

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 673 OF 2012

DISTRICT : - HINGOLI.

Uddhav Kisanrao Tandale,
Age : 59 years, Occu.: Nil-
Retired, R/o Tandale Nivas,
Hanuman Chowk, Jalna Road,
Shahu Nagar, Beed.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
Through the Presenting Officer,
Maharashtra Administrative Tribunal,
Aurangabad Bench.
2. The Deputy Director of Land Records,
Damdi Mahel, Aurangabad.
3. Shri Vasant Trymbakrao Mule,
Age : 53 years, Occ: Service as
Deputy Director of Land Records,
In the Office of R-4.
4. The Settlement Commissioner &
Director of Land Records,
Maharashtra State,
Central Building, Pune 411 001.
5. The Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai 400 032.

APPEARANCE : Shri Ajay Deshpande – learned Advocate for the Applicant.

: Mrs. Priya R. Bharaswadkar – learned Presenting Officer for the respondents.

**CORAM : HON’BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN (A).**

AND

**: HON’BLE SHRI J.D. KULKARNI,
MEMBER (J)**

**PER : HON’BLE SHRI J.D. KULKARNI,
MEMBER (J)**

J U D G M E N T

[Delivered on this 30th day of January, 2017]

1. Heard Shri Ajay Deshpande – learned Advocate for the Applicant and Mrs. Priya R. Bharaswadkar – learned Presenting Officer (P.O.) for the respondent Nos. 1, 2, 4 & 5. None appears for respondent No. 3 though duly served.

2. The applicant has joined services as Surveyor on 12.1.1983. He was promoted as Maintenance Surveyor on 22.9.2008 and thereafter, as Head Quarter Assistant. It is stated that on 21.5.2009 he was falsely implicated in Anti-

corruption Bureau trap and was tried for the offences under Prevention of Corruption Act, but ultimately he was acquitted in the said trial on 28.12.2010. The appeal against the acquittal was dismissed by the Hon'ble High Court on 30.6.2011.

3. The applicant was due for retirement on 30.11.2011 i.e. after 9 months of his reinstatement in service. However, for the extraordinary consideration the applicant was transferred at a distance of 200 kms at Aundha Nagnath from Beed. The applicant joined there and filed representation on 22.6.2011 for his transfer at Beed or a nearby place, considering his retirement in the month of November, 2011. However, nothing was done. On 1.8.2011 the suspension period of the applicant i.e. from 25.6.2009 to 6.2.2011 was regularized. The applicant was entitled to claim Rs. 1,39,125/- towards arrears of subsistence allowance etc., but the respondent No. 3, through one Shri H.G. Shinde, Junior Clerk, demanded Rs. 35,000/- for clearing his bill. His supplementary bill

towards benefit under Time Scale Promotion Scheme of Rs. 19,963/- was also not paid.

4. Respondent No. 3 on 30.11.2011 conveyed to the applicant that he is not eligible for Death-cum-Gratuity, final pension and commutation of pension as some enquiry was initiated against the applicant. It is stated that the memorandum of charge was served on the applicant on 30.11.2011 i.e. on the very day on which the applicant was to retire on superannuation and because of such charge-sheet the applicant has not been paid pension and other pensionary benefits. He has not been paid GPF amount worth Rs. 3,02,000/-, Gratuity amount of Rs. 2,43,340/-, Earned Leave Encashment of Rs. 2,65,000/-, Commutation Amount of Rs. 2,83,275/-. The applicant has, therefore, to receive an amount of Rs. 11,00,000/-, which has been held illegally by the respondent No. 3. The applicant is, therefore, claiming following reliefs: -

“(B) The respondents may kindly be directed to release pension and pensionary

benefits of the applicant, without any further delay, along with interest thereon, @ 12% per annum, from the date those became due and till the date of realization of all the amounts, to which the applicant is entitled to under law.

(C) The respondent No. 3, in the capacity of R-2 may kindly be saddled with costs of Rs. 50,000/- from his own pocket, on account of he having unnecessarily made the applicant to suffer an ordeal of the Departmental Enquiry, in which there is absolutely no substance.”

5. Respondent Nos. 1, 2, 4 & 5 have filed affidavit in reply and submitted that the applicant was transferred to Aundha Nagnath as there was no vacancy in Beed District. He was, therefore, accommodated as per availability of vacant post after reinstatement. As regards arrears of pay during the suspension period i.e. bill worth Rs. 1,39,125/-, it is stated that the same has been paid to the applicant on 30.1.2012 and the delay was caused for payment of the said amount because the bill in respect of suspension period was received to the Dy. Director of Land

Record, from District Superintendent of Land Record, Hingoli on 24.8.2011, but some queries were required to be satisfied/complied and, therefore, the same was sent back to the S.L.R. Hingoli on 6.9.2011 for compliance, and after compliance was made the amount was paid. Similarly, the amount of Rs. 19,963/- was also paid on 31.1.2012.

6. It is stated that the departmental enquiry was initiated against the applicant and, therefore, the regular pension was not paid. The applicant is not entitled to regular pension, as well as, amount of D.C.R.G. and amount of commutation as per the Rules. Provisional pension for six months' has already been paid to the applicant and further proposal for provisional pension has been submitted to the office of Accountant General, (A&E-II), Maharashtra State, Nagpur, on 23.5.2012. The GIS amount of Rs. 38,490/- is paid to the applicant on 21.5.2012 and the bill for withdrawal of GPF final amount has been sanctioned by the Accountant General and will be submitted to the Treasury Office and the same could

not be paid due to non-receipt of sanction amount to Treasury Office, Aundha Nagnath.

7. Respondent No. 3 viz. Shri. Vasant S/o. Trimbak Muley, Deputy Director of Land Records, Aurangabad Region, Aurangabad, has filed his separate affidavit in reply. It is stated that the applicant was facing departmental enquiry at the time of superannuation and now the enquiry officer has submitted enquiry report on 7.11.2012 and action will be taken on it as per the Rules.

8. During the pendency of the present Original Application the then learned Chief Presenting Officer, Shri D.T. Devane, has filed the order passed in the departmental enquiry against the applicant, which is dated 30.4.2013 and the copy of the same has been placed on record at page Nos. 104 to 109 (both inclusive). From the said order it seems that the departmental enquiry against the applicant has been concluded and the competent authority was pleased to pass the following final order in the said departmental enquiry : -

“श्री. उध्दव किसन तांदळे, तत्का.मुख्यालय सहाय्यक, उपअधीक्षक भूमि अभिलेख औढा (ना) हल्ली सेवा निवृत्त यांचेवर महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम १९८२ मधील नियम २७ (१) मधील तरतुदीअन्वये त्यांचे दरमहाचे निवृत्ती वेतनातुन रक्कम रुपये ५०/- (अक्षरी पन्नास रुपये मात्र) दोन वर्षांचे कालावधीसाठी कपात करण्याची शिक्षा बजावण्यात येत आहे.

सदर आदेशाची अंमलबजावणी तात्काळ होणेची आहे.”

9. The learned Advocate for the applicant submits that the departmental enquiry was initiated against the applicant on the very last date of his retirement just in order to harass the applicant. Initially the applicant was not given regular pension as he was facing criminal trial. Admittedly, the applicant got acquitted by the Special Judge, Osmanabad vide order dated 28.12.2010. The appeal against the acquittal has been dismissed by the Hon'ble High Court on 30.6.2011. Admittedly, till the last date of retirement the applicant was not served with any notice nor any charge-sheet was served to the applicant in Departmental Enquiry, but on the very date of retirement i.e. 30.11.2011 the applicant was served with the charge-sheet in the departmental enquiry. The said enquiry seems to be finally concluded on 30.4.2013. Even for

argument sake, it is accepted that the applicant was given provisional pension because the enquiry was pending against him still there is no reason as to why the provisional pension was given only for six months and no efforts are made to continue the said pension till conclusion of the departmental enquiry. Even for argument sake, it is accepted, though it is not proper on the part of the respondents to deny provisional pension to the applicant, the departmental enquiry was also concluded on 30.4.2013 and as per Rule 27 (1) of the Maharashtra Civil Services (Pension) Rules, 1982 an amount of Rs. 50/- per month has been deducted for two years only from his pension. In such circumstances, there is no reason as to why the applicant has not been given regular pension even after passing of final order in the departmental enquiry on 30.4.2012. In such circumstances, denial of the pension to the applicant is absolutely illegal. The pension is the fundamental right of the employee and denial of such right is not only arbitrary but illegal. We are, therefore, satisfy that the applicant is entitled to claim the relief 'B'.

10. The learned advocate for the applicant submits that the respondent No. 3 in his capacity of respondent No. 2 may be saddled costs of Rs. 50,000/- from his own pocket on account of applicant being unnecessarily made to suffer ordeal of departmental enquiry. It is true that the departmental enquiry was initiated on the very last day of the applicant in service i.e. on the date of his retirement. However, it is true that the charge-sheet was served on the date of retirement i.e. before retirement and in the said departmental enquiry the applicant has been found guilty and has been punished. Even though punishment may be minor there is nothing on record to show that the applicant has ever challenged his order of punishment in the departmental enquiry. It is also material to note that initiation of departmental enquiry has not been challenged by the applicant in this Original Application. In such circumstances the fact remains that the applicant was served with the charge-sheet on the last date of his service i.e. just before his retirement, but in the said departmental enquiry he was found guilty and, therefore, the pension seems to have been withheld due to pendency

of departmental enquiry. However, there is no reason as to why the pension and pensionary benefits have not been released after final conclusion of the departmental enquiry and as per final order passed in the departmental enquiry. The final order in departmental enquiry has been passed on 30.4.2013 and, therefore, the regular pension should have been granted as soon as the departmental enquiry was concluded on 30.4.2013 within a reasonable period. In such circumstances, we are of the opinion that the applicant is entitled to claim interest on the delayed payment of regular pension. We are, therefore, grant liberty to the applicant to file representation for claiming interest on the delayed payment of pension at least from 30.4.2013 till he gets regular pension.

11. In view of the discussion in foregoing paragraphs, we, therefore, pass the following order: -

ORDER

- (i) The present Original Application is partly allowed.

(ii) the respondents are directed to release the regular pension and pensionary benefits to the applicant without any further delay and in any case within three months from the date of this order.

(iii) The applicant is given liberty to file representation to claim interest on the delayed payment of pension from 30.4.2013 till he gets regular pension as per the provisions of the Maharashtra Civil Services (Pension) Rules, 1982.

(iv) In the facts and circumstances of the case, there shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.673-2012(hdd)-2016(DB)