

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.594 OF 2020

DISTRICT : THANE

Shri Namdeo Rabhaji Gaykar.)
Age : 66 Yrs., Occu.: Retired Assistant)
Commissioner of Sales Tax,)
Thane Division and residing at 102,)
Varad Vinayak Plot No.105/B, Sector 50)
New, Seawoods, Navi Mumbai – 706.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Finance Department, 6th Floor)
(Extension), Madam Cama Road,)
Hutatma Rajguru Chouk,)
Mantralaya, Mumbai – 400 032.)

2. The Special Commissioner of Sales)
Tax, M.S, Vikrikar Bhavan,)
Mazgaon, Mumbai – 400 010.)...**Respondents**

Mr. K. R. Jagdale, Advocate for Applicant.

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

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

DATE : 01.09.2021

JUDGMENT

1. The Applicant has challenged the order dated 15.01.2020 whereby Respondent No.1 – Government of Maharashtra rejected his claim for interest on belated payment on gratuity and leave encashment, invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the undisputed facts giving rise to this O.A.

(i) Applicant stands retired as Assistant Commissioner, Sales Tax from the establishment of Respondent No.2 on 31.05.2012.

(ii) Before his retirement, the Applicant was served with charge-sheet of D.E. on 03.09.2010 alleging some irregularities in his functioning under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity).

(iii) On the date of retirement of the Applicant, there was absolutely no progress in D.E. except appointment of Enquiry Officer.

(iv) Since gratuity and leave encashment were withheld on account of pendency of D.E, the Applicant has filed O.A.No.157/2017 for grant of retiral benefits with interest.

(v) It is during the pendency of O.A.No.157/2017, the Respondent No.1 had taken decision on 02.05.2017 to drop the D.E.

(vi) In view of decision of Government to drop D.E, the Tribunal disposed of O.A.157/2017 by order dated 16.06.2017 with liberty to the Applicant to avail further legal remedy in the matter of interest.

(vii) It is after disposal of O.A, the Respondent No.2 paid leave encashment Rs.4,28,840/- on 16.06.2017 and gratuity Rs.3,96,348/- on 28.09.2017.

(viii) The Applicant, therefore, made representation on 05.07.2017 for grant of interest on the belated payment of gratuity and leave encashment *inter-alia* contending that he is deprived of his legitimate due without any fault on his part for more than five years.

(ix) The Respondent No.1, however, rejected the claim of interest by order dated 15.01.2020 *inter-alia* stating that the Government has closed D.E. sympathetically, since he is already retired from service and it is not the case of exoneration from the charges framed in D.E.

3. It is on the above background, the Applicant has filed the present O.A. claiming interest on belated payment of gratuity and leave encashment.

4. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that in view of pendency of D.E, the Applicant was not entitled to gratuity and leave encashment and after decision of its closure, the benefits are released and denied the claim of interest.

5. Shri K.R. Jagdale, learned Advocate for the Applicant vehemently urged that though D.E. was required to be completed within six months from the date of its initiation or maximum within a period of one year, no such steps were taken by the Respondents to complete the D.E. for five years and Applicant was required to approach the Tribunal by filing O.A.No.157/2017. It is only after filing of O.A, the Government had taken decision to drop the D.E. and thereafter only, gratuity and leave encashment was paid. He has further pointed out that except the appointment of Enquiry Officer one after other, no further steps, much less sincere were taken to complete the D.E. and thereby Applicant is deprived of his legitimate entitlement to gratuity and leave encashment. According to him, had D.E. completed within a stipulated period, the Applicant would have got his legitimate dues within reasonable time but

he is deprived of his legal entitlement, and therefore, the Respondents cannot escape from the liability to pay interest.

6. The learned Advocate for the Applicant in this behalf placed reliance on the following decisions :-

- (a) ***AIR 2008 SC 1077 [S.K. Dua Vs. State of Haryana].***
- (b) Judgment of Hon'ble Bombay High Court in **Writ Petition No.3492/1994 [Yuvraj N. Rode Vs. Chairman, MSEB] decided on 18th September, 2008.**
- (c) ***2018 MLJ 697 [Vinodkumar Dixit Vs. State of Maharashtra].***
- (d) Reliance also placed on G.R. dated 06.05.1991 which governs the situations in the matter of payment of interest on belated retiral benefits released after conclusion of D.E. or judicial proceedings.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that since D.E. was pending on the date of retirement, the Applicant was not entitled to leave encashment and gratuity and the same were released after the Government had taken conscious and sympathetic decision to close the D.E. in view of his retirement in 2012, and therefore, the claim of interest is untenable.

8. In view of submissions advanced at the Bar, the question posed for consideration is whether the Applicant is entitled to interest on the belated payment of gratuity and leave encashment.

9. True, where a D.E. is pending against a Government servant at the time of his retirement, he will not be entitled to gratuity until the conclusion of D.E. or judicial proceedings and the issue of final order therein, as provided in Section 130 (1)(c) of Maharashtra Civil Services

(Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity). Whereas, as per Section 129-A of 'Pension Rules of 1982', if the payment of gratuity has been authorized after three months from the date where its payment is become due and it clearly establish that if the delay in payment was attributable to administrative lapse, a Government servant is entitled to interest at the rate applicable to General Provident Fund deposits in respect of period beyond three months.

10. In so far as leave encashment is concerned, significant to note that as per Rule 68(1) of Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules of 1981' for brevity), the authority competent to grant leave shall *suo motu* sanction to a Government servant, the cash equivalent of leave salary in respect of period of earned leave at his credit subject to maximum 300 days on attaining age of superannuation. Thus, obligation is cast upon competent authority to grant leave encashment *suo motu* on the date of retirement of a Government servant. In this connection, it is further important to note that as per Rule 68(6)(a) of 'Leave Rules of 1981', the competent authority to grant leave may withhold whole or part of cash equivalent to earned leave where in view of such authority, there is possibility of some money being recoverable from him on conclusion of departmental proceedings or criminal proceedings pending against a Government servant on the date of retirement. Suffice to say, on retirement, the competent authority was required to pass such specific order withholding leave encashment and in absence of it, there could be no reason to withhold leave encashment. In so far as the facts of present case are concerned, there is absolutely no such order of authority competent withholding leave encashment, as mandated under Rule 68(6)(a) of 'Leave Rules of 1981'. The Respondent No.2 simply withhold leave encashment mechanically.

11. At this juncture, it would be also apposite to refer G.R. dated 6th May, 1991 which inter-alia provides for payment of interest on belated

retiral benefits where the same were withheld on account of pendency of D.E. or judicial proceedings, which is as under :-

“(१) सेवानिवृत्तीच्या दिनांकाला ज्या शासकीय कर्मचा-यांच्या विरुद्ध विभागीय आणि न्यायिक कार्यवाही प्रलंबित असेल आणि जेथे कार्यवाही पूर्ण होईपर्यंत उपदाची रक्कम रोखून ठेवण्यात आली असेल अशा प्रकरणी

(अ) जर शासकीय कर्मचा-याची सर्व आरोपामधून पूर्णतः दोषमुक्तता झाली असेल आणि उपदानाच्या रकमेचे प्रदान, अशी कार्यवाही पूर्ण झाल्यानंतर करण्यात आले असेल तर उपदानाचे प्रदान सेवानिवृत्तीच्या काळालगतच्या दिनांकाला देय झाले, असे मानण्यात येईल. जर उपदानाचे प्रदान निवृत्ती दिनांकापासून तीन महिन्यांनंतर करण्यात आले असेल तर निवृत्ती दिनांकापासून तीन महिन्यांनंतरच्या कालावधीसाठी व्याज देण्यात येईल.

(ब) विभागीय/न्यायिक कार्यवाही प्रलंबित असताना शासकीय कर्मचा-याचा मृत्यू झाल्याने विभागीय आणि न्यायिक कार्यवाही बंद करण्यात आली असेल तर उपदानाचे प्रदान मृत्यूच्या दिनांकानंतरच्या लगतच्या दिनांकाला ते झाले असे मानण्यात येईल आणि जर उपदानाचे प्रदान विलंबाने करण्यात आले असेल तर मृत्यूच्या दिनांकापासून तीन महिन्यांनंतरच्या विलंबाच्या कालावधीसाठी व्याज देण्यात येईल.

(क) विभागीय/न्यायिक कार्यवाही पूर्ण झाल्यानंतर शासकीय कर्मचारी पूर्णतः दोषमुक्त झाला नसेल आणि सक्षम प्राधिका-याने उपदानाचे प्रदान करण्याचा निर्णय घेतला असेल अशा प्रकरणी सक्षम प्राधिका-याने उपदान प्रदान करण्याचे आदेश ज्या दिनांकाला काढले असतील, त्या दिनांकाला उपदानाचे प्रदान देय असेल असे मानण्यात येईल.”

12. On the above background, now let us see the decision taken by the Government in respect of closer of D.E. by order dated 02.05.2017, which is as under :-

“दोषारोपाच्या अनुषंगाने सविस्तर विभागीय चौकशी करण्यासाठी शासन आदेश दि.०८/०३/२०११ अन्वये श्री. आनंदसिंग धनसिंग पाटील, विक्रीकर उपायुक्त (निर्धारणा) बॅ.१३०, नरिमन पॉइंट, मुंबई यांची सादरकर्ता अधिकारी म्हणून तसेच प्रादेशिक विभागीय चौकशी अधिकारी, कोकण भवन, नवी मुंबई यांची दि.२२/०३/२०११ च्या शासन आदेशान्वये चौकशी अधिकारी म्हणून नियुक्ती करण्यात आली. तदनंतर श्री. बी.एन. मुदगल, विक्रीकर उपायुक्त (रो.नी.) यांची शासन आदेश दि.२७/०८/२०१२ अन्वये चौकशी अधिकारी म्हणून नियुक्ती करण्यात आली. दरम्यान श्री. बी.एन. मुदगल यांनी दि.१०/११/२०१४ च्या पत्रान्वये सदर प्रकरणी दुसरा विभागीय चौकशी अधिकारी नेमण्याबाबत केलेल्या विनंतीनुसार व विशेष विक्रीकर आयुक्त कार्यालयाने दि.१३/०२/२०१५ च्या पत्रान्वये केलेल्या शिफारशीनुसार दि.१७/०३/२०१५ च्या शासन आदेशान्वये याबद्दल श्री. मुदगल यांच्या ऐवजी श्री. सु.ना. रणखांबे, प्रादेशिक विभागीय चौकशी अधिकारी, कोकण भवन, नवी मुंबई यांची चौकशी अधिकारी म्हणून नियुक्ती करण्यात आली. तथापि प्रादेशिक विभागीय चौकशी अधिकारी, कोकण भवन, नवी मुंबई यांनी दि. ११/०८/२०१६ च्या पत्रान्वये केलेल्या विनंतीनुसार तसेच विशेष विक्रीकर आयुक्त यांनी दि.०३/०९/२०१६ अन्वये सादर केलेल्या प्रस्तावाच्या अनुषंगाने शासन आदेश दि. १४/१०/२०१६ अन्वये श्री. सु. ना.रणखांबे यांची चौकशी अधिकारी म्हणून केलेली नियुक्ती रद्द करून प्रादेशिक विभागीय चौकशी अधिकारी, कोकण भवन, नवी मुंबई यांची याची पदनामाने चौकशी अधिकारी म्हणून नियुक्ती करण्यात आली.

श्री. नामदेव रंभाजी गायकर, सहायक विक्रीकर आयुक्त (से.नि.) हे दि. ३१/०५/२०१२ रोजी सेवानिवृत्त झाले असून त्यांना सेवानिवृत्तीनंतर भविष्यनिर्वाह निधी व गटविमा योजनेचे लाभ अदा करण्यात आले आहेत. त्यांच्याविरुद्ध वरील प्रमाणे विभागीय चौकशीची कार्यवाही सुरु असल्यामुळे त्यांचे निवृत्ती उपदान व रजा रोखीकरण लाभाचे प्रदान करण्यात आलेले नाही. याशिवाय त्यांना तात्पुरते निवृत्तीवेतन प्रदान करण्यात येत आहे. सदर विभागीय चौकशी प्रकरणी विविध कारणांमुळे चौकशी अधिकारी वेळोवेळी बदलावा लागल्याने विभागीय चौकशीची कार्यवाही विहित कालावधीत पूर्ण होऊ शकली नाही. सदर प्रकरणी दीर्घ कालावधीनंतरही विभागीय चौकशी पूर्ण झाल्याच्या परिणामी श्री. गायकर यांना त्यांचे सेवा निवृत्ती विषयक लाभ मिळण्यापासून वंचित राहावे लागले असून थकीत सेवा निवृत्ती विषयक लाभांमुळे त्यांना एक प्रकारे आर्थिक भुर्दंड सोसावा लागलेला आहे, या बाबीचा विचार करता श्री. गायकर यांची विभागीय चौकशी सुरु ठेवण्याबाबतच्या व्युवहायतेच्या अनुषंगाने सखोल तपासणी करून स्वयंपाक अभिप्राय विशेष विक्रीकर आयुक्त यांच्याकडून दि. ३०/०३/२०१७ च्या पत्रान्वये मागवण्यात आले होते.

त्यावर विशेष विक्रीकर आयुक्त यांनी दि.१८/०४/२०१७ च्या पत्रान्वये सेवानिवृत्ती विषयक लाभ थकल्यामुळे श्री. गायकर यांना रु.८,२५,१८८/- इतक्या रकमेवरील व्याजाचा आर्थिक भुर्दंड सोसावा लागल्याचे स्पष्ट करून श्री. गायकर यांची विभागीय चौकशी सद्यस्थितीत चालू ठेवणे व्यवहार्यही नाही असे मत व्यक्त केले आहे.

श्री. गायकर यांच्याविरुद्ध विभागीय चौकशी सुरु असल्यामुळे त्यांना उपदान व रजा रोखीकरणाच्या रकमेचा उपभोग घेता आलेला नाही. यामुळे एक प्रकारे त्यांना आर्थिक भुर्दंड सोसावा लागलेला आहे. अशा परिस्थितीत विक्रीकर आयुक्तालयाच्या दि.१८/०४/२०१७ च्या पत्रान्वये सादर करण्यात आलेला अहवाल विचारात घेऊन श्री गायकर यांची विभागीय चौकशी विशेष सहानुभूतीपूर्वक विचार करता सुरु ठेवणे व्यवहार्य होणार नसल्याच्या निष्कर्षाप्रत शासन आले आहे.

श्री. गायकर यांची त्यांच्या सेवानिवृत्तीनंतर चालू असलेली विभागीय चौकशी विशेष सहानुभूतीपूर्वक निर्णय घेऊन बंद केल्यामुळे ते विभागीय चौकशीत दोषी ठरलेले नाहीत. किंबहुना ते निर्दोष आहेत किंवा विभागीय चौकशी पुढे चालू ठेवण्यात शासनात स्वारस्य नाही असा याचा अर्थ होणार नाही. त्यामुळे विभागीय चौकशी बंद करताना चौकशी सुरु असल्याच्या परिणामी श्री. गायकर यांना सेवा निवृत्ती विषयक लाभाच्या प्रदानास होणा-या विलंबासाठी व्याज देय ठरणार नाही, असे स्पष्ट करून श्री. नामदेव रंभाजी गायकर, सहाय्यक विक्रीकर आयुक्त (से.नि.) यांच्याविरुद्ध दि.०३/०९/२०१० च्या शासन जापनाव्यये दोषारोपपत्र बजावून सुरु करण्यात आलेली विभागीय चौकशीची कार्यवाही विशेष सहानुभूतीपूर्वक विचार करून शासन याद्वारे बंद करित आहे.”

13. Before advertng to the issue of interest, it would not be out of place to mention here some provisions of Departmental Enquiry Manual as well as instructions issued by Government by various Circulars prescribing time limit for completion of D.E.

14. As per Clause 3.19 of Departmental Enquiry Manual, the D.Es need to be completed as expeditious as possible and in any case, it should be completed within six months from the date of issuance of charge-sheet. Here, it would be material to refer Clause 3.19 of Manual, which is as follows :-

“३.१९ विभागीय चौकशी पूर्ण करण्यासाठी कालमर्यादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूर्ण करण्यात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी करण्याचा निर्णय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्कर्षासंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.

(२) तथापि, काही प्रकरणामध्ये उचित व पुरेशा कारणांसाठी सहा महिन्यांच्या विनिर्दिष्ट काळामध्ये विभागीय चौकशी पूर्ण करणे शक्य नसेल विभागीय चौकशा पूर्ण करण्यासाठी असलेली ही कालमर्यादा वाढवून देण्याचे अधिकार परिशिष्ट ८च्या स्तंभ ३ व ४ मध्ये नमूद केलेल्या प्राधिकाऱ्याला, त्या स्तंभाच्या शीर्षाखाली निर्देशलेल्या मर्यादित अधीन राहून दयावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षापेक्षा अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकीय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती दयावी.

(३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबंधित चौकशी अधिकार्याने आणि शिस्तभंगविषयक प्राधिकार्याने सक्षम प्राधिकार्यास परिशिष्ट ९ मध्ये अंतर्भूत असलेल्या प्रपत्रात माहिती द्यावी. कालमर्यादेची वाढ देण्यासाठी सक्षम असलेल्या प्राधिकार्याने प्रस्तावाची काळजीपूर्वक तपासणी करावी आणि कमीत कमी आवश्यक असलेल्या कालावधीची वाढ द्यावी.”

15. Whereas following are the instructions issued by Circular dated 30th October, 2010.

“शासन असे आदेश देत आहे की, प्राथमिक चौकशीअंती तथ्य आढळलेल्या प्रकरणांत नजिकच्या सहा महिन्यांच्या काळात सेवानिवृत्त होणारा अधिकारी / कर्मचारी गुंतला असेल तर, अशा प्रकरणी एक विशेष बाब म्हणून प्राधान्याने संबंधित अधिकारी / कर्मचार्याच्या सेवानिवृत्ती पूर्वी किमान ३ महिने अगोदर विभागीय चौकशी सुरु होईल व शासन सामान्य प्रशासन विभाग परिपत्रक क्रमांक : सीडीआर-१०९७/१५६/प्र.क्र.१४/९७/अकरा, दि.२४ फेब्रुवारी, १९९७ नुसार एकुण चौकशीची कार्यवाही एका वर्षात पूर्ण होईल अशा रितीने कार्यवाही करण्याची दक्षता घ्यावी. प्रकरणाच्या कोणत्याही टप्प्यावर विलंब झाल्याचे निदर्शनास आल्यास, अशा विलंबाला जबाबदार असणाऱ्या अधिकारी / कर्मचार्यावर शिस्तभंगविषयक कारवाईचाही विचार करण्यात यावा.”

16. Then again, in Circular dated 21.02.2015, the following instructions have been issued :-

“मा. लोक आयुक्त आणि मा. उप लोक आयुक्त यांनी शासनास सादर केलेल्या ४० व्या वार्षिक अहवालात सेवानिवृत्त शासकीय कर्मचार्यांच्या व निधन पावलेल्या शासकीय कर्मचार्यांच्या प्रलंबित विभागीय चौकशाची आणि त्यांच्या निलंबन कालावधीच्या नियमनाविषयीची प्रकरणे त्वरेने निकाली काढावीत अशी शिफारस केली आहे.

त्या शिफारशीच्या अनुषंगाने वरील संदर्भाधीन आदेशातील सूचनाकडे पुन्हा लक्ष वेधण्यात येत आहे. याबाबत शासन असेही आदेशित करीत आहे की, ज्या कर्मचार्यांविरुद्ध ते सेवानिवृत्त होत असताना विभागीय चौकशी चालू आहे त्यांच्या विभागीय चौकशा प्राथम्याने आणि त्यांच्या सेवानिवृत्तीच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. ज्या कर्मचार्यांविरुद्ध ते सेवानिवृत्त झाल्यावर चौकशी सुरु करण्यात आली आहे, त्यांच्या विभागीय चौकशा प्राथम्याने आणि चौकशी सुरु केल्याच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. याबाबतीत विहित कालावधीत निपटारा करण्यात आलेल्या प्रकरणांचा विचार करून आस्थापनविषयक कामे पाहणारे उप सचिव / सह सचिव तसेच विभागीय चौकशी अधिकारी यांच्या गोपनीय अहवालात विशेष अभिप्राय नोंदवावेत.”

17. In this behalf, reference of Circular dated 07.04.2008 is inevitable which specifically provides that D.E. initiated under Rule 8 of “Rules of 1979” should be completed within six months and where it is not done so

and the period exceeds more than one year, the disciplinary authority is required to obtain extension from the concerned administrative department. Furthermore, it specifically provides that where D.E. is not completed within 5 years or more, the Head of the Department is required to find out who is responsible for not completion of D.E. and he too, is liable for departmental proceedings for delaying departmental proceedings for such undue delay.

18. In so far as decisions relied by the learned Advocate for the Applicant are concerned, in **S.K. Dua's** case (cited supra), the Hon'ble Supreme Court observed that if there are statutory rules occupying the scheme, a Government servant can claim interest relying upon such Rules and if there are administrative instructions, guidelines or norms prescribed for the purpose, a Government servant can claim benefit of instructions or guidelines on that basis. It has been further observed, even in absence of statutory rules, administrative instructions or guidelines, an employee can get interest under Part III of the Constitution relying on Articles 14, 19 and 21 of Constitution. The Hon'ble Supreme Court further observed that retiral benefits are not in the nature of bounty. In **Yuvraj Rode's** case (cited supra), there was belated payment of arrears of pay which were due and payable in the year 1989 but were paid in September, 1994 without there being any fault on the part of Petitioner. The Hon'ble High Court held that employee cannot be allowed to suffer because of inaction on the part of employer and employee is entitled to interest on the belated payment. Accordingly, interest at the rate of 8% p.a. was granted. Whereas, in **Vinodkumar Dixit's** case (cited supra), the gratuity was withheld because of pendency of criminal prosecution. The Petitioner therein retired on 1st April, 1977 and came to be acquitted on 26.06.2009. The Hon'ble High Court construed Rule 129-A of 'Pension Rules 1982' and held where Government servant is exonerated of all charges and gratuity is paid on conclusion of such proceeding, the payment of gratuity will be deemed to have fallen due on the date of retirement and accordingly, granted

interest for the period of delay beyond three months from the date of retirement in terms of Rule 129-A of 'Pension Rules 1982'.

19. Turning to the facts of the present case, the laxity and inordinate delay on the part of Respondent No.2 for completion of D.E. is obvious. The perusal of order dated 02.05.2017 indeed reveals that except appointment of Enquiry Officer, there was no further progress in D.E. Initially, the Regional Enquiry Officer, Konkan Bhawan was appointed as Enquiry Officer by order dated 22.03.2011. Later, in his place, one Shri B.N. Mudgal was appointed as Enquiry Officer by order dated 27.08.2012. However, Shri B.N. Mudgal by his request letter dated 10.11.2014 asked the Government to appoint another Enquiry Officer in his place and accordingly, by order dated 17.03.2015, Shri S.N. Rankhanbe was appointed as Enquiry Officer. Then again, appointment of Enquiry Officer Shri Rankhanbe was cancelled by the Government by order dated 14.10.2016 and Regional Enquiry Officer, Konkan Bhawan was appointed as Enquiry Officer. As such, except appointment of Enquiry Officer one after other, no further steps were taken for completion of DE. Why D.E. was not conducted by the then Enquiry Officers appointed by the Government is not at all explained. Apart, the disciplinary authority also did not bother to see expeditious completion of D.E. though Applicant stands retired way back in 2012.

20. It is a matter of regret that despite specific provisions in Departmental Enquiry Manual, recommendations made by the Office of Lokayukta and various Circulars issued by the Government, adverted to above, the disciplinary authority simply turned blind eye to it and contravened the provisions with impunity. There is absolutely no iota of explanation even for name-sake for not completion of D.E. within stipulated period of one year. It may be noted that the charges framed against the Applicant were about irregularities while discharging his duties as Assistant Commissioner of Sales Tax and it is not a case of complicated charges requiring much time for D.E. Suffice to say, the

laxity rather negligence on the part of disciplinary authority in not getting the enquiry completed is writ at large.

21. As stated above, the D.E. was initiated by charge-sheet dated 03.09.2010 and in terms of Government instructions, it ought to have been finished by passing final order therein maximum within one year upto 03.09.2011, but in vain. The Applicant retired on 31.05.2012, and thereafter also, no such further steps in right earnest were taken for completion of D.E.

22. Indeed, the scope of D.E. which is continued after retirement is very limited, since there would be no question of major punishment of removal of service or dismissal from service. Where the D.E. is continued after retirement, the punishment would be restricted to reduction or withdrawal of pension for a specified period where a Government servant is found guilty in such D.E, as provided under Section 27(1) of 'Pension Rules of 1982'. This being the position, even assuming that Applicant held guilty for the charges framed against him, there was no justification to withheld gratuity or leave encashment after his retirement. As such, examining the matter from this angle also, it is explicit that Applicant is deprived of gratuity for a period of five years on account of pendency of D.E, which has been ultimately closed by the Government in its own wisdom.

23. As regard leave encashment, as stated above, the Respondent No.2 was required to sanction leave encashment *suo motu* on retirement of the Applicant, since there was no such conscious decision to withhold leave encashment as contemplated under Rule 68(a) of 'Leave Rules of 1981'. Suffice to say, withholding of leave encashment to which Applicant was entitled on the date of retirement itself is totally bad in law. In view of charges framed against the Applicant, it was not at all a case of possibility of recovery of some money from the Applicant where withholding of leave encashment could be said justified. At any rate, in

absence of any such specific order as mandated under Rule 68(6)(a) of 'Leave Rules of 1981' withholding of leave encashment for five years is totally impermissible and Applicant deserves to be compensated by way of interest on delayed payment of leave encashment.

24. It is only after five years, the Government belatedly closed the D.E. Such decision ought to have been taken much earlier. Either D.E. ought to have concluded on merit within stipulated period or by closing the same much earlier, as done by the Government belatedly. The submission advanced by the learned P.O. that the Government had already taken sympathetic approach for closing the D.E, and therefore, not liable to pay interest is nothing but face-saving exercise done quite belatedly. This is not a matter of charity. Retiral benefits are not bounty and Government servant earned it by rendering qualified service. It cannot be tinkered with in such manner. In any case, in D.E, the Applicant is not held guilty and no such punishment of any kind is imposed. Notably, as per Clause (a) of G.R. dated 6th May, 1991 itself in case of exoneration in D.E, the gratuity which is withheld on account of D.E. will presume to have fallen due after three months from retirement and a Government servant is entitled to interest on such belated period as reiterated by Hon'ble Bombay High Court in **Vinodkumar Dixit's** case (cited supra). Here, even if there is no such exoneration on merit but it should not be forgotten that Government in his own wisdom has closed the D.E. which amounts to exoneration of the Applicant from all charges. This being the position, the decision taken by Government to close the D.E. will have to be construed as exoneration of the Applicant from all charges and consequently, gratuity as well as leave encashment will be deemed to have fallen due on the date of his retirement. It is only in event of conviction in criminal case or guilty in D.E, the Government would be justified withholding gratuity.

25. Had the D.E. completed within reasonable period of maximum one year, the Applicant would have got his legitimate dues of gratuity and

leave encashment and he would have utilized the same for his family. However, he is deprived of his legal entitlement for a period of five years due to sheer laxity on the part of Respondent No.2.

26. For the aforesaid reasons, I have no hesitation to sum-up that Applicant's claim for grant of interest is totally infeasible and he needs to be compensated by grant of reasonable interest. Even if one give some latitude or concession to the Respondents, in any case, the D.E. ought to have been completed at least within one year from the date of his retirement so that he could get fruits of his service. He retired on 31.05.2012. Even if D.E. was not completed due to change of Enquiry Officers, all that exercise ought to have been completed maximum within one year from 31.05.2012. Therefore, it would be appropriate to grant interest for belated payment of gratuity and leave encashment from 31.05.2013 till the date of actual payment. Leave encashment was paid belatedly on 16.06.2017 and gratuity also paid belatedly on 28.09.2017, which was due and payable maximum upto 31.05.2013. It is thus obvious that there are administrative lapses for not taking D.E. to the logical conclusion for five years and closure of D.E. amounts to exonerating the Applicant from all charges framed against him and Applicant's case clearly falls within Para No.1(a) of G.R. dated 06.05.1991. The liability to pay interest is joint and several.

27. In so far as rate of interest is concerned, in my considered opinion, in view of falling rate of interest, it would be appropriate to grant interest at the rate 7% p.a. for the belated period i.e. from 31.05.2013 till the date of actual payment. The Respondents are at liberty to recover the same from the persons who are responsible for not completing D.E. within prescribed time limit.

28. The totality of aforesaid discussion leads me to conclude that considering peculiar facts and circumstances of the case, the Applicant is definitely entitled to interest at the rate of 7% p.a. for the belated

period as discussed above and O.A. deserves to be allowed partly.
Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The Respondents are jointly or severally liable to pay interest at the rate of 7% p.a. from 31.05.2013 till the date of actual payment.
- (C) The Respondents are directed to calculate actual amount of interest and it be paid within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 01.09.2021

Dictation taken by :

S.K. Wamanse.

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