

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.13 OF 2023  
WITH  
ORIGINAL APPLICATION NO.202 OF 2023**

**DISTRICT : PUNE**  
**Sub.:- Retiral Benefits**

Shri Dilip Pandurang Varpe. )  
Age : 62 Yrs, Retired as Agriculture )  
Development Officer, Raigad Zilla Parishad )  
Alibaug in the Office of Chief Executive )  
Officer, Zilla Parishad, Alibaug, )  
District : Raigad and residing at Flat No.15,)  
Patel Regency, Dhore Nagar, Lane No.2, )  
Old Sangwi, Pune – 27. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Agriculture Department, Mantralaya,) )  
Mumbai – 400 032. )
2. The Chief Executive Officer. )  
Zilla Parishad, Raigad having Office )  
at Alibaug, District : Raigad. )...**Respondents**

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Smt. A.B. Kololgi and Shri A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 02.05.2023**

## **JUDGMENT**

1. These two Original Applications being interlinked are decided by common order.
2. The Applicant has filed O.A.No.13/2023 for direction to the Respondents to release retiral benefits with interest and O.A.No.202/2023 is filed challenging the order of punishment of censure dated 09.02.2022 issued by the Government.
3. Shortly stated facts giving rise to these O.As are as under :-

The Applicant stands retired on 31.05.2018 as Agriculture Development Officer (ADO). Hardly before one month of retirement, he was served with charge-sheet dated 07.04.2018 under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) for unauthorized absence. In enquiry, the Government appointed Enquiry Officer, but no enquiry report was submitted for a long time. Therefore, after waiting for near about 3 years, the Applicant has filed O.A.No.964/2021 in this Tribunal for direction to the Respondents to release retiral benefits, since DE was delayed inordinately without any fault on the part of Applicant. When O.A.964/2021 was taken up for admission, the learned P.O. made a statement that enquiry is already completed and only report was remained to be submitted. Therefore, the Tribunal disposed of O.A. by order dated 02.12.2021 with direction to the Respondents to complete DE by passing final order in DE within two months from the date of order. Besides, directions were also issued to enquire as to why DE was delayed for three years. Ultimately, Government passed order on 09.02.2022 thereby imposing punishment of censure. However, despite completion of DE, no further steps were taken to release remaining retiral benefits of the Applicant for more than

one year. Therefore, Applicant has again filed this O.A.No.13/2023 for direction to the Respondents to release remaining retiral benefits coupled with some other dues with interest.

4. Simultaneously, Applicant has also challenged the order of punishment of censure dated 09.02.2022 by filing 2<sup>nd</sup> O.A. i.e. O.A.No.202/2023 *inter-alia* contending that though Enquiry Officer submitted report exonerating him from the charges, he was not given an opportunity of hearing and Government arbitrarily reversed the finding of Enquiry Officer without giving opportunity of hearing to him and imposed punishment of censure which is in blatant violation of principles of natural justice as well as procedure prescribed in this behalf in 'D & A Rules of 1979'.

5. To begin with, let us see the legality of order dated 09.02.2022 whereby punishment of censure is imposed upon the Applicant, since the decision in this matter have bearing over the claim raised for retiral benefits coupled with some other dues with interest in O.A.No.13/2023.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi and Shri A.J. Chougule, learned Presenting Officers for the Respondents.

7. Indisputably, Applicant stands retired on 31.05.2018 and hardly before one month of retirement, he was served with charge-sheet dated 07.04.2018 under Rule 8 of 'D & A Rules of 1979'. Even after retirement, no expeditious steps were taken for conclusion of DE and it is only after direction given by the Tribunal in O.A.No.964/2021 on 02.12.2021, Respondents passed final order in DE on 09.02.2022 imposing punishment of censure which in fact makes no sense. Be that as it may, there is no denying that in the said enquiry which was initiated for unauthorized absence, the Enquiry Officer has recorded negative findings and given clean chit to the Applicant. This being so, if

disciplinary authority disagree with the finding recorded by Enquiry Officer, it was incumbent to serve the copy of enquiry report with tentative reasons for disagreement and to give an opportunity to the delinquent to submit his explanation as to why he should not be imposed the punishment and disciplinary authority is required to consider the representation, if any, submitted by the Government servant and then to proceed in the matter, as mandated under Rule 9(2-A) of 'D & A Rules of 1979'. For ready reference Rule 9(1)(2)(2-A) are reproduced as under :-

**“9. Action on the inquiry report.-** (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 8 of these rules as far as may be.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is [favourable or not to the said Government servant].

[(2-A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in sub-rules (3) and (4)].”

8. In the present case, indisputably, on receipt of report of Enquiry Officer exonerating the Applicant, the disciplinary authority directly proceeded to impose punishment of censure without compliance of Rule 9(2) and (3) of 'D & A Rules of 1979'. Thus, not providing such opportunity amounts to violation of the principles of natural justice and being in blatant contravention of mandatory requirement of Rules, it is liable to be quashed and set aside. Only because punishment imposed is of censure, the departure from the mandatory requirement of law is totally impermissible.

9. All that, learned Presenting Officer sought to contend that the O.A. without availing remedy of appeal challenging the punishment of censure is not maintainable. I find no substance in her submission. True, as per Section 20 of Administrative Tribunals, 1985, the Tribunal shall not ordinarily admit an application unless it is satisfied that the Applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Thus, the use of word 'ordinarily' itself indicates that in a given case, the Tribunal can entertain the application directly without relegating to the Applicant to the alternate remedy and there is no such absolute bar. In the present case, Applicant stands retired on 31.05.2018 and subjected to punishment of censure by order dated 09.02.2022 which itself is bad in law as concluded above. Therefore, in fact situation, there is no propriety to relegate the Applicant to the appellate authority and it would be waste of time and nothing else.

10. Suffice to say, *ex-facilia*, order of punishment dated 09.02.2022 is totally bad in law and liable to be quashed.

11. Now turning to O.A.No.13/2023. In this O.A, the Applicant has claimed following reliefs :-

- (i) Gratuity with interest,
- (ii) Interest on delayed payment of Leave Encashment paid on 01.02.2023,
- (iii) Pay and allowances of compulsory waiting period as sanctioned by order dated 18.01.2023,
- (iv) Pay and allowances of the period of leave already sanctioned by Respondent No.2 – Chief Executive Officer, Z.P. by order dated 15.03.2018.

12. **As to claim of gratuity with interest and interest on delayed payment of Leave Encashment :-**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that in view of inordinate delay in passing final order in DE, the Applicant is entitled to interest on gratuity as well as interest on delayed payment of leave encashment. He has pointed out that in terms of various Circulars and instructions issued by the Government, DE was to be completed maximum within one year, but in the present case, final order in DE, that too of punishment of censure has been passed on 09.02.2022 and even thereafter also, till date, gratuity is not paid, and therefore, Applicant's claim for interest cannot be defeated.

13. Per contra, learned P.O, all that, tried to contend that in view of pendency of DE, the Applicant was not entitled to receive gratuity in terms of Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity) which provides that gratuity is not payable until conclusion of departmental proceedings or criminal prosecution.

14. The Applicant stands retired on 31.05.2018 and DE was initiated before one month of his retirement for alleged unauthorized absence in the year 2016-2017. True, in terms of Rule 131(c) of 'Pension Rules of 1982' where DE is pending, gratuity is not payable until the conclusion of departmental proceedings or criminal prosecution. However, the question is of time limit, responsibility as well as accountability on the part of Respondents for completion of DE within stipulated period. Disgusting to note that despite specific instructions contained in Departmental Enquiries Manual for completion of DE expeditiously and reiterated by Circular dated 31.05.1997 and 07.04.2008, DEs are continued for years together and even after retirement, no expeditious steps are taken for completion of DE entailing delay in getting retirement dues. Circulars and instructions issued by the Government from time to time are totally ignored and *ex-facia*, there is no accountability and enquiries are dragged on for years together. In a case where after enquiry, ultimately, punishment of only censure is imposed,

which itself is bad in law, Government servant has to be compensated by granting interest on delayed payment, since they are deprived of utilizing their legitimate dues for years together due to sheer administrative lapses and lethargy.

15. The perusal of Circular issued by GAD dated 24.02.1997 reveals that the Office of Lokayukta, the State of Maharashtra in its 23<sup>rd</sup> Annual Report brought to the notice of Government an inordinate delay in completion of DE of retired Government servant and directions were issued to complete within one year on priority basis. Following Paragraph from Circular dated 24.02.1997 is material, which is as under:-

“वरील अभिप्राय व शिफारशी यांचा अभ्यास केल्यानंतर शासन अशा निष्कर्षाप्रत आले आहे की, सेवानिवृत्त कर्मचा-यांच्या विरुद्धची विभागीय चौकशी प्राथम्यक्रमाने पूर्ण होणे आवश्यक आहे. त्यानुसार शासन असे आदेश देत आहे की, विभागीय चौकशीची प्रकरणे शक्यतो कर्मचा-यांच्या सेवानिवृत्तीच्या सुमारास किंवा सेवानिवृत्तीनंतर सुरु करण्याच्या प्रवृत्तीपासून परावृत्त व्हावे व अशा प्रकारच्या चौकशा सेवानिवृत्तीपूर्वी पुरेसा अवधी शिल्लक असताना सुरु करण्याची दक्षता घ्यावी. तथापि, जर काही विशिष्ट परिस्थितीत ही चौकशी सेवानिवृत्तीच्या वेळी किंवा त्यानंतर सुरु करणे आवश्यक झाले तर अशावेळी दोषारोप पत्र तातडीने बजावण्यात यावे. तसेच चौकशी अधिकारी व सादरकर्ता अधिकारी यांच्या नेमणुका २ महिन्यात करण्यात याव्यात व विभागीय चौकशीची संपूर्ण कार्यवाही १ वर्षात पूर्ण होईल याची दक्षता घेण्यात यावी.

सर्व मंत्रालयीन विभागांनी वरील सूचनांचे पालन करण्याची दक्षता घ्यावी. तसेच ह्या सूचना त्यांच्या प्रशासकीय नियंत्रणाखालील सर्व विभाग प्रमुख/कार्यालय प्रमुख यांच्या निदर्शनास आणून त्यांना त्यांचे कटाक्षाने पालन करण्यास कळवावे.”

16. Thereafter again, Government through GAD issued Circular dated 07.04.2008 directing all concerned for completion of DE maximum within one year and where for one or other reasons it is not completed within stipulated period, specific extension is required to be obtained from the competent authority. It further provides whether DE is delayed for more than 5 years, the enquiry is required to be conducted by the concerned Head of the Department for such delay and appropriate disciplinary action against person responsible for delay in completion of DE. In the present case, no such extension was sought.

17. Regret to note, the practice of issuance of charge-sheet at the verge of retirement and to drag on years together is continued unabated. As such, lack of accountability and responsibility is obvious and this is high

time to take note of it. The Respondents, therefore, cannot shirk their liability to pay interest to the Applicant for the period it took on more than stipulated period and Respondents can cause enquiry to fix the responsibility and to recover the same from concerned employee.

18. In the present case, the worst part is that even if final order in DE is passed on 09.02.2022 till date gratuity is not paid which again invariably spells sheer administrative lapses and inaction on the part of Respondents. In Affidavit-in-reply, all that Respondents submit that the process for payment for gratuity is in process. No explanation much less justifiable is forthcoming for such inordinate delay. In terms of Rule 129-A of 'Pension Rules of 1982', if gratuity has been authorized after three months from the date when it's payment become due and it is clearly established that the delay in payment was attributable to the administrative lapses, the interest at the rate applicable to GPF Account is payable for the period beyond three months.

19. As stated above, DE was initiated on 07.04.2018 and Applicant stands retired on 31.05.2018. In terms of various Circulars referred to above, DE was to be completed within one year i.e. upto 07.04.2019. Even if some latitude is given to the Respondents, one can add one more year for completion of DE. As such, DE ought to have been finished by passing final order therein latest upto 07.05.2020. However, final order in DE is passed on 09.02.2022. In such situation, the Applicant is definitely entitled to interest on gratuity from 07.05.2020 till its actual payment.

20. **As regard interest on Leave Encashment :-**

Admittedly, Leave Encashment amount was paid on 01.02.2023 though he stands retired on 31.05.2018. It is not a case of Respondents that Leave Encashment was withhold on the ground of possibility of some money become recoverable from him on conclusion of DE which is pending against him at the time of retirement. Indeed, DE was



pertaining to alleged unauthorized absence and it was not a case of charge of causing monetary loss to the Government, so as to recover from him on conclusion of DE. As per G.R. dated 20.06.1996, Leave Encashment is payable after one month from the date of retirement. Leave Encashment was thus due and payable on 01.07.2018. Whereas in the present case, it is paid on 01.02.2023. The Respondents are, therefore, liable to pay interest at the rate applicable to GPF on the amount of Leave Encashment from 01.07.2018 to 01.02.2023. The Respondents shall calculate the interest and it be paid to the Applicant.

21. **As to pay and allowances of compulsory waiting period :-**

Indisputably, period from 10.08.2015 to 26.01.2016 has been already regularized as 'duty period' in terms of order dated 18.01.2023 issued by the Government. However, pay and allowances of the said period still not paid. The perusal of order dated 18.01.2023 reveals that Applicant was kept in waiting without any posting from 10.08.2015 to 26.01.2016 and there is specific mention in the order that he was not responsible for the same and it happened due to administrative delay. Despite the order dated 18.01.2023 till date, pay and allowances are not paid which again shows totally indifferent attitude of the Respondents towards retired Government servant. The Respondents are, therefore, liable to release pay and allowances for the period from 10.08.2015 to 26.01.2016.

22. **As to pay of Commuted Leave sanctioned by order dated 15.03.2018 :-**

The Applicant claimed pay and allowances of leave already sanctioned by CEO, Z.P. on 15.03.2018. The learned P.O. opposed the pay and allowances for the Commuted Leave sanctioned by Chief Executive Officer, Z.P, Raigad contending that he was not competent to sanction the leave and it was for the Government to take the decision. However, admittedly, Government has not cancelled the order dated

15.03.2018 passed by SEO, Z.P, Raigad. Now, the period of more than 5 years is over. The Applicant already stands retired from service on 31.05.2018. In such situation, the Respondents will have to release pay and allowances for the Commuted Leave sanctioned for the period from 16.11.2016 to 04.07.2017 by order dated 15.03.2018 and it required to be paid.

23. The totality of aforesaid discussion leads me to sum-up that the order of punishment of censure dated 09.02.2022 passed in O.A.No.202/2023 is liable to be quashed and set aside. The Applicant is also entitled to gratuity with interest, interest on Leave Encashment and also entitled to pay and allowances in terms of orders dated 08.02.2023 and 15.03.2018. Hence, the following order.

### **ORDER**

#### **In O.A.No.13 of 2023**

- (A) The Original Application is allowed.
- (B) The Respondents are directed to pay gratuity with interest at the rate applicable to GPF from 07.05.2020 till the date of payment and it should be paid within six weeks from today.
- (C) The Respondents are also directed to pay interest on Leave Encashment for the period from 01.07.2018 to 01.02.2023 at the rate applicable to GPF and it be paid within six weeks from today.
- (D) The Respondents are also directed to release pay and allowances of the waiting period as sanctioned by order dated 18.01.2023 and it be paid within six weeks from today.

- (E) The Respondents are further directed to release pay and allowances of the Commuted Leave sanctioned by the period from 16.11.2016 to 24.07.2017 as sanctioned by order dated 15.03.2018 and it be paid within six weeks from today.
- (F) No order as to costs.

**In O.A.No.202 of 2023**

- (A) The Original Application is allowed.
- (B) Impugned punishment order dated 09.02.2022 is quashed and set aside.
- (C) No order as to costs.

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

Mumbai

Date : 02.05.2023

Dictation taken by :

S.K. Wamanse.

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