

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.244 OF 2018

DISTRICT : Pune

Smt. Rajani M. Bahule)
Age : 60 years, Retired as Head Clerk)
R/at 201, Shivajinagar, Near Jain Mandir,)
Buddha Vihar, Bhamburda Gaothan,)
Pune 411 005.)...**Applicant**

Versus

1. The State of Maharashtra, through)
Chief Secretary, Mantralaya, Mumbai.)
2. The Additional Chief Secretary, Home)
Department, Mantralaya, Mumbai 32.)
3. The Director General of Police, M.S.)
Shahid Bhagatsingh Marg, Mumbai.)
4. The Additional Director General of)
Police, CID (M.S.) Pune University)
Chowk, Near Modern Law College,)
Pashan Road, Pune – 411 008.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.03.2020

JUDGMENT

1. The Applicant is retired as Head Clerk and filed the present O.A. seeking directions to the Respondents to release retiral benefits.

2. Shortly stated facts are as follows:-

The Applicant was serving as Head Clerk on the establishment of Respondent No.4 - Additional Director General of Police, CID, Pune. One Shri Ahmadi, Deputy Police Superintendent who was also serving on the same establishment retired on 31.07.2005. The Applicant was entrusted with the duty to process the pension papers of Shri Ahmadi in accordance to rules. However, she was guilty of negligence in processing the pension papers, and therefore, pension of Shri Ahmadi was delayed. On this ground, Respondent No.4 by order dated 23.01.2009 imposed the punishment of withholding of next increment for three years. The said punishment was imposed without conducting appropriate D.E. as required under rules. The Applicant has challenged the punishment order by filing appeal before the Respondent No.3. The appellate authority by order dated 28.09.2016 set aside the punishment having found that enquiry was not conducted in accordance to rules. Therefore, while setting aside the punishment, he issued directions for departmental enquiry as provided under Rule 10(2) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. Indeed, the Applicant was due to retire on 31.09.2016 and accordingly stands retired. Thereafter, no step was taken for initiation of regular D.E. as directed by appellate authority in its order dated 28.09.2016. Despite the representation made by the Applicant on 14.11.2017, 28.12.2017, 12.02.2018, no step was taken to release the retiral benefits of the Applicant. As such, despite retirement on 31.09.2016, she was deprived of getting retiral benefits, and therefore, filed the present O.A. for issuance of directions.

4. Today, when the matter was taken up for hearing, learned P.O. on instructions submits that by order dated 02.12.2019 regular pension is granted. He further pointed out that gratuity has also been granted and paid on 24.06.2019. As regard initiation of D.E., Respondent Nos.1 to 4 in its reply state that proposal was send to the Government for sanction to issue charge sheet as contemplated under Rule 27(2)(b) of Maharashtra Civil Services (Pension) Rules, 1982 and orders were awaited (hereinafter referred to as 'Pension Rules 1982').

5. Thus, what transpires from the record that till date, no charge sheet is issued to the Applicant. Indeed, during the pendency of O.A., gratuity has been paid and regular pension has been also released. Thus, it is apparent that question of initiation of D.E. does not survive. In fact, now no such D.E. is permissible in view of embargo of Rule 27(2)(b)(ii) of 'Pension Rules 1982' which inter-alia states that D.E. shall not be in respect of any event which took place more than four years before such institution. In the present case, alleged misconduct attributed to the Applicant in the matter of pension papers of Shri Ahmadi is of 2005. This being the position, now initiation of D.E. itself is not permissible and barred by limitation. It appears that precisely for this reason, D.E. was not initiated and finally gratuity was released.

6. In view of above, issue remains to the grant of interest only as claimed by the Applicant in O.A.

7. Smt. Punam Mahajan, learned Counsel for the Applicant submits that there is inordinate delay of more than three years in payment of gratuity, and therefore, Applicant is entitled for interest under Rule 129 (A) of 'Pension Rules 1982'.

8. In this behalf, it would be apposite to reproduced Rule 129(A) of the Pension Rules 1982.

“129-A - Interest on delayed payment of gratuity.

(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 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.

(2) Every case of delayed payment of retirement gratuity or death gratuity, as the case may be, shall *suo motu*, be considered by the concerned Administrative Department, and where the Department is satisfied that the delay in the payment of such gratuity was caused on account of administrative lapse, that Department shall sanction payment of interest after obtaining the admissibility report, in this behalf, from the Accountant General (Accounts and Entitlement), Maharashtra, Mumbai or Nagpur, as the case may be. The approval of the Finance Department for the payment of such interest shall not be necessary.

(3) In all cases, where interest has been paid on retirement gratuity or death gratuity, as the case may be, due to administrative lapse, the concerned Administrative Department shall fix the responsibility and take disciplinary action against the Government servant or servants concerned, including the concerned officer, who are found responsible for the delay in the payment of such gratuity and recover the amount of interest required to be paid from the Government servant or servants concerned including the concerned officer who are found responsible for the delay in the payment of such gratuity.

(4) If as a result of Government's decision taken subsequent to the retirement of a Government servant, the amount of gratuity already paid on his retirement is enhanced on account of-

(a) grant of pay higher than the pay on which gratuity, already paid was determined, or

(b) liberalization in the provisions of these rules from a date prior to the date of retirement of the Government servant concerned, no interest on the arrears of gratuity shall be paid.”

9. Shri A. J. Chougule, learned Presenting Officer for the Respondents sought to contend that Applicant is required to make representation to the Government on interest and if she made so, it can be dealt with in accordance to rules.

10. The submission advanced by the learned P.O. is misconceived in view of Rule 129(A)(2) of 'Pension Rules 1982' reproduced above, which inter-alia states that the concerned Administrative Department shall consider the issue of payment of gratuity *suo motu* and where the department is satisfied that the delay is caused on account of administrative lapse then interest requires to be granted. In the present case, the Applicant was deprived of getting gratuity for near about three years. She stands retired on 31.09.2016 and no D.E. was initiated in terms of order of the appellate authority. This being the position, there is certainly administrative lapse on the part of concerned department for which the Applicant is entitled to interest.

11. In view of above, Original Application deserves to be disposed of with suitable directions as regard payment of interest on delayed gratuity. Hence the following order.

ORDER

- (A) Original Application is disposed of with direction to Respondent No.2 to consider the issue of grant of interest on delayed payment of gratuity and shall pass appropriate orders within two months as contemplated under Rule 129(A) of Maharashtra Civil Services (Pension) Rules, 1982.
- (B) If the Applicant felt aggrieved by the order on the point of interest, she is at liberty to avail further recourse of law as may be permissible to her.
- (C) No order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J