

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 297/2015.

Sudhakar Rajaram Dubey,
Aged about 62 years,
Occ : Retired Govt. servant,
R/o Plot No.346, Nagar Vikas Housing Society,
Narendranagar, Nagpur-15

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Agriculture, Animal Husbandry,
Dairy and Fisheries,
Mantralaya, Mumbai-440 032.
- 2) The Commissioner of Fisheries,
Govt. of Maharashtra, Tarapurwala Aquarium,
Subhashchandra Road, Mumbai.

Respondents

Shri R.S. Khobragade, Ld. Advocate for the applicant.

Shri A.P. Sadavarte, learned P.O. for respondents.

Coram:- Justice M.N. Gilani, Member (J).

Dated: - 23rd December 2015.

Oral order.

This is second round of litigation. Limited question involved in this O.A. is, the liability of the respondents to pay interest on the delayed payment of gratuity, pension and other retiral benefits.

2. While holding the post of Assistant Commissioner, Fisheries, the applicant attained the age of superannuation on 30.11.2011. On the date when he retired, neither any judicial nor departmental proceedings were pending against him. In the earlier O.A. No. 604/2013 filed by him, this Tribunal, considering this aspect of the matter directed the respondents to finalize pension case of the applicant and ensure payment of entire amount due to the applicant. Despite that, the respondents did not ensure payment of retiral dues to the applicant and caused delay. Only when contempt proceedings were initiated, the respondents took step to make payment. Details of payments are given in para 4.5 which are reproduced below:

"i) Rs. 4,21,390/- as leave encashment paid on 13.11.2014.

ii) Rs. 4,40,055/- gratuity paid on 22.12.2014.

iii) Rs. 5,24,482/- CVP paid on 14.2.2015.

Total Rs. 13,85,927/-."

Question that arises is whether the delay in payment of retiral benefits is attributable to administrative lapse.

3. Provisions of Rule 129-A and 129-B of the M.C.S. (Pension) Rules, 1981 mandate timely payment of gratuity and pension and if delay in payment is attributable to administrative lapse,

interest as per stipulated rate on the amount of gratuity and pension becomes payable. What is administrative lapse is a question of fact. In the present case, on the date when the applicant retired, no departmental or judicial proceedings were pending against him. In that view of the matter, the respondents had no authority to withhold the retiral benefits after three months in case of gratuity and after six months in case of pension. Rule 130 read with Rule 27 clarifies as to when departmental proceedings shall be deemed to be instituted. Admittedly on 30.11.2011, no chargesheet as contemplated under Rule 27 (6) (a) was served on the applicant.

4. Even assuming that because of pendency of proposal to initiate departmental enquiry, the respondent No.2 at its level was not in a position to take decision about release of retiral benefits and such act of withholding the retiral benefits on its part may not be termed as "administrative lapse", however, in view of decision taken by the respondent No.1 and communicated vide letter dated 5.10.2012, nothing prevented the said authority from taking steps in releasing the retiral benefits in favour of the applicant. Communication dated 5.10.2012 (Annexure A-5) which was filed in earlier O.A. No. 604/2013 and reference of which is appearing in para 3 of the judgment in that O.A., categorically states that no case of grave

misconduct or negligence was made out against the applicant. Relevant portion from the said communication is extracted below:

“आता श्री. दुबे हे सेवानिवृत्त झाल्यानंतर ऊपरोक्त नियम १० खाली त्यांच्याविरुद्ध शिस्तभंगविषयक कार्यवाही करता येत नाही. टसेच श्री. दुबे यांच्यकडून गंभीर गैरवर्तन झाले नसल्याने त्यांच्या निवृत्तीवेतनातून कपातीची शिक्षा त्यांना देण्याच्या दृष्टीने त्यांच्याविरुद्ध म.ना.से. (निवृत्तीवेतन) नियम १९८२ मधील नियम क. २७ व म.ना.से. (शिस्त व अपील) नियम १९७९ मधील नियम क.८ खाली शिस्तभंगविषयक कार्यवाही करणे (दोषारोपाचे स्वरूप पहाता) योग्य होणार नाही.”

5. It is unfortunate that, despite clear directions from the respondent No.1, delay was caused in finalizing the pension case of the applicant. Matter did not end here. Again on 13.2.2013, second communication was issued by the respondent No.1, holding that no *prima facie* case was made out against the applicant. In para 3 of the order passed in O.A. No. 604/2013, reference of this communication has been made. It seems that, whatever was communicated by the respondent No.1 fell on the deaf ears of the concerned authority. Even the directions issued by this Tribunal in O.A. No.604/2013 were flouted and, therefore, the applicant was required to initiate contempt proceedings against the respondents. Therefore, this is a clear cut case of causing delay and the same is attributable to administrative lapse which entitles the applicant to receive interest at the rate specified under Rule 129-A on unpaid amount of gratuity and under Rule 129-B on unpaid amount of pension and other retiral dues. After

receiving communication dated 5.10.2012, it was expected of the respondent No.2 to finalize the pension case of the applicant at the most within next six months. Therefore, interest shall become payable from 6.4.2013.

6. In the result, O.A. is allowed in the following terms:

(i) The respondents are directed to pay interest on the delayed payment of gratuity at the rate specified under Rule 129-A of the Pension Rules from 6.4.2013 till the date of actual payment.

(ii) The respondents are further directed to pay interest on the delayed payment of pension (minus provisional pension) and other dues at the rate specified under Rule 129-B of the Pension Rules from 6.4.2013 till the date of actual payment.

(iii) The amount of interest as directed above shall be computed and its payment be ensured within three months from the date of passing of this order.

(iv) There shall be no order as to costs.

Sd/-

(M.N.Gilani)
Member (J)