

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD  
ORIGINAL APPLICATION NO.322 OF 2020  
(Subject:- Pension & Pensionary Benefits)**

**DISTRICT: - JALGAON.**

**Lilachand s/o Hiraji Patel,** )  
Age :63 Yrs., Occu. Nil (Pensioner), )  
R/o: Bhagwanbhau Nagar, )  
Oppo. Kisan College, Parola, )  
Dist. Jalgaon. )...**APPLICANT**

**V E R S U S**

**1. The Collector,** )  
Jalgaon, )  
Mahabal Road, )  
New Joshi Colony, )  
Prabhat Colony, Jalgaon-01. )

**2. The Tehsildar,** )  
Parola, )  
Dist. Jalgaon. )...**RESPONDENTS**

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**APPEARANCE :** Shri Avinash S. Deshmukh, learned Advocate for the applicant.  
: Shri M.P. Gude, learned Presenting Officer for the respondents.

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**CORAM :** **SHRI V.D. DONGRE, MEMBER (J)**

**DATE :** **06.06.2022**

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## **ORDER**

By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned communication dated 31.12.2019 (Annex. 'A-9') issued by the respondent No.1 to the applicant thereby refusing to grant requisite certificates as contemplated under Rule 27 (4) of M.C.S. (Pension) Rules, 1982 in respect of judicial and departmental proceedings initiated against him and consequently seeking direction against the respondents and more particularly the respondent No.1 to forthwith process and finalize applicant's pension case by issuing requisite/necessary orders finally concluding the departmental enquiry against him initiated vide Memorandum of Charge dated 22.05.2014 and to pay all the pensionary benefits.

2. The facts in brief giving rise to this application can be summarized as follows:-

- (i) The applicant entered in the services of the State Government as Talathi on 09.05.1983. On 28.03.2013 when the applicant was working as Circler Officer at Tamaswadi in Taluka -Parola, Dist. Jalgaon he was allegedly being involved in a false case of trap. In that background, the respondent No.1 by issuing order dated 15.04.2013 (Annex. 'A-1') put the applicant

under suspension w.e.f. 28.03.2013. After completion of investigation, the prosecution was lodged against him vide Special Case No.2/2013 in the Court of Ld. Special Judge At Amalner in Jalgaon Disitric. Apart therefrom, on 22.05.2014, the respondent No.1 even initiated a departmental enquiry against the applicant under Rule 8 of M.C.S. (Discipline & Appeal) Rues, 1979. The said departmental enquiry was initiated on the basis of and in relation to same very incident concerning which prosecution was already lodged against the applicant.

- (ii) It is further stated that subsequently by order dated 15.05.2015 (Annex. 'A-2'), the respondent No.1 reinstated the applicant in service subject to outcome of the judicial proceedings and departmental enquiry initiated against him. After being reinstated in service the applicant discharged duties for about 7 months. Thereafter he was retired from service on superannuation on 31.12.2015 as per order dated 31.12.2015 (Annex. 'A-3') issued by Tahsildar, Chhopda.
- (iii) It is further stated that in the light of judicial proceedings and departmental enquiry against him,

the applicant was not sanctioned his regular pension and other pensionary benefits, but was only sanctioned provisional pension as reflected in documents such as order dated 13.01.2016 (Annex. 'A-4') issued by the respondent No.2 sanctioning provisional pension for six months, communication dated 29.06.2016 (Annex. 'A-5') issued by the respondent No.2 to Accountant General, Mumbai for continuation of applicants provisional pension and communication dated 21.09.2016 (Annex. 'A-6') of Account General, Mumbai to the respondent No.2 regarding continuation of provisional pension to the applicant.

- (iv) It is further submitted that the Ld. Special Judge, and Additional Sessions Judge, Amalner by pronouncing a judgment/order dated 26.07.2017 (Annex. 'A-7') acquitted the applicant in the abovesaid Special (ACB) Case No.2/2013. Being aggrieved by the said judgment and order of acquittal of the applicant, the State of Maharashtra has approached the Hon'ble High Court, Bench at Aurangabad by filing delay condonation application bearing Criminal Application

No.3777/2019 with Criminal Appeal Memo on 14.11.2019.

- (v) It is further stated that subsequent to pronouncement of the judgment and order by Ld. Special Judge, Amalner acquitting the applicant, the applicant submitted application dated 09.09.2019 (Annex. 'A-8') to the respondent No.1 urging that requisite certificate be issued in his favour so as to see that his pension and pensionary benefits are granted on regular basis. However, the respondent No.1 by impugned communication dated 31.12.2019 (Annex. 'A-9') conveyed to the applicant that requisite No Objection Certificate (NOC) could not be issued in his favour in view of pendency of a proceeding against him in the Hon'ble High Court.
- (vi) It is further submitted that pertinently in the departmental enquiry initiated against the applicant, the enquiry officer was pleased to submit his report dated 20.06.2017 to the respondent No.1. In view of that the respondent No.1 issued communication dated 24.07.2017 (part of Annex. 'A-10' collectively) asking him to submit his written submission/representation in response to the enquiry officer report (part of Annex.

'A-10' collectively). Bare reading of the said enquiry officer report dated 20.06.2017 (Annex. 'A-10' collectively) would show that the applicant was fully exonerated of the charges against him in the departmental enquiry. Upon receipt of the said enquiry officer report, the applicant submitted his representation dated 31.07.2017 (Annex. 'A-11') pointing out that the findings recorded by the enquiry officer as were based on documentary evidence, he did not find it necessary to make any comments in respect thereof. On the backdrop, the applicant requested the respondent No.1 to exonerate him of both the charges and to finally conclude the departmental enquiry. However, though period of more than 3 years has passed since after submission of above representation by the applicant, till today the respondent No.1 has not issued the final order in pending departmental enquiry against him.

- (vii) In the circumstances as above, it is submitted that it is crystal clear that though the applicant has already been acquitted in Special Case No.2/2013 by the competent Court of Law and further when the departmental enquiry against the applicant has

practically stood concluded, still he is illegally being denied his regular pension and other pensionary benefits (commuted value of pension, gratuity and leave encashment). Hence this application.

3. The application is resisted by filing affidavit-in-reply on behalf of the respondent Nos.1 & 2 by one Rajesh Madhavrao Paul working as Naib-Tahsildar in the office of Tahsildar, Chhopda.

- (i) He thereby denied the adverse contentions raised in the application. It is specifically submitted that as a matter of record, there is pendency of appeal of criminal proceedings against the applicant before the Hon'ble High Court, No objection Certificate under M.C.S. (Pension), Rules, 1982 could not be issued to the applicant. In view of that the present application is premature and is not tenable.
- (ii) It is further submitted that any appeal is continuation of proceeding and hence it can be stated that judicial proceeding is pending against the applicant. However, the applicant has been granted provisional pension as per Rule 130 (a) of M.C.S. (Pension) Rules. Thereafter, the respondent by issuing letter dated 29.06.2016 to the Accountant General, Mumbai requested him to

grant and extend the provisional pension as per Rule 130(a) of the M.C.S. (Pension) Rules, till completion of the departmental enquiry.

- (iii) Rule 130 (b) of the M.C.S (Pension) Rules, crates bar on sanctioning pension than that of the provisional pension, if any enquiry or judicial proceeding is pending against the retired person. The applicant has misread and misinterpreted the said Rule. In view of same, the claim of the applicant is not tenable and is liable to be dismissed.

4. I have heard the argument advanced by Shri Avinash S. Deshmukh, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on other hand.

5. Considering the rival pleadings the issue involved in the matter is regarding the right of the applicant of getting regular pension and pensionary benefits in view of his acquittal in the judicial proceedings as well as he being exonerated as per report of the enquiry officer that the charges framed against him being not proved. However, the respondents have resisted the said right contending that the respondents have preferred criminal appeal against the order of acquittal of the applicant in judicial



proceedings and therefore, there is no conclusion of judicial proceedings. Moreover, no final order of exoneration of departmental enquiry is passed against the applicant.

6. In view of above, the relevant provisions which call for consideration are interpretation of Rule 27 of M.C.S. (Pension) Rules, 1982 and more particularly Rule 27 (4) of the said Rule as well as Rule 130 (a) and (b) of the said Rules. Rule 27 (4) is as under:-

**“27. Right of Government to withhold or withdraw pension.**

.....

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in rule 130 shall be sanctioned.”

7. In view of abovesaid provision after initiation of judicial proceedings as well as the departmental enquiry, when pending against the applicant as on the date of his retirement on 31.12.2015 on superannuation, provisional pension was granted to the applicant. For that purpose it would be just and proper to refer to Rule 130(1) (a), (b) and (c) of M.C.S. (Pension) Rules, 1982 which are as under:-

“130. Provisional pension where departmental or juridical proceedings may be pending.

- (1) (a) In respect of a Gazetted or Non-gazetted Government servant referred to in sub-rule (4) of Rule 27, the Head of Office shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, or if he was under suspension on the date of retirement upto the date immediately preceding the date on which he was placed under suspension.
- (b) The provisional pension shall be authorized by the Head of Office for a period of six months during the period commencing from the date of retirement unless the period is extended by the Audit Officer and such provisional pension shall be continued upto and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.
- (c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issued of final orders thereon.”

8. Learned Advocate for the applicant in this regard also invited my attention to Rule 26 of M.C.S. (Pension) Rules. The caption of the said Rule is “Pension subject to good conduct”. In view of the said provision, the learned Advocate for the applicant submitted that by invoking the said provision the option is open to the respondents to recover regular pension amount in case the applicant is convicted in the criminal appeal. According to him reading together of these Rules 26, 27 and 130 would not show

that appeal is continuation of criminal proceedings for the purpose of withholding the pension amount. Further once the applicant is acquitted in a criminal case and when the enquiry report in departmental enquiry is submitted with the findings that no charges are proved against the applicant, in these circumstances according to him the applicant would be entitled for the relief as sought for of releasing regular pension and pensionary benefits he being entitled to it. To support the said submissions, he placed reliance on citation reported in 2015(7) Bom.C.R.621 in the matter of **Vishnu Gangaram Sonawane Vs. Chief Executive Officer, Zilla Parishad, Nashik & Ors.** In the said citation case also retiral benefits of the petitioner is withheld in the background of pending criminal appeal against the acquittal of the petitioner. It is held that in absence of any provision of law pensionary benefits which is recognized as property cannot be withheld and/or stopped.

9. Learned Presenting Officer appearing on behalf of the respondents strenuously argued before me that no final order is passed in the departmental enquiry exonerating the applicant though enquiry report is on record showing that charges are not proved. Moreover, the criminal appeal along with the delay condonation application is filed already against the acquittal of the applicant in a criminal case. In view of same, the applicant would

not be entitled for releasing of regular pension and pensionary benefits.

10. After having considered the rival submissions and citations relied upon by the learned Advocate for the applicant, it is evident that there is no specific provision of law regarding withholding the retiral benefits only on the ground that criminal appeal is pending. At the most, requisite undertaking can be taken from the applicant that in case he is held convicted in a criminal appeal, he would refund admissible pension and pensionary benefits. So far as the departmental enquiry is concerned, it is a fact that enquiry report states that charges levelled against him are not proved. No doubt, show cause notice was issued to the applicant by the respondent No.1 in this regard, which is the show cause notice dated 24.07.2017 (part of Annex. 'A-10' collectively) together with enquiry report. However, in the said show cause notice it is not mentioned that the disciplinary authority disagreed with the findings recorded by the enquiry officer.

11. In view of the same, it is not proper on the part of the respondents and more particularly the respondent No.1 not to pass final order in respect of the departmental enquiry years together. The respondent No.1 ought to have granted requisite certificate of exoneration when nothing otherwise is placed on record in all these four years after findings of enquiry report by the enquiry

officer. The applicant has filed his written statement/reply immediately to the respondent No.1 by reply letter dated 31.07.2017 (Annex. 'A-11'). Otherwise also reading of Rule 26 of M.C.S. (Pension) Rules would show that necessary powers are vested in the Government to take appropriate action in respect of pension and pensionary benefits which are already paid if he is convicted in criminal appeal. In the circumstances, in my opinion, at this stage when the applicant is acquitted in the criminal case and that in the departmental enquiry there is finding that the charges are not proved, the applicant would be entitled for getting release of regular pension and pensionary benefits in accordance with law and in that regard the requisite undertaking can be taken from the applicant for refund of the admissible amount in case he is convicted in a decision in a criminal appeal. I, therefore, proceed to pass the following order:-

**ORDER**

The Original Application is allowed in following terms:-

- (A) The impugned communication dated 31.12.2019 (Annex. 'A-9') issued by the respondent No.1 is quashed and set aside.
  
- (B) The respondents and more particularly respondent No.1 is directed to process and finalize the applicant's pension case by issuing requisite/necessary orders finally concluding the departmental enquiry against him initiated vide

Memorandum of Charge dated 22.05.2014 and to sanction and pay to the applicant all his admissible regular pension and pensionary benefits i.e. the regular monthly pension, commuted value of pension, leave encashment, gratuity etc.)

- (C) The applicant shall submit his requisite undertaking that in case of conviction, he would refund admissible recoverable amount received by him towards regular pension and pensionary benefits within 1 month of this order.
- (D) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:-Aurangabad**  
**Date :- 06.06.2022**  
SAS O.A.322/2020