

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 114 OF 2015

DISTRICT :Thane

Shri Vinodkumar Narayan Dixit,)
Aged 76 Yrs, Occ. Nil)
[Retd. as Deputy Collector])
R/O. Vijaynagari, Ghodbundar)
Road, Thane [E].)
Address For Service of Notice:)
Shri Arvind V. Bandiwadekar,)
Advocate, Having Office at 9,)
"Ram-Kripa", Lt. Dilip Gupte Marg,))
Mahim, Mumbai – 400 016.)...**Applicant**

VERSUS


The State of Maharashtra,)
Through Principal Secretary)
[Revenue],)
Revenue and Forest Department,)
Having Office at Mantralaya,)
Mumbai – 400 032.)....**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

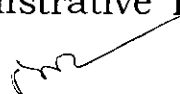
CORAM : Shri J.D. Kulkarni, Member (J)

DATE : 29.01.2016.



JUDGEMENT

1. In this O.A. the Applicant Shri Vinodkumar Narayan Dixit has prayed for setting aside the order dated 20.1.2015 passed by the Respondent to the extent to which the interest of delayed payment at 12% p.a. till realization from due date vis-a-vis the amounts of the retirement dues is denied to the Applicant. It is further prayed that the Respondent be directed to grant interest on the same amounts as mentioned in Exhibit- 'C'.
2. The Applicant joined the Government servant as the Tahasildar on 24.3.1964. He was promoted as Deputy Collector on 9.4.1979 and he got retirement on superannuation on 31.3.1997.
3. While the Applicant was working as Administrator of Ambarnath Municipal Council in between 1.4.1980 to October 1982. Certain allegations of misconduct were made against him. It was alleged that he had committed misconduct thereby misusing his powers and caused financial loss to the said Municipal Council. In 1984 a Criminal Case No.82 of 1984 came to be registered against the Applicant under the provisions of section 5[1] [c] [d] reads with 5[2] of the Prevention of Corruption Act, 1988. Consequently the Applicant was kept under suspension on 21.11.1986. The said suspension was stayed by the Hon'ble HighCourt in Writ Petition No.5167 of 1989 and the matter was sent before the Maharashtra Administrative Tribunal for

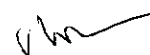


disposal. In the M.A.T. the Applicant's Petition was re-numbered as T.A.No.368 of 1991 vide order dated 3.2.1997. The Hon'ble M.A.T. was pleased to quash and set aside the order of suspension.

4. In the meantime the Criminal case was filed against the Applicant before Learned Special Judge, Thane (under Prevention of Corruption Act) bearing Special Case No. 4 of 1988. Ultimately on 26.6.2009 the Applicant came to be acquitted honourably and said decision of acquittal was not challenged by the Respondents.

5. The Applicant expected that the Respondents will immediately release all his payment as regards pre and post retirement dues, such as leave encashment, revision of pay fixation, difference to pay and allowances and gratuity and the difference of amount between the regular pension and provisional pension. Since the Respondents didnot take any action, the Applicant was forced to file O.A.No.657 of 2010 and O.A.No.1203 of 2010. On 13.1.2011, the Respondents passed the order thereby treating the suspension period of the Applicant in between 4.12.1986 to 11.12.1989 as duty period for all purposes and further directed to pay to the Applicant all the pay and allowances for the said period. The retirement dues were however paid to the Applicant after his retirement belatedly.

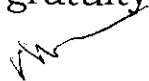
6. On 22.2.2013, the O.A.No.1203 of 2010 was disposed of by the Hon'ble Tribunal and the Applicant was given liberty to make a representation to the Respondents for



the payment of interest on delayed payment and retiral dues. The Applicant accordingly made representation on 15.3.2013. On 20.1.2015, the Respondents passed order and granted Rs.36,021/-, interest towards the delayed payment of gratuity and Rs.3,581/- towards interest of amount by reason of pay fixation to the Applicant. The Respondents made a reference to the provisions of Rule 130[1] [c] of the M.C.S. [Pension] Rules, 1982 and in the impugned order dated 20.1.2015 didnot specifically mentioned about the rate of interest. Thereis no reference to number of item such as retiral dues as mentioned by the Applicant in representation. The Applicant was, infact, entitled to receive the interest on those amount. The interest therefore has been rejected vide order dated 20.1.2015.

7. The Applicant has given a statement showing the calculation of interest on the delayed payment as per Exhibit 'B' on page no.16 of the paper book and has claimed the said difference towards interest. He is claimed total amont of Rs. 696486/- towards the interest amount and hence this O.A.

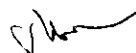
8. The Respondents filed affidavit-in-reply which has been sworn by Shri Sunildatta Bhikaji Patankar, Deputy Secretary in the office of the Revenue and Forest Department, Mantralaya, Mumbai on defended the impugned order passed by the Respondents. It is states that the Applicant has committed irregularities while working as Administrator of Ambarnath Municipal Council and considering his representation, the Government has granted him interest amount of Rs.36,021/- on gratuity amount from



the date of his acquittal that is 26.6.2009. The Government has also paid Rs.3,581/- as an interest on the amount of difference in pay fixation. It is stated that Applicant was facing criminal trial due to his own fault and since the trial was pending he can not claim interest during the pendency of the criminal trial.

9. It is further stated that the Applicant's claim of interest on gratuity from 1.4.1997 is not sustainable in view of the provision of Rule 130 (1) (c) of the Maharashtra Civil Service (Pension) Rules, 1982. The said Rule prohibits gratuity till conclusion of the departmental proceedings/ Criminal Trial as regards difference between pension and provisional pension. It is stated that the finalization of pension was delayed due to his prosecution and not on account of any administrative reason and as per Rule 129 (B) of Maharashtra Civil Service (Pension) Rules, 1982, no interest is payable since provisional pension was being paid to the Applicant. The Applicant's claim of interest from the date of his retirement from 1.4.1997 but said claim is not admissible.

10. The Applicant has filed affidavit-in-rejoinder and submitted that though he came to be acquitted in Criminal Case in the year 2009, the acquittal relate back to the date on which the Applicant was subjected to prosecution and therefore he has entitled to interest.



11. The Respondents also filed affidavit-in-reply to the rejoinder which has been sworn in by Shri Sanjay Jagannath Patil, Section Officer, Revenue and Forest Department, Mantralaya, Mumbai. It is stated that since the Applicant has been acquitted in the year 2009, he is entitled to claim of interest only after reasonable period till actual payment. Paragraph no.8 of the affidavit-in-reply states as regards total amount of calculation of interest which has been paid to the Applicant.

12. It is seems that due to certain events taken place during the pendency of the O.A., that the Applicant has amended the O.A. and added pargraph no. 6.19 to 6.24 in the pleading. However, relief clause has not to be amended.

13. Heard Shri A.V. Bandiwadekar, the learned Counsel for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents. I have perused the affidavit-in-reply, affidavit-in-rejoinder, Sur-rejoinder. I have also perused the amended pleadings as well as varius documents place on record at the some and substance of the pleadings shown that the Applicant was prosecuted for case under Prevention of Correption Act vide special case of 1 of 1999 and the said special case came to disposed of in 2009. The Applicant has been acquitted in the criminal trial on 26.06.2009. It is admitted fact on record that the Applicant came to be retired from the Government Servant on 31.3.1997. It is case of the Applicant that though he has been acquitted from criminal trial in 2009, the acquittal



relates back to the date of his retirement on 31.3.1997 and therefore the pension should have been paid as if no criminal case is pending against him and therefore the due date for pension and pensionary benefits should have with effect from 1.4.1997 and since the pension and other benefits were paid after acquittal in 2009, the interest should have been paid from 1.4.1997. The said benefits however has been rejected vide impugned letter dated 20.1.2015.

14. The only question, therefore, arise as to whether denial of interest from 1.4.1997 on the retiral benefits is legal or not? Or in the other word whether the impugned order dated 21.1.2015 rejecting the claim of the Applicant for interest prior to the period of his acquittal is legal?

15. The base of this O.A. seems to be order passed by this Tribunal in O.A.No.1203 of 2010. In that O.A. the Applicant's claimed pre and post retirement dues and it was observed that the Applicant was already paid of retiral dues. The question was only of interest. The Hon'ble Tribunal vide order dated 22.02.2013 in O.A.No.1203 of 2010 has observed:-

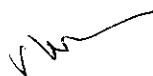
“If the Applicant make such a representation claiming interest with regard to retiral benefits as per the rules, the representation shall decide the same and pass an appropriate order in accordance with law, preferably within a period of two months from today and also communicate the same to the applicant immediately.”



16. In view of the aforesaid directions in the O.A.the Applicant has filed representation and the said representation is placed on record at Exhibit 'F' page no.74 to 78 (both inclusive).

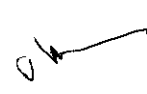
17. Perusal of representation filed by the Applicant shows that the said representation was filed on 15.3.2013 and in the said representation the Applicant has claimed that he was under suspension due to criminal case in between 14.12.1986 to 11.12.1989 and the said period has been treated as duty period for all purposes. He has claimed difference on various counts and claimed interest at 12 % p.a. on the difference.

18. Learned Counsel for the Applicants submits that the Applicant is entitled to claim various reliefs as mentioned in the amended O.A. I have carefully gone through the amended petition of the Applicant it is stated in para 6.19, as amended, that the Petitioner realised that some more material and important facts need to be brought on record in order to strengthen his case vis-a-vis the reliefs sought in the O.A. In paragraph 6.20, he has stated about the application of 4th pay Commission recommendation which have become effective from 1.1.1986. It is the case that for the first time, in July 1993, his pay was fixed for Rs.3,300/- per month as on 1.4.1986, the Collector excluded the increments during the period of suspension from 4.12.1986 to 11.12.1989. In the amended paragraph no.6.21, the Applicant has claimed interest on delayed payment of pay and allowance and on



gratuity. In paragraph no.6.22, it is pleaded that the such delayed payment of gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. Some G.R.s issued by the Government are also referred in this regard and interest on delayed payment of pension is also claimed for making amendment considering the difference of pay as per 5th Pay Commission. In paragraph no.6.23, the Applicant has claimed compensatory interest and in paragraph no.6.24, as amended, it is stated that the Applicant was under suspension not because of his fault but he has been involved in the said criminal case and therefore after acquittal he should have been considered for entitlement to interest since the date of retirement till actual realization.

19. It is material to note that though exhausted amended has been made in the O.A., the prayer clause is not amended. Admittedly the first representation was made by the Applicant in view of the directions issued by this Tribunal in O.A.No.1203 of 2010 and therefore it was, infact, necessary for the Applicant to submit his claim before the competent authority. Since the claim by way of amended paragraph nos. 6.19 to 6.24 was never raised before competent authority, the competent authority can not be blamed for not considering the same. In fact, I was observed by the Tribunal that Applicant has received all retiral dues and he was permitted to make representation only for interest.



20. In view of the aforesaid facts it will have to consider as to whether the representation filed by the Applicant on 15.3.2013 has been considered properly by the Respondent or not?

21. As already stated it is not dispute that the interest has been paid by the Respondent to the Applicant after the date of acquittal till the amount actually received by the Applicant. It is also not in dispute that the Applicant was getting provisional pension even during pendency of criminal trial. In the said circumstances the defence of the Respondents will have considered.

22. Learned P.O. for the Respondents invited my attention to rule 129 (a) of the M.C.S. (Pension) Rule, 1982. This Rule deals with interest on delayed payment of gratuity. There is not need to reproduce the said rule as it is since it is not disputed that if the gratuity is paid after three months, the employee is entitled to inerest at particular rate and if it is paid between three months to one year then the rate of interest deffirs. The provision to rule 129 (1) (a) it is says that no interest shall be payable if the delay in payment of gratuity was attributable to the failure on the part of the payment Government servant to comply with the procedure laid down in this chapter. The further provision says that no interest shall be payable in the case in which the provisional gratuity is sanctioned.



23. In rule 129 (B) of M.C.S. deals with interest of delayed payment of pension. It also states and specifies the interest to be payable considering the delay. The proviso to rule 129 (B) (1) states that no interest shall be payable if the delay in payment of pension was attributable to the failure on the part of the Government servant to comply with the procedure laid down in this Chapter and the further proviso say that no interest shall be payable for the period for which a provisional pension is sanctioned to the Government Servant in case such provisional pension is sanctioned for six months only then the interest can be paid after the period of 6 months from the cessation of provisional pension till the final pension is authorised.

24. In this case admittedly the Applicant is getting provisional pension and he has received all the dues expect interest as claimed by him. Admittedly in this case, the criminal case was pending against the Applicant where in Civil Appeal No.1 of 1999 (original special case no.4 of 1988) under the provision of corruption Act. The Applicant was acquitted by the Learned Special Judge, Kalyan vide judgement delivered on 22.06.2009. It seems that the gratuity has not been paid to the Applicant because of pendency of such criminal case.

25. The learned P.O. invited my attention to Rule 130 of the M.C.S. (Pension) Rule 1982, which reads as under:-

“130. Provisional pension where departmental or judicial proceedings may be pending.- (1) (a) In respect of a Gazetted or Non-gazetted Government



servant referred to in subrule (4) of rule 27 the Head of Office shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.

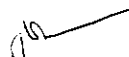
(b) The provisional pension shall be authorised by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the Maharashtra Civil Service (Discipline & Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clause (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorised to be paid to the Government Servant.]

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period."

26. From perusal of the aforesaid Rule 130, it will be crystal clear that if the criminal case is pending against the Government servant he is not entitled to gratuity until the conclusion of criminal trail and departmental enquiry.



27. On a conspectus of discussion in foregoing paragraph it will be, thus, crystal clear that the Applicant may not be claimed interest on the delayed payment since the criminal case was pending against him. The said criminal case came to an end on 26.06.2009 and therefore the Respondents has rightly granted interest on whatever payment was due after acquittal of Applicant from criminal trial. Since the proovisional pension was being paid to the Applicant continuously from the date of his retirement, there was no question for granting interest on the pension amount.

28. I have perused the representation filed by the Applicant before competent authority which has been placed on recorod at paper book, pgae no.74 to 78 (both inclusive). It seems that the Applicant has claimed that his annual increments were release from time to time and due to such increment he was paid difference amount of Rs.95823/- on various dates. However, the said difference should have been paid from 1.4.1997 along with interest of 12% p.a. Another claim in the representation is that he has already submitted all the documents at the time of his retirement and therefore the gratuity should have been paid on 1.4.1997. However the same has been paid on 11.2.2011 and therefore he has entitled for claiming interest at 12% p.a. on said amount from 1.4.1997. It is also his contention that he received less pension and difference of pension to which he was entitled has been paid on 23.11.2011 and in fact interest shall be paid on this amount from 1.4.1997 at the




rate of 12% p.a. These are the only claims made by the Applicant in his representation. As already stated the Applicant was allowed to make representation for claiming interest only and admittedly all the amended pleading was not placed before the competent authority by way of representation. It might be rightly so because the Applicant was allowed for making representation for claiming interest only.

29. Perusal of the impugned communicated dated 20.1.2015 shows that the interest has been granted by the Respondents to the Applicant on delayed payment from the date of his acquittal till the realisation of the amount. As already stated the Applicant is not entitled to claim interest during the pendency of criminal trial.

30. Learned Counsel for the Applicant place reliance on the judgement delivered in O.A.No.256 of 2008 in case Shri Kantilal D. Shah Vs- The State of Maharashtra & Others delivered by this Tribunal on 6.11.2009. In the said case there was delay in completing enquiry on the part of department and therefore the Tribunal held that enquiry should have been completed within reasonable period and interest should have been granted. The said case is not applicable to the present set of facts.

31. Learned Counsel for the Applicant has also placed reliance on judgement reported in case of O.P. Gupta Vs.- Union of India & Ors. on 3rd September 1987 reported in



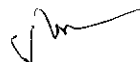
1987 AIR 2257. Learned Counsel for the Applicant invited my attention to the observation in the said judgement that as under:-

“Normally, this court, as a settled practice, has been making direction for payment of interest at 12% on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case.”

The facts of the said case are also not analogous to the present set of facts.

32. Learned Counsel for the Applicant placed reliance on one circular issued by the Government of Maharashtra dated 23.06.1986 which deals with payment of interest on the gratuity. However, the said circular relates to the employees, who died prior to payment of such gratuity. The circular is also not applicable in the case.

33. The learned Counsel for the Applicant then placed reliance on judgement delivered by the Hon'ble Bombay High Court at Nagpur Bench in Writ Petition No.3387 of 2009 **Satyanarayan Ramswarup Sharma Vs. Under Secretary (M.P.S.C.) and others** delivered on 4th May 2010. In this said judgement the Hon'ble High Court has referred to one Supreme Court judgement delivered in the case of **Vidya Charna Shukla Vs. Purshottam Lal Kaushik reported in (1981) 2 SCC 84**, whereby it has been held that an order of acquittal annulling or voiding a conviction operates from nativity. The said judgement is not applicable in present case since Applicant has been paid interest form the date of



actuittal in the criminal case till actual realization of the amount.

34. Lastly, the learned Counsel for the Applicant has placed reliance on (2013) three Supreme Court cases 472 in case of **Y.K. Singla Vs. Panjab National Bank and Others**. In this case it has observed that if the gratuity is withheld without any fault of employee, the employee is entitled to compensatory cost. In the present case gratuity was withheld as criminal trial was pending and rule 130 of M.S.C. (Pension) Rule authorises Employer to withheld gratuity during pendency of the criminal trial. Hence the action of the Respondents can not be held illegal.

35. In view of the discussion in the foregoing paragraph, I pass following order:-

ORDER

Application stands dismissed with no order as to costs.


(J.D. KULKARNI)
MEMBER (J)

Date : 29.01.2016

Place : Mumbai

Dictation taken by : SBA