

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 335 OF 2023**

**(Subject:- Pension/ Pay Fixation/Suspension Period)**

**DISTRICT:-AURANGABAD**

**Prakash S/o Fulaji Patil,** )  
Age : 62 years, Pensioner, Retired as )  
Su-Divisional Engineer, )  
Address for Correspondence: )  
Plot No. 32 Pruthvivihar Apartment, )  
Chandralok Housing Society, Jyoti Nagar, )  
Aurangabad, District Aurangabad. )  
Mobile No. 9422758758. ) **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra** )  
Through its Additional Chief Secretary, )  
Public Works Department, )  
Main Building, Mantralaya, )  
6<sup>th</sup> Floor, MadamKama Road, )  
Hutatma Rajguru Chowk, )  
Mumbai – 400032. )
2. **The Chief Engineer,** )  
Public Works Regional Division, Nasik, )  
Bandhkam Bhavan, Nasik Road, Nasik,) )  
District Nasik. ) **RESPONDENTS**

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**APPEARANCE** : Shri V.B. Wagh, learned Counsel  
for the applicant.  
: Smt. Sanjivani K. Deshmukh-Ghate,  
learned Presenting Officer for the  
respondent authorities.

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**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATED** : **12.01.2024.**  
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## **ORAL - ORDER**

Heard Shri V.B. Wagh, learned counsel for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking directions for finalization of his pension papers and for the payment of retirement benefits and fixation of pay scale as per 7<sup>th</sup> Pay Commission and so also regularization of the suspension period i.e. from 09.03.2010 to 09.05.2013.

3. The Original Application is considered to the extent of giving directions to the respondents for fixation of pension papers and payment of retirement benefits by passing appropriate orders with regard to the 7<sup>th</sup> Pay Commission and also to regularizes suspension period as prayed by the applicant.

4. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant was working as a Sub-Divisional Engineer in Public Works Department, Division (East), Nasik under the

office of respondent No.1 since 01.07.2016 and retired on superannuation on 30.06.2019. The applicant was promoted eventually during service and also transferred to various places during his service tenure.

(ii) The applicant while working on the post of Sub Divisional Engineer, Zilla Parishad (Works) Sub Division, Shindkheda caught red handed while accepting the bribe and accordingly, the C.R. No. 03 of 2010 came to be registered against the applicant on 05.02.2010. Thus on the basis of said, the respondent No.1 had placed the applicant under suspension vide order dated 06.03.2010 and the order was sent for execution to the Superintendent Engineer, Public Works Circle, Dhule. In consequence thereof, the order dated 09.03.2010 came to be passed against the applicant for suspension. It further appears that the charge sheet came to be submitted before the Special Judge, however, by order dated 02.05.2013, the respondent No.1 had revoked the suspension order and reinstated him at Andheri (West) as Sub Divisional Engineer.

(iii) According to the applicant by judgment and order dated 21.06.2013 the Additional Sessions Judge, Dhule in Special

Case No. 484/2011 acquitted the applicant for the offence punishable under Section 7 r/w 13 (1) (d), 13 (2) of the Prevention of Corruption Act. In view of the said judgment of acquittal is marked as Annexure 'A-7'.

(iv) Being aggrieved by the same, the State has preferred the appeal bearing Criminal Appeal No. 709/2014 and the same is still pending before the Hon'ble High Court of Bombay, Bench at Aurangabad. It further appears that the applicant was also subjected to departmental enquiry, however, the applicant also came to be exonerated in the departmental enquiry by the enquiry officer and report is lying with the respondent No.1 for further action. The respondent No.1 has directed the applicant to file written submissions in connection with the report of the enquiry and accordingly, the applicant has submitted his written submissions. However, the said report is still pending since 2017.

5. Learned counsel for the applicant submits that the Hon'ble High Court of Bombay, Bench at Aurangabad vide order dated 25.10.2021 passed in W.P.No. 6650/2020 in a case **Ashfakali Khan Abdulali Khan Vs. State of Maharashtra & Ors.** and also this Tribunal in the identical

cases, directed the respondents to release pensionary benefits to the applicant by taking undertaking from the applicant that in case, if the appeal against the applicant preferred by the State is allowed, the applicant shall return the entire gratuity amount within 8 weeks.

6. Learned counsel for the applicant submits that unless and until the benefits of 7<sup>th</sup> Pay Commission are extended and so also suspension period is regularized, no retiral benefits including the pension can be fixed. Learned counsel for the applicant however has stated that no order has been passed by the respondents till this date with regard to the same.

7. Learned Presenting Officer for the respondents submits that in terms of the view taken by the Hon'ble High Court in the aforesaid case, the appropriate order may be passed with the further directions to the respondents to pass an appropriate order to extent the benefits as per 7<sup>th</sup> Pay Commission and so also with regard to regularize the suspension period.

8. In the instant case, the applicant came to be suspended way back in the year 2010 by order dated

09.03.2010 and the applicant remained under suspension for the period of 4 years i.e. upto 09.05.2013. Though the said order of suspension came to be revoked by subsequent order passed by the respondent No.1 dated 02.05.2013 and even though in the year 2013 itself the applicant came to be acquitted in connection with the Special Case No.484/2011 and also exonerated in the departmental enquiry in the year 2017 itself, the retirement benefits are withheld except that the provisional pension has been granted to the applicant.

9. In terms of the view taken by the Hon'ble High Court of Bombay, Bench at Aurangabad in Writ Petition No. 6650/2020 and also by this Tribunal in other identical cases, the applicant can be directed to submit undertaking to the department and on the basis of same, the respondents shall release all the pensionary benefits by passing appropriate order to grant the benefits of 7<sup>th</sup> Pay Commission and so also regularize the suspension period in terms of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during suspension, Dismissal and Removal) Rules, 1981 within the period of 12 weeks from the date of receipt of

certified copy of this order. Hence, the following order:-

**ORDER**

The Original Application No. 335 of 2023 is disposed of with the following order:-

- (A) The applicant shall tender an affidavit/undertaking to respondents stating therein that if he suffers an adverse order in the pending proceedings for challenging the acquittal and his acquittal is converted into conviction, he shall return the entire gratuity amount within 8 weeks from such adverse judgment, subject to his right to challenge the said judgment. All consequences flowing from such conversion of acquittal into conviction would bind the applicant to the extent of the monetary relief that he would be getting in view of this order.
- (B) After such affidavit is filed satisfying the above stated ingredients, the respondents shall initiate steps for compliance of prayer clause "B" to the extent of releasing of the retiral benefits only and

ensure that such compliance is made within 12 (twelve) weeks from the date of the filing of such affidavit by the applicant.

- (C) The respondents shall pass an appropriate orders to grant benefit of 7<sup>th</sup> Pay Commission and so also regularize the suspension period in terms of Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during suspension, Dismissal and Removal) Rules, 1981 within the said period of 12 weeks.
- (D) The Original Application stands disposed of in aforesaid terms.
- (E) In the circumstances there shall be no order as to costs.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 12.01.2024**

SAS O.A. 335/2023 (S.B.) VKJ Pension/Pay Fixation/suspension.