

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.959 OF 2022**

**DISTRICT: SOLAPUR  
SUB : Retiral benefits**

Shri Mahadev R. Jadhav, )  
Age:- 68 yrs, Retired as Superintendent/Warden )  
Office of Assistant Commissioner, Social Welfare )  
Dr. Ambedkar Bhavan, Sangli, R/o. Settlement )  
Colony No.2, Near Salgar Vasti, Police Station, )  
Solapur. )... **Applicant**

**Versus**

- 1) The Commissioner, Social Welfare (M.S.), )  
Pune, having office at Social Welfare )  
Commissionerate, 3, Church Road, Pune 1 )
- 2) The Assistant Commissioner, Social )  
Welfare, having office at Dr. Ambedkar )  
Bhavan, Old Budhgaon Road, Sangli. )
- 3) The State of Maharashtra, through Principal)  
Secretary, Social Justice and Special )  
Assistance Dept., Mantralaya, Mumbai 32. )...**Respondents**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 16.02.2023

**ORDER**

1. The Applicant has filed present O.A. for direction to the Respondents to release gratuity and leave encashment with interest which was withheld on account of punishment of criminal case as well as D.E. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Heard Shri A. V. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

3. Following are the admitted facts including subsequent developments which are taken place during the pendency of O.A.

(A) The Applicant stands retired on 31.12.2012 while serving as Superintendent on the establishment of Respondent No.2.

(B) While the Applicant was in service, offence under Section 468, 471, 420 & 34 of I.P.C. was registered against him and others on 07.03.2009.

(C) In Criminal Case, charge-sheet was filed by Police on 30.12.2013 (after retirement).

(D) Before retirement, the department had initiated D.E. on charge of misappropriation of money on 15.02.2010 (before retirement).

(E) The Enquiry Officer submitted report on 28.09.2012 holding the Applicant guilty.

(F) The Disciplinary Authority had issued notice on 06.03.2014 stating that why his pension should not be withheld permanently and as to why gratuity should not be forfeited.

(G) The Applicant submits reply on 30.06.2014.

(H) No final order was passed in D.E. and the matter was kept in cold storage for almost nine years. Therefore, Applicant has filed present O.A. on 26.09.2022.

(I) The Disciplinary Authority by order dated 03.01.2023 (during pendency of O.A.) passed final order in D.E. imposing punishment of minimum pension and forfeiture of gratuity. The punishment order is as under :-

" श्री.एम.आर.जाधव यांच्याविरुद्धचा दोषारोप सिद्ध होत असल्याच्या निष्कर्षाप्रत शासन आले असल्यामुळे, श्री.एम.आर.जाधव यांना "श्री.एम.आर.जाधव यांना किमान निवृत्तीवेतन अनुज्ञेय करून त्यांचे उर्वरित निवृत्तीवेतन कायमस्वरूपी कपात करण्यात यावे. तसेच त्यांची उपदानाची रक्कम काढून घेण्यात यावी." ही शिक्षा प्रदान करण्यात येत आहे."

3. Shri A.V. Bandiwadekar, learned Counsel for the Applicant sought to contend that there was inordinate delay in passing final order in D.E. and since final order in D.E. was passed during the pendency of O.A., it would not bar the Applicant for claiming relief claimed. This submission is totally fallacious and misconceived.

4. Smt. Archana B. K., learned Presenting Officer rightly pointed out that once the punishment order is passed in the form of forfeiture of gratuity, the remedy is to challenge the punishment order before appropriate forum and nothing survives in the matter except payment of leave encashment.

5. True, there is inordinate and huge delay on the part of Disciplinary Authority to pass final order in D.E. which is not explained much less satisfactorily. Indeed, in terms of various instructions and G.R.s issued by the Government, the D.E. ought to have been completed within one year of retirement. Be that as it may, now the Disciplinary Authority has passed final order in D.E. against which the Applicant can avail legal remedy as may be permissible in law. The question of direction to Respondents to release gratuity, therefore, does not survive. He is already getting provisional pension. Now, the Applicant will be entitled to pension in terms of punishment order dated 03.01.2023. The Respondents are, therefore, required to pass further appropriate orders expeditiously so that Applicant could get pension in terms of punishment order without prejudice to his right to challenge the punishment, if so desire.

6. In view of above, the Original Application is disposed of with directions to Respondents to release leave encashment amount as per Applicant's entitlement within a month from today, failing to which the amount would carry interest at the rate applicable to G.P.F. from the date of default till the date of actual payment.

7 The Respondents are further directed to take necessary steps to release pension in terms of punishment order dated 03.01.2023 and to ensure release of pension within a month from today.

8. No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai

Date: 16.02.2023

Dictation taken by: Vaishali Santosh Mane

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