

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 743/2016**

Arun S/o Krushnarao Dhoble,  
Aged about 59 years,  
Occupation : Retired,  
R/o Land Record Society, Kolhe Layout,  
Darwha Road, Yavatmal  
Tq. and District Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai.
- 2) The Divisional Commissioner,  
Amravati Division, Amravati.
- 3) The Collector,  
Yavatmal, District Yavatmal.

**Respondents**

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**Shri T.U. Tathod, Advocate for the applicant.**

**Shri S.A. Sainis, P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

**Dated :- 30/03/2017.**

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**ORDER -**

The applicant in this case was appointed as Junior Clerk on 13/10/1980 and was promoted as Naib Tahsildar on 16/03/2004. He retired on superannuation on 31/12/2015. During his service period an offence was registered against him on 30/08/2007 and there

was inquiry initiated. The Inquiry Officer submitted his report on 19/09/2011. As per the said inquiry report the only charge proved against the applicant was that he did not follow the Govt. orders. The main charge of misappropriation or fraud was held not proved. The applicant was thereafter reinstated in service on 01/07/2012 and came to be retired on 31/12/2015 as already stated. The applicant's proposal for encashment of earned leave at his credit was submitted by the Collector on 13/05/2016. The District Supply Officer also submitted that no recovery was proposed against the applicant vide letter dated 18/07/2016. The applicant was however not paid the leave encashment. He thereafter filed representation on 26/09/2016, but vide impugned order dated 28/09/2016 his representation was rejected. The applicant has therefore filed this O.A.

2. The applicant is claiming that the impugned order dated 28/09/2016 issued by Respondent no.2, the Divisional Commissioner, Amravati rejecting leave encashment be quashed and set aside and it be declared that the applicant is entitled to leave salary in respect of 206 days earned leave to his credit.

3. The respondent no.2 tried to justify the order passed by respondent no.2. It is submitted that the encashment of leave cannot be granted in view of the provisions of rule 68 of the Maharashtra Civil

Services (leave) Rules,1981 (In short “MCS (Leave) Rules”). The applicant’s claim was withheld till the decision of the Trial in the criminal proceedings. Because of the criminal proceedings, the departmental enquiry has been kept in abeyance and therefore the applicant is not entitled to leave encashment. The respondent no.3 also resisted the claim on same grounds.

4. The learned counsel for the applicant has invited my attention to the impugned order whereby the claim has been rejected. The said order is at P-35 & 36 of the P.B. The relevant paras in the said order are as under :-

^Jh-, -ds<kcGj uk; c rgfl ynkj] rgfl y dk; ky; ] uj]ft- ; orekG ; k; k jtk jk[khdj.kkP; k iLrkokl kcr ikBfo.; kr vkysys ftYgki jOBk vf/kdkjh] ; orekG ; k; k vgokyke/; s Jh-<kcGs gs fnukad 01@01@2002 rs 02@08@2004 ; k dkyko/khe/; srgfl y dk; ky; ] egkxko] ft- ; orekG ; fks dk; jr vl rkuk djkfI u ?kk/kGk ; k idj.kkckcr R; kpsfo#/n foHkkxh; pksd'kh l # vl u ftYgk i jOBk vf/kdkjh] ; orekG ; kps vgokykr djkI hu ?kk/kGk idj.k U; k; i fo"V vl Y; keGsU; k; ky; hu vkns k gkbLrkoj foHkkxh; pksd'khpk varhe vkns k i kjhr dj.; kpsrqrZLFkxh B.; kr vkysysvl u R; kpsdMu ol nyhp vkns k i kjhr dj.; kr vkysyk ukgh- rjh l nj idj.k vkfFkd ckch'kh %djkI hu vi gkj½ fuxMhr vl Y; keGs egjk"V<sup>a</sup> ukxjh l ok %j tk½ fu; e]1981 e/khy fu; e 68 %5½ o %6½ %4v½ y{kk ?ksksvko' ; d vkgs

Lkcc] Jh-, -ds<kcGj uk; c rgfl ynkj] rgfl y dk; ky; ] uj]ft- ; orekG ; k; k vftI jtP; k ysI; kr R; k; k l okfuorRrP; k fnukadkl f'kYyd vl ysI; k 206 fnol %nksu'ks l gk fnol %vftI jtps l eeY; egjk"V<sup>a</sup> ukxjh l ok %j tk½

fu; e]1981 P; k 68 ¼6½ ¼v½ e/khy rjrmhuu kj foHkkxh; pld' khph dk; bkggh  
i wkZ>kY; koj eatjgh nsks; kx; gkbjy-

Lkcc] Jh-, -ds<kcGj uk; c rgfl ynkj] rgfl y dk; ky; ] uj]ft- ; orekG  
; kx; k vftz jtP; k yq; kr R; kx; k l okfuorRrP; k fnukadkl f'kYyd vl yq; k  
300 fnol ¼rhu'ks fnol ¼vftz jtP; l eeY; egkjk"Vª ukxjh l ok ¼j tk½  
fu; e]1981 e/khy fu; e 68 ¼6½ ¼v½ e/khy rjrmhuu kj foHkkxh; pld' khph  
dk; bkggh i wkZ>kY; koj eatjgh nsks; kx; gkbjy\*\*-

5. Perusal of the said order thus makes it crystal clear that the respondents are denying the encashment in view of the provisions of Rules 68 (6) (a) of the MCS (leave) Rules,1981. It is mentioned that the encashment is not rejected, but the applicant has been asked to wait till the decision in the criminal trial / departmental enquiry.

6. The relevant provision of Rule 68 (5) & (6) (a) reads as under :-

**“(68) Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation :-**

(1) .....

(2) .....

(3) .....

(4) .....

(5) [subject to the provision of sub-rule (5), a Government servant] who retires from service on attaining the age of

*compulsory retirement while under suspension shall be paid cash equivalent of leave salary under sub-rule (1) above in respect of the period of earned leave at his credit on the date of his superannuation, provided that in the opinion of the authority competent to order reinstatement, the Government servant has been fully exonerated and the suspension was wholly unjustified.*

*(6) (a) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any”.*

7. Plain reading of the aforesaid provisions make it crystal clear that the leave encashment can be withheld only in view of such authority there is possibility of some money becoming recoverable from the employee on conclusion of proceedings against him.

8. The learned counsel for the applicant invited my attention to the Inquiry Report which is at page-18 of P.B. The charge against the applicant was as under :-

^f'kLrHkx i kf/kdj.kkus vipkjh depkjh ; kpoj Bøysys vkjsi [kkyhyizæk.kk  
vkgr-

1- Jh-, l -ds<kcGj i wfu-] rgfl y dk; kÿ; ] egkxkø ; fksdk; jr vl rkauk  
01@01@2002 rs 02@08@2004 ; k dkyko/khe/; s 'kkI ukph QI o.kad dÿyh  
vl Y; kpsvk<Guu vkysvkgs

2- Jh-, -ds<kcGj i wfu- ; kauh 'kkI ukpsvkns kpsi kyu dÿysukgh\*\*

9. Admittedly it has been held that the charge no.1 has not been proved against the applicant and therefore whatever allegations proved are only as regards non compliance of some Govt. G.Rs. From the inquiry report it does not seem that any money is to be recovered from the applicant.

10. The learned counsel for the applicant submits that the inquiry was conducted against number of employees including the applicant. The learned counsel for the applicant also invited to one order passed by the Collector, Yavatmal (Respondent no.3) dated 24/05/2013. The said order is placed on record at Page nos. 37 to 41 of P.B. (both inclusive at Anex-A-6). It seems that the total alleged misappropriation in sell of kerosene was Rs.2,25,72,722/- and the Collector has directed that the said amount shall be recovered from as many as 155 persons. The learned counsel for the applicant points out that the name of the applicant is not included in that order which in other word means that nothing is to be recovered from the applicant.

11. On discussion in foregoing paras it will be thus crystal clear that the respondents could not place on record any documentary evidence to show that money is to be recovered from the applicant and therefore in such circumstances the provisions of Rule 68 (6) of the MCS (Rule) Rules,1981 is not applicable in the case of the applicant.

12. As already stated the Inquiry Officer has already exonerated the applicant from the charge on fraud and no charge of misappropriation of the Government amount which is required to be recovered from the applicant has been alleged or proved. At the most the applicant can be said to have committed some irregularities by not following the Govt. G.Rs. If the applicant is convicted in criminal case, the department will always be at liberty to take action as per rules, but there is absolutely no reason to deny the applicant his legitimate dues to which he is entitled too. In view of the discussion in foregoing paras, I, therefore, pass the following order:-

### **ORDER**

The O.A. is allowed. The impugned order dated 28/09/2016 issued by Respondent no.2, the Divisional Commissioner, Amravati (A-5) is quashed and set aside. The respondents' action in denying cash equivalent of the leave salary in respect of earned leave

of 206 days at the credit of the applicant is held illegal. The respondents are directed to release the cash equivalent of the leave salary in respect of earned leave of 206 days at the credit of the applicant. The said cash shall be paid within three months from the date of this order. No order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

dnk.