate for the Applicant.

18. At this juncture, it would be profitable to refer the decision of Hon'ble Supreme Court in ***AIR 2008 SC 1007 (S.K. Dua Vs. State of Haryana & Anr.)*** where in Para No.11, the Hon'ble High Court made following observations about the entitlement of Government servant for interest even in absence of statutory provisions :-

“11. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of bounty is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.”

19. As such, in view of dicta laid down by the Hon'ble Apex Court, the denial of interest to the Applicant from the date on which amount was payable would be miscarriage of justice. Suffice to say, the Applicant is entitled to interest on delayed payment on the basis of statutory provisions and settled legal principles.

20. In so far as the delay in payment of commutation of pension amount is concerned, the sum of Rs.3,40,683/- was paid to the Applicant on 20.07.2018. However, admittedly, the provisional pension was granted to the Applicant. Needless to mention that commutation takes effect from the date of actual payment of commutation amount. This being the position, admittedly, the Applicant had received provisional pension on full amount of pension till the payment of commutation amount. Therefore, the question of grant of interest on belated payment of commutation pension does not survive.

21. For the aforesaid reasons, I have no hesitation to sum-up that there being inordinate delay of near about four years for payment of gratuity, leave encashment salary and pay and allowances for the period from 01.02.2014 to 13.02.2014, the Applicant is entitled to interest. As per Section 129A & B, on delayed payment, the Government servant is

entitled to interest at the rate applicable to General Provident Fund, which is at present 8.5% p.a. Therefore, it would be appropriate to grant interest at the rate of 8.5% on the delayed payment from the date on which it becomes due till actual date of payment.

22. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order dated 07.09.2017 treating the period from 14.02.2014 to 31.05.2014 as *dies-non* holds no water. However, the claim of the Applicant for interest on delayed payment deserves to be accepted, as discussed above. The O.A, therefore, deserves to be allowed partly. In view of challenge to the decision rendered by this Tribunal in O.A.No.1072/2014 quashing D.E. in Writ Petition (Stamp) No. 2637/2018 before Hon'ble High Court, it would be appropriate to direct the Applicant to give undertaking before the Respondents to the effect that, in case, Writ Petition is allowed by the Hon'ble High Court, he will refund the amount of interest. This will protect the interest of Respondents also.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned order dated 07.09.2017 treating the absence period from 14.02.2014 to 31.05.2014 as *dies-non* is upheld.
- (C) The Applicant is entitled to interest on the delayed payment of leave encashment salary, gratuity and pay and allowances for the period from 01.02.2014 to 13.02.2014 at the rate of 8.5% p.a. from 1st September, 2014 [after expiration of period of three months from the date of retirement] till the date of payment.
- (D) The Respondents are directed to pay the interest as directed above to the Applicant within a month from today, subject to Undertaking to be furnished by the Applicant that, in case the decision of Writ Petition (Stamp) No. 2637/2018 goes

against him, he will refund the said amount within one month from the date of receipt of notice by the Department to that effect.

(E) No order as to costs.

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

Mumbai
Date : 02.01.2020
Dictation taken by :
S.K. Wamanse.

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