

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.869 OF 2018

DISTRICT : SANGLI

Shri Suresh Mahadeo Naik.)
Age : 61 Yrs., Occu.: Government Servant,)
R/o. Bethelumnagar, Plot No.25, Gondhali Plot)
in front of Kripamai Hospital, Miraj,)
District : Sangli.)...**Applicant**

Versus

The District Collect, Sangli.)
Having Office at Vijay Nagar, Sangli-Miraj Road,)
District : Sangli.)...**Respondent**

Mr. M.B. Kadam, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 12.03.2019

JUDGMENT

1. In the present Original Application, the Applicant is seeking direction to the Respondent to release gratuity and regular pension invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
2. Briefly stated facts giving rise to this Tribunal are as under.

3. The Applicant joined revenue service as Clerk-cum-Typist in 1979 on the establishment of Respondent (Collector, Sangli). During the course of his tenure, he was promoted to the post of Senior Clerk. He stands retired from service w.e.f.30.04.2015. During the course of his tenure, the first departmental enquiry (D.E.) was initiated against him on 10.08.2006 for certain irregularities in the payment of compensation to the farmers relating to the period from 18.02.2002 to 18.11.2006. The said D.E. was concluded on 29.02.2008 whereby the punishment of stoppage of one increment was imposed upon the Applicant. The Applicant accepted the said punishment without challenging the same and thus it attained finality. However, again, the Respondent issued 2nd charge-sheet in D.E. on 17.01.2012. The Applicant contends that the charges framed in 2nd D.E. was already subject matter of earlier D.E. and some of the charges were over-lapping for which he was already punished. He, therefore, challenged the initiation of 2nd D.E. by filing O.A.177/2017 in this Tribunal which was disposed of by order dated 07.10.2018 giving direction to the Respondent to complete the D.E. within three months. In 2nd D.E, the Enquiry Officer has submitted the report to the Respondent with finding that no charge was proved against the Applicant.

4. However, the Respondent while passing final order in D.E. observed that in respect of distribution of amount of compensation to the agriculturists arising out of acquisition of land for Chandoli Sanctuary, one Enquiry Committee was set up by Office Order dated 13th March, 2015 with direction to the Committee to fix the responsibility of the employee individually and to prepare charge-sheet. In the said enquiry, action against 29 officials/employees was proposed including the present Applicant. The said Committee had examined land acquisition proceedings of 4 matters, but still the inspection and examination of remaining 3 land acquisition matters are pending with the Enquiry Committee. With this observation, the Respondent closed the 2nd D.E. by order dated 15.03.2018 without prejudice to his right initiated the fresh D.E. against the Applicant, if

required or found necessary and permissible on receipt of report of Enquiry Committee. As such, though 2nd D.E. has been closed by order dated 15.03.2018, the Applicant has been deprived of getting gratuity and regular pension. He made representation on 12.03.2018 to release his retiral benefits, but in vain. He was informed that, as the report of internal Enquiry Committee is not received, his pension file cannot be processed. Ultimately, the Applicant has approached this Tribunal by filing the present O.A.

5. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.48 to 53 of Paper Book) *inter-alia* denying that the Applicant is entitled to gratuity and regular pension. It is not in dispute that in 1st D.E, the Applicant was subjected to punishment of stoppage of one increment by order dated 29.02.2008. It is also not in dispute that the Applicant stands retired on 30.04.2015. After his retirement, G.P.F, G.I.S, Leave Encashment was paid. Besides, provisional pension has been also granted. As regard 2nd D.E, the Respondent contends that, though by order dated 15.03.2018 it has been closed, it was subject to the report of internal Enquiry Committee's report which was set up by the Respondent keeping open the issue of alleged irregularities of the Applicant and others pertaining to the acquisition of land for Chandoli Sanctuary. As such, so long as the report is not received, the Applicant is not entitled to the remaining retiral dues i.e. gratuity and regular pension. With this pleading, the Respondent prayed to dismiss the application.

6. Shri M.B. Kadam, learned Advocate for the Applicant urged that, as the D.E. has been already closed by Respondent on 15.03.2018, now the Applicant cannot be deprived of getting remaining retiral dues. He has pointed out that the D.E. was initiated in 2012 and in the meantime, the Applicant stands retired on 30.04.2015. The D.E. was finally closed on 15.03.2018, but still the retiral benefits are withheld. He, therefore, contends that, as of now, there being no D.E. against the Applicant, the retiral benefits cannot be withheld on the ground

of non-receipt of report by internal Enquiry Committee set up by Collector in 2015. He has further pointed out that, some of the charges framed against the Applicant in 2nd D.E. were over-lapping as observed by the Enquiry Officer in his report. On this line of submission, he contends that, in such situation, withholding of retiral benefits is totally illegal.

7. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer all that stated that, because of non-receipt of report from internal Enquiry Committee, remaining retiral benefits of the Applicant could not be released.

8. During the course of hearing, specific query was made to the learned P.O. to clarify the period of alleged irregularities committed by the Applicant to see how again 3rd D.E. would be permissible against the Applicant in the teeth of provisions of Section 27(4) of M.C.S.(Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1981'). However, she was not able to give any satisfactory or reasonable answer. In this behalf, specific orders were passed by the Tribunal on 06.02.2019 and 25.02.2019 to clarify the legal position, but in vain.

9. The perusal of final order passed by Collector on 15.03.2018 in 2nd D.E. reveals that, in all, 9 charges were framed against the Applicant and Enquiry Officer has exonerated the Applicant from all the charges. The charges were as follows :

- “१. श्री. एस. एम. नाईक, हे विशेष भूमि संपादन अधिकारी क्र. ४ सांगली या कार्यालयात दिनांक १८/०७/२००२ ते दि. १८/११/२००६ या कालावधीत लिपीक या पदावर कार्यरत असताना, त्यांनी सदर कालावधीमध्ये चांदोली अभयारण्यासाठी संपादन करणेत आलेल्या जमिनीचे नुकसान भरपाई र.रु. ९,६४,१४०/- इतकी अतिप्रदान वाटप केलेली आहे.
२. निवाडा निहाय हिशोब ठेवलेला नाही.
३. निवाडयामधील रकमेनुसार खातेदारांना रक्कम वाटप केली नाही.
४. नुकसान भरपाई रक्कम वाटप करतांना जमिन मुल्याचे ६५ % कब्जेहक्काची रक्कम खातेदारांकडून कपात केली. मात्र त्याचा स्वतंत्र हिशोब ठेऊन रक्कम शासन जमा केली नाही.
५. निवाडावाईज शिल्लक रक्कमेचा ताळमेळ घेतलेला नाही.

६. विहीत कार्यपध्दतीचा अवलंब न करता नुकसान भरपाईची रक्कम वाटप केली नाही.
७. सांगली पोस्ट ऑफीस मधील खात्यातील रकमेचा ताळमेळ घेतला नाही.
८. रोखलेखावही तपशीलवार लिहीली नाही.
९. बेजबाबदारपणे नुकसान भरपाईचे वाटन करून शासनाचे नुकसान केले आहे.”

10. Interestingly, the Enquiry Officer in his report specifically observed that, some of the charges framed in 2nd D.E. i.e. Charge Nos.5, 7 and 8 are over-lapping as those were the subject matter of earlier D.E. in which the Applicant was subjected to punishment of stoppage of one year's increment, and therefore, for the same charges again, the punishment cannot be imposed as impermissible by the Rule of double jeopardy. The Respondent also noted these aspects in his final order whereby he closed the D.E.

11. Here, it would be apposite to reproduce relevant Paragraphs of the final order dated 15.03.2018, which are as follows :

“४. या कार्यालयाकडील आदेश क्र.जा/अलेपप/चांदोली अभयारण्य निवाडे क्र.५६९ ते ५७४/८/२००६ दिनांक ०३/०८/२००६ व समक्रमाकांचे आदेश दिनांक १६/०९/२००६ आणि ३०/०९/२००८ नुसार चांदोली अभयारण्याकरिता संपादित जमिनीची नुकसान भरपाई वाटप करतेवेळी अतिप्रदान होऊन २९ अधिकारी / कर्मचारी यांचेविरुद्ध कारवाई करावी, असे आदेशित करण्यात आलेले होते. (सदर आदेशामध्ये श्री. एस.एम. नाईक यांचा समावेश आहे.) परंतु सदर अधिकारी/ कर्मचारी वैयक्तिकरित्या जबाबदार आहेत किंवा कसे तसेच जबाबदार असलेस अतिप्रदान झालेल्या रकमेपैकी किती रक्कमेस जबाबदार आहेत याबाबतची माहिती संबंधित आदेशामध्ये नमूद नसलेने तसेच सदर आदेशानुसार झालेल्या तपासणीमध्ये फार मोठ्या प्रमाणात तफावत असलेचे दिसून आलेने या कार्यालयाकडील आदेश क्र.मह-कार्या-१/आस्था-२/आरआर -१३१/२०१५, दिनांक १३ मार्च २०१५ अन्वये सदर प्रकरणाची फेरतपासणी करून अहवाल सादर करणेकामी व वैयक्तिक जबाबदारी निश्चित करून प्रारूप दोषारोपपत्रे तयार करण्यासाठी समिती गठीत करणेत आलेली आहे. सदर समितीने एकूण ७ निवाडयापैकी ३ निवाडयाची तपासणी केली आहे. अदयाप ४ निवाडयाची तपासणी समितीकडे प्रलंबित आहे. म्हणजेच अदयाप कर्मचारी / अधिकारी यांचेविरुद्ध समितीने जबाबदारी निश्चित केलेली नाही. म्हणजेच अदयाप कर्मचारी/ अधिकारी यांचेविरुद्ध समितीने जबाबदारी निश्चित केलेली नाही.

७. चौकशी अधिकारी यांनी उपलब्ध कागदपत्रे, साक्षीदार व अपचारी यांचे म्हणणे, सादरकर्ता अधिकारी यांचा अहवाल या सर्व बाबींची तपासणी करून श्री. नाईक यांचेविरुद्ध दोषारोप सिध्द होत नाहीत असा निष्कर्ष काढलेला आहे.

९. चांदोली अभयारण्य चौकशी समितीने अदयाप सर्व निवाडयांची तपासणी पूर्ण केलेली नाही. तसेच अतिप्रदानास जबाबदार असणा-या कोणत्याही कर्मचारी / अधिकारी यांचेविरुद्ध दोषारोपपत्र तयार करून इकडे सादर केलेले नाहीत. तसेच सदर स्थितीमध्ये चौकशी समितीनेही श्री. नाईक सेवानिवृत्त अव्वल कारकून यांचेकडून अतिप्रदान झाले अगर कसे ? याबाबतचा अहवाल सादर केलेला नाही. श्री. नाईक हे दिनांक ३०/०४/२०१५ रोजी शासकीय सेवेतून सेवानिवृत्त झालेले आहेत. जर चांदोली चौकशी सगितीकडून श्री. नाईक यांना अतिप्रदानास जबाबदार धरणेत येऊन त्यांचेविरुद्ध दोषारोपपत्र सादर केलेस व त्या अधारे विभागीय चौकशी भविष्यात करणे

आवश्यक असल्यास श्री. नाईक हे सेवानिवृत्त झाले असलेमुळे त्यास शासनाकडून मंजूरी घ्यावी लागेल व मंजूरी नंतर श्री. नाईक यांची विभागीय चौकशी पुनश्च सुरु करावी लागेल. जर शासनाकडून विभागीय चौकशी सुरु करणेस मंजूरी मिळाली नाही व अतिप्रदानामुळे शासनाचे नुकसान होणार असेल तर सदरची रक्कम श्री. नाईक यांचेकडून वसूल करणेची कार्यवाही करावी लागेल किंवा त्यांचेविरुद्ध न्यायिक कार्यवाही (फौजदारी/दिवाणी) करावी लागेल.

चौकशी अधिकारी तथा उपजिल्हाधिकारी (भूसंपादन) क्र.६ सांगली यांचा क्र.उ.जि.भू.सं.क्र.६/एस आर/२२९/२०१८, दिनांक ०३/०३/२०१८ अन्वये श्री. नाईक, सेवानिवृत्त अव्वल कारकून यांचेविरुद्धच्या विभागीय चौकशीचा अहवाल पाहता श्री. नाईक, सेवानिवृत्त अव्वल कारकून यांचेविरुद्ध दोषारोप सिध्द होत नाहीत. तथापि, सदर अतिप्रदानाबाबत चांदोली अभयारण्य चौकशी समितीकडून चौकशी सुरु आहे. यास्तव, श्री. नाईक यांचेविरुद्ध चांदोली अभयारण्य चौकशी समितीकडून प्राप्त होणा-या अहवालाच्या अनुषंगाने आवश्यकता असल्यास वर नमूद मुद्द क्र.९ नूसार व प्रचलित इतर कायदयातील तरतूदीनुसार कारवाई करण्यास अधिन राहून मी, वि.ना. काळाम, जिल्हाधिकारी सांगली खालील प्रमाणे निर्णय देत आहे.

नि र्ण य

श्री. एस.एम. नाईक, सेवानिवृत्त अव्वल कारकून यांचेविरुद्ध या कार्यालयाकडील ज्ञापन क्र. मह/कार्या-१/आस्था-४/एसआर-०१/२०१२, दिनांक १७/०१/२०१२ अन्वये सुरु करणेत आलेली विभागीय चौकशी बंद करणेत येत आहे. सदर आदेशाची नोंद त्यांचे मुळ सेवा पुस्तकी व सर्व सेवा अभिलेखात घेण्यात यावी.”

12. In view of operative order passed by the Respondent as reproduced above, there is no denying that the D.E. initiated against the Applicant has been closed. This being the position as of now, there is no pending D.E. against the Applicant. True, the Respondent closed the D.E. keeping open some issue relating to payment of compensation of Chandoli Sanctuary for which purpose, he has appointed internal Enquiry Committee. Here, significant to note that the said Enquiry Committee was appointed in 2015 to examine Land Acquisition proceedings and to prepare charge-sheet against the concerned employee, if the case is made out. Furthermore, the Respondent was conscious that the Applicant having retired on 30.04.2015, the permission of Government for initiation of D.E. for the alleged irregularities or for criminal prosecution took place prior to four years would be required as contemplated under Rule 27 of 'Pension Rules 1982'. This being the position, at present, there is no such conclusion of internal Enquiry Committee nor any charge-sheet afresh has been issued against the Applicant. In other words, the retiral benefits i.e. gratuity and regular pension has been withheld only on assumption that, in future, fresh D.E. can be initiated against the Applicant. The Applicant stands retired on 30.04.2015 and period of near

about four years is completing, but he is being deprived of getting retiral benefits. Needless to mention that the pension is not bounty and recognized as a right in property and such right cannot be kept in abeyance or withheld only on assumption that in future, D.E. can be initiated against the Applicant. I am afraid, whether any such fresh D.E. will be permissible in the teeth of provisions of Rule 27 of 'Pension Rules 1982'. Thus, once the Applicant stands retired long back and D.E. which was pending on the date of retirement now stands closed, the retirement benefits cannot be withheld.

13. In so far legal position is concerned, Rule 130 of 'Pension Rules 1982' provides for grant of provisional pension where departmental or judicial proceeding is pending and no gratuity is payable until the conclusion of departmental or judicial proceeding and issuance of final order therein. In the present case, in view of final order passed by Respondent closing D.E, now Rule 130 have no application and Respondent is under obligation to release remaining retiral dues.

14. At this juncture, it would be apposite to take note of Rules 26 & 27 of 'Pension Rules 1982'. Rule 26 of 'Pension Rules 1982' provides about future good conduct of pensioner and in case, pensioner is convicted of a serious crime or found guilty for grave misconduct, the Government is empowered to withheld the pension. As such, it is only in event of conviction in criminal case or proven misconduct in D.E, then only the pensioner forfeit right to receive pension as he is bound to be of good conduct while receiving the pension during his life time.

15. In the present case, the D.E. has been already closed and fresh D.E. is admittedly not seen the day of light. Therefore, only on assumption or conjuncture, that D.E. can be initiated afresh, the Applicant cannot be deprived of the retiral benefits.

16. Whereas, as per Rule 27 of 'Pension Rules 1982', the Government is empowered to withhold the pension in case D.E. pending on the date of retirement concluded later on and Government servant is found guilty. As per Rule 27(2)(b) and 27(3) of 'Pension Rules 1982', no departmental proceeding or no judicial proceeding, if not instituted while Government servant was in service, shall be instituted in respect of the cause of action which arose in respect of an event which took place, more than four years before such institution. Whereas, Clause (6) of Rule 27 provides that the departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date. Whereas, in the present case, at the cost of repetition, necessary to point out that the D.E. initiated against the Applicant has been already closed and no further D.E. in legal parameter is in existence.

17. Suffice to say, in view of closer of D.E. by the Respondent, now gratuity and regular pension cannot be kept in abeyance on the assumption that, in future, D.E. is likely to be initiated against the Applicant. If we accept the contention of Respondent that because of likelihood of initiation of D.E, the gratuity and regular pension has to be withheld, then it would be contrary to the principles of law and constitutional right cannot be denied on the basis of surmises or conjuncture. We need to consider the position as of now which is obviously does not permit withholding of retiral benefits. As stated above, right to receive pension is recognized as a right in property. Whereas, as per Article 300-A of Constitution of India, no person shall be deprived of his property save and except by authority of law. This being the position, in absence of any specific Rule of law permitting withholding of pension and gratuity, the Applicant cannot be deprived of his statutory entitlement without authority of law which is constitutional right enshrined in Article 300-A of Constitution, as held by Hon'ble

Supreme Court in ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr. (Civil Appeal No.6770/13), decided on 14.08.2013.***

18. Even assuming that, in future D.E. is initiated against the Applicant, in that event also, only in case of proven guilt in D.E. or conviction in Criminal Case, the pension can be withheld as contemplated in Rule 26 of 'Pension Rules 1982'. At any rate, at present, the Respondent cannot withhold gratuity and regular pension only on the surmises or conjuncture or possibility of likelihood of initiation of D.E. which itself is uncertain as well as seems to be impermissible in the teeth of provisions of Rule 27 of 'Pension Rules 1981'.

19. The necessary corollary of aforesaid discussion leads me to sum-up that the Applicant is entitled to receive gratuity and regular pension and action of Respondent to withhold the same is illegal and unsustainable in law. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondent is directed to release retiral benefits of the Applicant i.e. gratuity and regular pension as per his entitlement within two months from today.
- (C) Issue of initiation of another D.E. or Criminal Prosecution is kept open, if permissible in law.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.03.2019

Dictation taken by :

S.K. Wamanse.