

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 144 OF 2017**

**DISTRICT: - JALGAON.**

**Sharad Ramdas Pathak,**  
Age : - 75 years, Occu: Nil,  
Pensioner, R/o 8/2,  
Bhikamchand Jain Nagar,  
Near Durwankur Park,  
Pimprala Road, Jalgaon.

**.. APPLICANT.**

**V E R S U S**

**1. The State of Maharashtra,**  
Through the Secretary  
Revenue & Forest Department,  
Mantralaya, Mumbai – 400 032.

**2. The Settlement Commissioner &  
Director of Land Records,**  
New Administrative Building,  
In front of Council Hall,  
Pune 411 001.

**3. The Deputy Director of Land Records,**  
Near Old CBS, Sharnapur Road,  
Nasik 422 002.

**.. RESPONDENTS**

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**APPEARANCE :** Shri Ajay Deshpande – learned  
Advocate for the applicant.

: Shri M.P. Gude – learned Presenting  
Officer for the respondents.

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**CORAM :** **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (JUDICIAL)**

**DATE :** **6<sup>TH</sup> AUGUST, 2018.**

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**ORDER**

1. By filing the present Original Application the applicant has sought directions from this Tribunal to the respondents to extend the benefits of V Pay Commission w.e.f. 1.1.1996 to 30.9.2000 and to release the pensionary benefits including pension, gratuity and commutation leave encashment and also cumulative interest @ 15% on the said amount.

2. The applicant joined the service as Surveyor on 4.4.1965. He was promoted as District Surveyor in the year 1988. Thereafter, he came to be further promoted as Head Quarter Assistant (HQA) in the year 1997. While he was working at Jamner in the Office of TILR, Jamner, one Shri G.W. Ahirrao – Nimtandar No. 2 / Maintenance Surveyor made grievance before him i.e. his bill towards leave salary was pending for a quite a long time. As he was working as Head Quarter Assistant, he assured to Shri Ahirrao to look into the matter. Thereafter, he made enquiry about pending leave salary bill of Shri Ahirrao and that time he came to know that the bill of Shri Ahirrao has

already been sanctioned and paid. It was further disclosed that the bill of other employees working in their office were also sanctioned and paid. He apprehended a foul play and, therefore, he made further enquiry and that time it was brought to his notice that some of such bills were submitted and encashed by one Smt. Vandana Shantaram Mahajan, who was working as Accounts Clerk in the office of TILR, Jamner, District Jalgaon. Immediately he apprised TILR about the said fact. As per their advice he filed report in writing on 30.5.2000. It is the contention of the applicant that his role was that of a whistle-blower, but they had not protected him. On the contrary, he came to be placed under suspension on 30.6.2000 on the verge of his retirement. Thereafter, on 30.9.2000 he made to retire while under suspension.

3. It is contention of the applicant that on 31.5.2000 Smt. Vandana Shantaram Mahajan gave a statement before the then TILR Shri S.J. Mulay, who was also one of the accused in the criminal proceedings and deposited total misappropriated amount of Rs. 3,04,828/- in the State Bank by Challan on 31.5.2000 and 1.6.2000.

Thereafter, TILR submitted report to the Deputy Director of Land Records, Nasik in that regard holding Smt. Vandana Shantaram Mahajan and Shri S.J. Mulay responsible for misappropriation of the amount. Shri S.J. Mulay was retired on 31.5.2000 and, therefore, no departmental enquiry was proposed against him, but it was proposed against Smt. Vandana Shantaram Mahajan and she was suspended. Thereafter, Deputy Director of Land Records made communication with District Treasury Officer, Jalgaon and that time it was revealed that from 1.4.1996 to 31.5.2000 there was misappropriation of amount in the tune of Rs. 12,00,000/- to Rs. 13,00,000/- and, therefore, he gave direction for initiating criminal proceedings for misappropriation of Rs. 12,73,707/-. Therefore, the criminal case has been filed against Smt. Vandana Shantaram Mahajan, the present applicant and other three persons for the offences punishable under section 409, 218 r/w S. 34 of IPC regular criminal case No. 686/2002 was filed against them. After full-fledged trial the learned CJM, Jalgaon acquitted all the accused. The Government challenged the said decision by preferring

an appeal bearing No. Criminal Appeal No. 39/2014 in the Sessions Court, Jalgaon. It was decided by Additional Sessions Judge, Jalgaon on 10.10.2016 and he dismissed the appeal.

4. After dismissal of the appeal by the Sessions Judge, the applicant filed a representation to the respondent No. 3, with a copy to the respondent No. 2 and requested to revoke the suspension order and regularize his suspension period as duty period and to grant regular pension and release the amount of gratuity, leave encashment and commutation. He has also claimed interest on it as it has been wrongfully withheld. He made a representation on 13.12.2016. Prior to that also he made representations but those were declined by the respondents. As the respondents are not taking action on the said representation dated 13.12.2016, he approached this Tribunal by filing the present Original Application.

5. Respondent No. 3 has resisted the contentions of the applicant by filing affidavit in reply. He has not disputed about the appointment, promotions of the applicant. He

has admitted that the applicant came to be retired w.e.f. 30.9.2000. It is his contention that the applicant came to be retired in the year 2000, but the present O.A. has been filed in the year 2016 and there is delay of 16 years. Therefore, it is barred by limitation. It is his contention that the applicant has not challenged his suspension order before the appropriate Appellate Authority. He has not exhausted alternate remedy available to him. Therefore, the present Original Application deserves to be dismissed.

6. It is further contention of the respondent No. 3 that since a criminal case bearing No. Criminal Appeal No. 129/2009 was registered against the applicant with Jamner Police Station, Jamner, District Jalgaon, the respondents suspended the applicant. Thereafter, the applicant came to be retired on superannuation. It is his contention that the respondents granted provisional pension to the applicant in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. It is his contention that after receiving representation of the applicant dated 13.12.2006, the

pension papers of the applicant have been prepared and the pension will be disbursed to him in due course. It is his further contention that the pension proposal of the applicant was pending before the Accountant General. It is his contention that an amount of Rs. 12,554/- towards group insurance was paid to the applicant on 21.10.2000. An amount of Rs. 1,21,894/- was paid to the applicant on 24.11.2000 and amount of Rs. 21,749 was paid to the applicant on 23.4.2001 towards gratuity. The provisional pension was paid to him regularly. The difference amount of pay as per the recommendation of 6<sup>th</sup> Pay Commission has been paid to the applicant. It is his contention that an amount of Rs. 52,852/- has been paid to the applicant towards leave encashment amount on 27.9.2017. It is his contention that there were no lapses on the part of the respondents in making the payment towards pension and pensionary benefits to the applicant and, therefore, the applicant is not entitled to claim interest thereon. On these grounds, he prayed to dismiss the present Original Application.

7. During the pendency of the present Original Application, the applicant has received regular pension, pensionary benefits i.e. gratuity, arrears of pay as per the recommendation of 6<sup>th</sup> pay commission, commutation amount. Therefore, it was submitted on behalf of the applicant that the applicant is not pressing prayer clauses 'B' & 'C' and applicant wants to press his claim regarding interest on the delayed payment of pension and gratuity only.

8. I have heard Shri Ajay Deshpande, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed on behalf of respondents. I have also perused the documents placed on record by both the sides.

9. Admittedly, the applicant was serving as Head Quarter Assistant (HQA) at the time of his retirement. Admittedly, he came to be retired on 30.9.2000. There is no dispute about the fact that before his retirement he was placed under suspension w.e.f. 30.7.2000 on the



ground that a criminal case of misappropriation of Government money was registered against him and other Government servants. Admittedly, a criminal case bearing RCC No. 686/2002 was registered against him and others. Admittedly, the criminal case bearing RCC No. 686/2002 came to be ended in their acquittal by the judgment of CJM, Jalgaon, on 4<sup>th</sup> August, 2012. The Government has challenged the said judgment in appeal by filing criminal appeal No. 29/2014 before the Sessions Court at Jalgaon. The said appeal came to be dismissed on 10.10.2016 by the Additional Sessions Judge, Jalgaon. Admittedly, the applicant moved an application dated 13.12.2016 with the respondents claiming regularization of his suspension period as duty period, arrears of 5<sup>th</sup> pay commission, grant of regular pension and other pensionary benefits including gratuity etc. There is no dispute about the fact that the amount of GIS has been paid to the applicant on 21.10.2000, amount of G.P.F. has been paid to him in two installments on 24.11.2000 and 23.4.2001, arrears of 5<sup>th</sup> pay commission has been paid to him. An amount of Rs. 52,852/- has been paid to the applicant on 27.09.2017

towards leave encashment. Regular pension has been sanctioned during the pendency of the present O.A. Now only the grievance of the applicant is regarding interest on the delayed payment of the pensionary benefits and gratuity.

10. Learned Advocate for the applicant has submitted that the applicant was unnecessarily prosecuted by the State Government though the applicant had no role in the misappropriation of the amount. He has submitted that in fact the applicant has unearthed the misappropriation done by Smt. Vandana Shantaram Mahajan and other employees. His role was of whistle-blower, but the investigating machinery had wrongly involved him in the crime and due to the initiation of the criminal proceeding he was suspended. Therefore, he had to face the criminal proceedings since the year 2000. He has submitted that the applicant was acquitted initially in the year 2006, but the said acquittal was challenged in the appeal by filing criminal appeal No. 58/2008 before the Sessions Court at Jalgaon and thereafter matter was again remanded to the Court of CJM. Again he was acquitted by the CJM on

4.8.2012, but the said judgment was challenged before the Court of Additional Sessions Judge, Jalgaon by preferring the criminal appeal No. 39/2014, which came to be dismissed on 10.10.2016. He has submitted that for no reasons the applicant was deprived of his legal right to get the pension and other benefits only because the criminal proceeding was pending against him. He has submitted that the applicant was unnecessarily entangled in criminal prosecution for more than 17 years and because of the pendency of the criminal case he was not granted pensionary benefits in view of the provisions of rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that as the applicant was unnecessarily involved in the criminal case and he has faced the criminal trial for near about 17 years, it is just to direct the respondents to pay interest on the amount of delayed payment of pension and gratuity to him in view of the provisions of rule 129-A and 129-B of Maharashtra Civil Services (Pension) Rules, 1982. Therefore, he prayed to allow the present Original Application.

11. Learned Presenting Officer has submitted that the pension has been withheld by the respondents as the applicant was involved in the criminal case and the criminal case was pending at the time of his retirement. He has submitted that the action taken by the respondents withholding the final pension and pensionary benefits of the applicant, is in accordance with the provisions of rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that however, the provisional pension was granted to the applicant as per the said rule and, therefore, no question of withholding the pension unnecessarily arises. He has submitted that the criminal case against the applicant has been concluded finally in the year 2016, when the criminal appeal No. 39/2014 has been dismissed by the Additional Sessions Judge on 10.10.2016. He has submitted that thereafter the respondents have processed the pension papers to grant regular pension to the applicant immediately and accordingly the pensionary benefits and other benefits have been extended to the applicant at the earliest. He has submitted that there is

no illegality in withholding the pension of the applicant in view of the Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 and, therefore, the applicant is not entitled to get interest as prayed for. On this ground he prayed to dismiss the present O.A.

12. On perusal of the record, it reveals that the criminal case has been registered against the applicant and other employees for misappropriation of Government money in the tune of Rs. 12,73,707/-. The case was pending before the CJM, Jalgaon when the applicant retired. No doubt the applicant came to be acquitted in the criminal case by the judgment delivered by learned CJM, Jalgaon on 4.8.2012, but the said decision has been challenged by the State Government in the Court of Sessions Judge, Jalgaon by filing the criminal appeal No. 39/2014. The said criminal appeal was decided by the Additional Sessions Judge on 10.10.2016 and it was dismissed and the judgment of the trial court was upheld. The said criminal proceeding finally concluded in view of the said judgment. Immediately after receiving the copy of the said judgment, the respondents processed papers regarding

regular pension and other pensionary benefits payable to the applicant and accordingly granted those benefits to the applicant within a reasonable period. There was no delay in making payment of those amounts to the applicant. Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 provides that, if Government servant is under suspension on the date of retirement then the head of the office shall authorize the provisional pension which would have been admissible on the basis of qualifying service and such provisional pension shall be continued up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority. It also provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings. Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 is material and, therefore, I reproduce the same.

**“130. Provisional pension where departmental or judicial proceedings may be pending.-** (1) (a) In respect of a Gazeted 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 up to the date of retirement of the government servant, or if he was under suspension on the date of retirement up to 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 up to 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 issue of final orders thereon.

[Provided that where departmental proceedings have been instituted under Rule 10 of the

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, for imposing any of the minor penalties specified in sub-clauses (i), (ii) and (iv) of clause (1) of Rule 5 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.]

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

13. In view of the above said provisions the respondents granted provisional pension to the applicant and withheld the amount of gratuity till conclusion of judicial proceeding i.e. criminal case pending against the applicant. As soon as the case was concluded and ended in acquittal of the applicant, the respondents processed the papers regarding grant of regular pension to the applicant and paid the amounts, which were due to the applicant. Therefore, in my opinion there is no illegality



on the part of the respondents in withholding the pension of the applicant till final conclusion of the criminal proceeding. No doubt the applicant was acquitted by the learned C.J.M., but the said judgment was challenged before the Appellate Court i.e. Sessions Court. Therefore, it amounts continuation of the criminal trial. The matter has been finally concluded when the Sessions Judge upheld the judgment of the C.J.M. and dismissed the appeal on 10.10.2016. Therefore, in my opinion there is no illegality in the orders of the respondents withholding the amount of gratuity and granting provisional pension to the applicant till conclusion of the criminal trial. As there was no delay and administrative lapses on the part of the respondents in granting the pensionary benefits to the applicant after decision of the criminal case, no question of granting the interest to the applicant in view of the provisions of rule 129-A and 129-B of Maharashtra Civil Services (Pension) Rules, 1982, arises. Therefore, I do not find any substance in the contentions raised by the applicant in that regard. The action taken by the respondents is in accordance with the provisions of rule

130 of the Maharashtra Civil Services (Pension) Rules, 1982. Therefore, I found no illegality in it. There is no merit in the present Original Application. Consequently, it deserves to be dismissed.

14. In view of the above, the present Original Application stands dismissed with no order as to costs.

**PLACE : AURANGABAD**  
**DATE : 6<sup>TH</sup> AUGUST, 2018**

**(B.P. PATIL)**  
**MEMBER (J)**

O.A.NO.365-2017(SB)-HDD-2018-Interest