

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR**

ORIGINAL APPLICATION NO.430 OF 2018

DISTRICT : NAGPUR

Shri Gangadhar S. Kohale)
Age : 73 Yrs, Occu.: Retd. Govt. Officer,)
R/o. 30, Padole Layout, Parsodi,)
Ring Road, Nagpur – 22.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Principal Secretary,)
Water Resources Dept., Mantralaya,)
Mumbai – 32.)
2. The Superintendent Engineer.)
Nagpur Irrigation Circle, Sinchan)
Bhavan, Civil Lines, Nagpur 440 001)
3. The Accountant General (A & E)-II,)
Maharashtra, Indian Audit and)
Accounts Department, Civil Lines,)
Nagpur – 440 001.)...**Respondents**

Mr. A. Upadani, Counsel for Applicant.

Mr. M.I. Khan, Presenting Officer for Respondents.

CORAM : SHRI A.D. KARANJKAR, MEMBER-J

DATE : 20.01.2020

JUDGMENT

1. This application is filed for issuance of direction to the Respondents to pay regular full pension to the Applicant from the date of his retirement along with arrears and the amount of gratuity to gather with interest.

2. The facts are that the Applicant retired from the service on 31st October, 2003 on attaining superannuation, at that time, the Applicant was Sub-Divisional Engineer. The Charge-sheet was served on Applicant on 28.05.2002. It was the allegation of the Department that the Applicant and 4 other Officers were involved in Criminal misappropriation of Government money. The Departmental Enquiry was conducted from 08.06.2007 to 15.02.2008 and it was held that Charge No.1 was proved against the Applicant and the Enquiry Officer submitted his report.

3. The Regular Criminal Case No.143/2007 was pending against the Applicant on the file of C.J.M, Bhandara and the Applicant was acquitted by the learned C.J.M. in that case on 28-11-2014. After acquittal of the Applicant in the Criminal Case, second Show Cause Notice was served by the Respondent No.1 on the Applicant on 15.12.2015 and Applicant was called upon to show cause why amount of Rs.1000/- p.m. should not be recovered from his pension for a period of one year as punishment. The Show Cause Notice was replied by the Applicant but no decision was taken by the Respondent No.1 and ultimately, the Respondent No.1 passed order on 21.09.2017 and directed to recover the amount of Rs.1000/- from the pension of the Applicant for a period of one year as punishment. It is the contention of the Applicant that in spite of this order dated 21.09.2017, no steps were taken by the Respondents to release regular pension of the Applicant and matter was kept lingering, therefore, letter dated 15.02.2018 was written by the Applicant and request was made to deduct the amount of Rs.12,000/- (penalty) from provisional pension of the Applicant and to release the regular pension and gratuity. As no action was taken, therefore, the representation dated 16th March, 2018 was made by the Applicant, but no action was taken, consequently, the present application is filed by the Applicant to recover regular pension along with arrears and amount of gratuity together with interest at the rate of 12% p.a. from the date of retirement.

4. The Respondents have resisted the O.A. by filing their reply. The Respondents 1 and 2 have filed their reply, which is at Page Nos. 42 and the Respondent No.3 has filed reply, which is at Page No.36. According to Respondents, vide letter dated 06.07.2018, the Respondent No.2 forwarded the pension proposal after conclusion of departmental enquiry. The commutation application was received in Form-B and it was returned by the Accountant General Office for the reason that the commutation application in Form-A was necessary. It is submitted that the Respondents were not responsible for the delay, and therefore, the Respondents are not entitled to pay the interest on the amount of pension and the amount of gratuity.

5. The learned Counsel for the Applicant submitted that the Enquiry Officer submitted report on 22.02.2008 but as the Criminal Case was pending, therefore, no decision was taken by the Respondent No.1. It is submitted that after conclusion of Criminal Trial, the Respondent No.1 was under obligation to take fast decision, but it was not done. The Respondent No.1 issued second Show Cause Notice on 15.12.2015 and called upon the Applicant to show cause why the punishment mentioned in the notice should not be awarded. The learned Counsel for the Applicant submitted that prompt reply was given by the Applicant to the second Show Cause Notice, but no prompt decision was taken by the Respondent No.1 within a reasonable time. It is submitted that the Respondent No.1 passed the final order in the D.E. on 21.09.2017 and directed to recover the amount of Rs.1000/- p.m. for 12 months from the amount of pension of the Applicant.

6. It is the contention of the Respondents that they acted punctually and they are not responsible for the delay. In this regard, I would like to point out that on 15.12.2015, the Criminal Case was not pending against the Applicant and the report of Enquiry Officer was already received, consequently, the Respondent No.1 issued second Show Cause Notice and called upon the Applicant to explain on the point of penalty. The reply was submitted by the Applicant, but no decision was taken

promptly and on 21.09.2017, the final order was passed in the enquiry. In my opinion, as the Applicant stood retired on superannuation on 31.10.2003 long back and a period of more than 12 years was expired on 15.12.2015, therefore, the Respondent No.1 was bound to take speedy decision in the matter, but it was not done. Here it must be considered that the learned C.J.M. pronounced the judgment on 28-11-2014 and acquitted the applicant, thereafter, time more than 1 year was spend by the respondents for issuing second show cause notice for hearing the applicant on the point of punishment. The Respondents have not shown any justification why matter was kept pending till 21.09.2017 for a period about one year and nine months. It seems that, till the date of filing of this application, the amounts of pension and gratuity were not paid to the Applicant regarding which there is no satisfactory explanation given by the Respondents.

7. The learned Counsel for the Applicant has placed reliance on the G.R. dated 24th April, 1995. As per this G.R, if there is a delay more than three months to pay the amount of gratuity, the Department shall be liable to pay compound interest at the rate of 12% p.a. after expiry of three months till the realization when the delay in payment was attributable to administrative reasons. Similarly, where the amount of pension is not released within six months after the date of retirement / entitlement of the Government servant to pension and the delay in payment was attributable to administrative reasons, the Department shall pay the interest at the rate applicable to GPF deposits and its interest shall be compounded.

8. The learned Counsel for the Applicant has placed reliance on the Judgment in case of ***Vinodkumar Narayan Dixit Vs. State of Maharashtra : 2018 DGLS (Bom.) page 206*** relying upon the ratio, it is submitted that the Applicant is entitled for the interest on the amount of pension and gratuity since the date of his retirement.

9. It appears from the facts and circumstances that the Applicant retired on 31.10.2003. The Applicant had already served with the Charge-sheet on 28.05.2002 and the D.E. was pending. Similarly, a Criminal Case was filed against the Applicant and it was pending till 28-11-2014. Thus, it seems that, as per the Rules, the Applicant was not entitled to receive the amount of regular pension and gratuity due to pendency of Criminal Case and after acquittal in the Criminal Case on 28.11.2014, the Applicant became entitled. It seems that, as Criminal Case was pending, therefore, the D.E. was also kept pending and on 15.12.2015, the Respondent No.1 issued second Show Cause Notice on the point of penalty to the Applicant.

10. In the above background, in my opinion, it was the duty of the Respondents to conclude the D.E. within a reasonable period after acquittal of the applicant and after issuance of second Show Cause Notice dated 15.12.2015. It seems that this was not done. The Respondent No.1 passed the order and awarded penalty on 21.09.2017. The Respondents have not given any cogent reason why there was delay in taking decision in this regard. No explanation is given by the Respondents why prompt steps were not taken after 21.09.2017 to release the regular pension and amount of gratuity to the Applicant after deducting the amount of penalty of Rs.12,000/-. It is submitted that though representation was made on 15.02.2018, the Respondents did not take prompt action to recover the amount of penalty and release the pension and gratuity. In these circumstances, I am compelled to say that it is established by the Applicant that the Respondents are bound to pay interest for the delayed payment of the regular pension and the gratuity.

11. After reading the Judgment on which reliance is placed by the Applicant, in my opinion, in this case, interest cannot be granted from the date of retirement because misconduct of the applicant is proved. The evidence is that the Criminal Case was closed on 28.11.2014 and thereafter, as the Respondent No.1 was already in possession of the

Enquiry Report, the Respondent No.1 was bound to take prompt decision. In view of this, the Applicant became entitled to recover the regular pension after decision of the Criminal Case and after issuance of second Show Cause Notice dated 15.12.2015 in which the proposed punishment was to impose penalty of Rs.12,000/-. In this situation, as the decision was not taken by the Respondent No.1 promptly, within a reasonable period of six months from 15-12-2015, the Respondents are liable to pay the interests to the Applicant on the amount of pension and the amount of gratuity. In the result, I pass the following order.

O R D E R

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to release the regular pension and amount of gratuity to the Applicant.
- (C) The Respondent No.1 shall pay interest at the rate of 12% p.a. with six monthly rest, from 16.06.2016 till realization of the amount of gratuity.
- (D) The Respondent No.1 shall pay interest at the prevailing interest rate, on the G.P.F. with six monthly rest, on the amount of pension w.e.f.16.06.2015 till the realization of the amount of pension.
- (E) No order as to costs.

Sd/-
(A.D. KARANJKAR)
Member-J

*Nagpur
Date : 20.01.2020
Dictation taken by :
S.K. Wamanse.