

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.04 OF 2020**

**(Subject:- Regularization of Suspension Period/Retiral Benefits)**

**DISTRICT: - Beed.**

Smt. Chhaya Shivajirao Shinde, )  
Age 60 years, Occu. Service as )  
Senior Accountant in the office of )  
District Planning Officer, Beed (retired), )  
R/o "Megharaj", Shikshak Colony, )  
Near New Saraswati Vidyalaya, )  
Old Dhanora Road, Beed. )...**APPLICANT**

**V E R S U S**

1. **The State of Maharashtra** )  
through the Secretary )  
Finance Department, )  
Mantralaya, Mumbai. )
2. **The Director,** )  
Accounts and Treasuries, )  
J.N. Heredia Road, Ballard Estate )  
Fort, Mumbai -400 001. )
3. **The Joint Director,** )  
Accounts and Treasury, )  
Aurangabad Division, )  
Koshagar Bhavan, Aurangabad. )...**RESPONDENTS**

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**APPEARANCE** : Shri J.B. Choudhary, learned Advocate  
for the applicant.  
: Shri B.S. Deokar, learned Presenting  
Officer for the respondents.  
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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**

**DATE** : **10.10.2022**  
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**ORDER**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking reliefs as follows:-

*(b) This Original Application may kindly be allowed and the order dated 14.10.2019, issued by the respondent No.3 may kindly be quashed and set aside and further the respondent No.1 to 3 may kindly be directed to grant the retiral benefits to the application by regularizing the period of suspension of the applicant as a duty period as she is acquitted from all the charges in the Special Case.*

*(c) The respondent No.2 and 3 may kindly be directed to regularize the suspension period of the applicant w.e.f.4/3/2011 to 28/3/2014 as duty period for all purposes and accordingly to grant the regular pension and pensionary benefits and all consequential benefits thereof to the applicant.*

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant is Government servant. Initially the applicant was appointed as a Junior Clerk at District Treasury Officer, Beed on 13.03.1982. In the year 1992, she was promoted as Senior Clerk and further in the year 2003, she was promoted as Deputy Accountant/Senior Accountant and was posted at District Treasury Office, Beed. In September 2009, she was posted as a Senior Accountant in the office of Senior Geologist (G.S.D.A., Beed and was working there upto 03.03.2011. While working at Beed on the said post, Anti Corruption Squad conducted raid on the allegations of demand of bribe of Rs.1000/- by the applicant. Pursuant to that raid, crime was registered against the applicant under Section 7,13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 . In that respect, the applicant was tried before the Special Court, Beed in Special Case No.01/2012, wherein the charge sheet came to be filed on 31.12.2012.

(ii) It is further submitted that after registration of crime against the applicant on 03.03.2011, the applicant was put under suspension by the respondent No.3 i.e. the Joint

Director, Accounts and Treasury, Aurangabad Division, Aurangabad by order dated 05.03.2011. The applicant was under suspension upto 28.03.2014 as the Suspension Review Committee took a decision to reinstate the applicant on the post by order dated 04.03.2014. Pursuant to the Suspension Review Committee's order, the applicant was reinstated in service by order dated 29.03.2014 (Annex. 'A-4') issued by the respondent No.3. As per the said order, the applicant joined in the office of District Planning Office, Beed on 29.03.2014 and from that date till the retirement of the applicant i.e. on 30.06.2017, the applicant was working on the same post.

(iii) It is further submitted that Special Case No.1/2012 pending against the applicant under Section 7,13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 was finally decided by the Special Court, Beed by judgment and order dated 23.11.2017 (Annex. 'A-5') and thereby, the applicant was acquitted of all the charges in that case.

(iv) In view of the same, the applicant submitted representation dated 01.02.2018 (Annex. 'A-6') to the respondent No.3 requesting to treat the period of suspension of the applicant from 04.03.2011 to 29.03.2014 as duty

period in view of his acquittal in criminal case and thereby also annexed thereto the copy of order of acquittal.

(v) It is further submitted that meanwhile, the departmental enquiry was initiated against the applicant in respect of very same incident of the year 2013. The enquiry officer was appointed by order dated 11.01.2013. The said departmental enquiry was completed in the year, 2015 when the enquiry officer submitted report dated 19.01.2015 to the respondent No.3. The copy of the said enquiry report, however, was served upon the applicant only as per memorandum dated 05.03.2018 (Annex. 'A-7'), whereby charge was said to be partly proved. The applicant submitted his reply dated 19.03.2018 (Annex. 'A-8'), thereby stating that she was falsely implicated in the case and she was acquitted in the criminal case and therefore, the findings in the enquiry report are not correct.

(vi) It is further submitted that she submitted representation dated 05.02.2018 (part of Annex. 'A-9' collectively) to the District Planning Officer, Beed requesting to submit the proposal for regularization of suspension period in view of her acquittal in the criminal case and accordingly,

the District Planning Officer, Beed submitted proposal dated 09.02.2018 (part of Annex. 'A-9' collectively) to the respondent No.3.

(vii) It is further submitted that the charge in the departmental enquiry and in Special Case are one and the same. The applicant was acquitted in criminal case. In view of the same, it was incumbent on the part of the respondent Nos.1 to 3 to drop the departmental enquiry and to give all the benefits to the applicant. In view of the same, the applicant again submitted representation dated 03.04.2018 (Annex. 'A-10') to the respondent No.3 for regularization of suspension period and also requesting to process her pension papers. The respondent No.3 however, vide communication dated 30.06.2018 (Annex. 'A-11') informed the applicant that appeal is preferred against the order of acquittal passed by the Special Court, Beed and till decision in the said criminal appeal, no due certificate cannot be given in favour of the applicant. To that, the applicant made representation dated 10.10.2018 (Annex. 'A-12') to the respondents stating therein that there is no stay granted by the Hon'ble High Court and therefore, the applicant is entitled for regularization of

suspension period and consequential service benefits and also for retiral benefits.

(viii) Thereafter, the applicant further made representation dated 14.03.2019 (Annex. 'A-13') placing on record that criminal appeal is only admitted by the Hon'ble High Court and there is no stay and the applicant stood acquitted in the criminal case. In view of the representations made by the applicant, the respondent No.2 i.e. the Director, Accounts and Treasuries, Mumbai by letter dated 03.05.2019 (Annex. 'A-14') directed the respondent No.3 to take appropriate decision regarding regularization of suspension period and for granting retiral benefits to the applicant as the applicant is acquitted in special case.

(ix) Thereafter, the respondent No.3 by sending communications dated 13.06.2019 and 17.06.2019 (Annex. 'A-15' collectively) to Deputy Superintendent of Police, Anti Corruption Bureau, Beed and Government Pleading of Hon'ble High court Bench at Aurangabad seeking to know about if stay is granted by the Hon'ble High court. Thereafter, the respondent No.3 by impugned order dated 14.10.2019 (Annex. 'A-1') deferred the decision on regularization of

suspension period stating that till the decision of the Hon'ble High Court in Criminal Appeal, decision on regularization cannot be taken. The said impugned order is not legal and proper. It is against the principles of natural justice and various decisions of the Hon'ble High Court that retirement benefits and regularization of suspension period cannot be deferred or withheld under the pretext of pending of criminal appeal when the Government servant is acquitted in criminal case. During pendency of this Original Application, final order in departmental enquiry came to be passed by the respondent No.3 vide order dated 20.02.2020. The applicant preferred departmental appeal. However, the final order of suspension of censure is confirmed in appeal by the respondent No.2 by dismissing the appeal vide order dated 10.07.2020.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 to 3 by one Ravikumar Balajirao Linganwad working as the Joint Director Account and Treasuries Aurangabad Division, Aurangabad, thereby he denied all the adverse contentions raised in the Original Application. However, the contentions raised by the applicant about his acquittal in criminal case and deferring decision of regularization of



suspension period and withholding the pension and pensionary benefits on account of pendency of criminal appeal are not denied. The matter is pending before the Hon'ble High Court by way of criminal appeal and as such it is subjudice and it was duly communicated to the applicant. It is further submitted that unless the suspension period of the applicant is regularized, retiral benefits cannot be released. In the departmental enquiry the charges leveled against the applicant were partly proved. Final order in the departmental enquiry was reserved considering the pendency of the criminal appeal. Hence, the impugned order of deferring the decision of regularization of suspension period as well as withholding of pension and pensionary benefits are justifiable. There is no merit in the application and it is liable to be dismissed.

4. The applicant has filed affidavit-in-rejoinder and has denied all the adverse contentions raised in the affidavit-in-reply and retreated the contention raised in the Original Application. She further placed reliance on G.R. dated 20.07.2006 (Annex. 'A-19') which speaks about taking review of suspension period. Paragraph No.2 (d) of the said G.R. makes it clear that after acquittal in the criminal case the

employee re-gains status as a general employee and cannot be termed as accused/wrong doer even though any appeal, review, etc. is pending before any higher court/authority. In view of the same, it is not necessary for the respondents to wait for the decision in criminal appeal to take decision on regularization of suspension period and thereafter, to consider to grant of pension and pensionary benefits for which the applicant is otherwise entitled.

5. I have heard at length the arguments advanced by Shri J.B. choudhary, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer for the respondent on other hand.

6. Upon perusal of the rival pleadings and documents on record, it appears that initially the applicant was put under suspension by the respondent No.3 by order dated 05.03.2011 in view of registration of crime against the applicant on allegation of demand and acceptance of bribe of Rs.1000 under Section 7,13 (1) (d) read with Section 13(2) of Prevention of Corruption Act against the applicant on 03.03.2011. After completion of investigation, the applicant was tried before the Special Court, Beed in Special Case

No.1/2022 wherein the charge sheet came to be filed on 31.12.2012. Upon trial, the applicant is acquitted in the said case by judgment and order dated 23.11.2017 (Annex. 'A-5'). Meanwhile, the suspension of the applicant was revoked and the applicant was reinstated in service vide order dated 29.03.2014 (Annex. 'A-4'). After his acquittal, the applicant made representation dated 01.02.2018 (Annex. 'A-6') as well as further representations dated 05.02.2018 (Annex. 'A-9' collectively), dated 03.04.2018 (Annex. 'A10') for the said purpose as well as for processing pension papers in view of his acquittal. In this regard, letter dated 03.05.2019 (Annex. 'A-14') was sent by the respondent No.2 to the respondent No.3 to take appropriate decision. Thereafter, the respondent No.3 issued impugned communication dated 14.10.2019 (Annex. 'A-1') thereby deferring the decision on regularization of suspension period and consequentially withholding the pension and pensionary benefits till the decision of the Hon'ble High Court in criminal appeal against the order of acquittal of the applicant pending before the Hon'ble High Court.

7. Moreover, during pendency of this Original Application, final order in departmental enquiry is passed. In that respect, the respondent No.3 has issued final order dated 20.02.2020

imposing the punishment of censure upon the applicant. The applicant preferred departmental appeal against the said order before the respondent No.2. The respondent No.2 by order dated 10.07.2020 confirmed the order of imposition of minor punishment imposed by the respondent No.3. The applicant has produced on record the copy of the order of the respondent No.3 dated 20.02.2020, departmental appeal memo dated 13.03.2020 and copy of order dated 10.07.2020 passed by the respondent No.2 in departmental enquiry.

8. In the circumstances as above, the issue involved in the matter is as to whether after acquittal of the applicant in the criminal prosecution, the decision on regularization of suspension period and granting of pension and pensionary benefits can be deferred till the decision in the criminal appeal pending before the Hon'ble High Court against the order of acquittal of the applicant.

9. In this regard, learned Advocate for the applicant submitted that there are various decisions of the Hon'ble High Court as well as the Co-ordinate bench of this Tribunal holding that the decision on regularization of suspension period governed by Rule 72 of Maharashtra Civil Services

(Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) cannot be deferred only because the criminal appeal is pending against the order of acquittal and that the issue of processing pension and pensionary papers also cannot be kept in abeyance or withhold.

10. So far as deferring the decision on regularization of suspension period is concerned, the learned Advocate for the applicant placed reliance on O.A.No.524/2020 in the matter of **Sanjay Sarjerao Sapkal & Ors. Vs. The Commissioner of Police, Thane & Anr.** decided on 08.10.2021. In the said case, the applicants were working in Police Department. Criminal case was filed against them. They were subjected to departmental enquiry. In the departmental enquiry they were reduced to lower scale for three years. The applicants subsequently were reinstated in service without taking a decision about treatment to period of suspension. The applicants made representation seeking regularization of suspension period. However, the applicants were informed that the decision will be taken only after conclusion of

criminal case subjudice in the court of law. However, by referring Rule 72 (3), (4) and (5) of M.C.S. 'Rules of 1981', it was held that as per the said provisions it was not necessary to wait for decision on criminal case since law specifically provides for review of any such decision after final conclusion of D.E. or criminal case.

11. The facts of the present case are on better footing as is the pleaded in abovesaid case. During pendency of this Original Application, the departmental enquiry is completed and minor punishment of censure is imposed upon the applicant. In the circumstances, it would be just and proper to reproduce the Rule 72 (3), (4) and (6) of M.C.S. 'Rules of 1981' which are as under:-

*“72 (3) : Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:*

*Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an*

*opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be 4 O.A.524/2020 recorded in writing that the Government servant shall be paid for the period of such delay only such amount [not being the whole] of such pay and allowances as it may determine.*

**(4)** *In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.*

**(6)** *Where suspension is revoked pending finalization of the disciplinary or court proceedings, any order passed under sub-rule (1), before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or (5), as the case may be.”*

12. In view of the abovesaid Rule and the decision dated 08.10.2021 in O.A.No.524/2020, it was incumbent upon the respondents to take decision on the suspension period of the applicant. In the facts and circumstances of this case, the decision in O.A. relied upon by the learned Advocate for the applicant would be aptly applicable. I have no reason to take

another view as regards the interpretation of Rule 72 of M.C.S. 'Rules of 1981'. In view of the same, the impugned communication dated 14.10.2011 (Annex. 'A-1') issued by the respondent No.3 in the case in hand is not in accordance with law and is liable to be quashed and set aside and the direction will have to be given to the respondent No.3 to decide the nature of period of suspension in accordance with law within stipulated period.

13. It is also a fact that the applicant has received only provisional pension and his regular pension and other pensionary benefits are withheld giving reasons that the criminal prosecution lodged against the applicant is not finalized and though the applicant is acquitted in the special case No.1/2012 vide judgment and order dated 23.11.2017 (Annex. 'A-5'), criminal appeal preferred by the State against the said order of acquittal is pending and therefore, the applicant is not entitled for receiving the pension and pensionary benefits.

14. In this regard, learned Advocate for the applicant placed reliance on citation of the Hon'ble High Court in Writ Petition No.6650 of 2020 in the matter of **Ashfakali Khan Abdulali**



**Khan Vs. The State of Maharashtra & Ors.** decided by order dated 25.10.2021. In the said case, pensionary benefits were withheld on the ground of pendency of criminal appeal against the order of acquittal of the petitioner therein for the offences punishable under Section 7 and 13 (1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988. The Hon'ble High Court was pleased to hold that it is settled law that gratuity cannot be forfeited unless the offence amounting to moral turpitude is proved to have been committed by the petitioner under Section 4,6(d) (2) of Payment of Gratuity Act, 1972 and in the light of the judgment delivered by the Hon'ble Apex Court in the matter of **Union Bank of India and others Vs. C.G. Ajay Babu and another** [(2018) 9 SCC 529]. It was however observed that learned Advocate for the Corporation in that matter cannot point out any provision in MCS (Pension) Rules, 1982 that an appeal pending against acquittal would empower the employer to hold back regular pension. In view of the same, the respondents were directed to release gratuity amount and pension by seeking requisite undertaking from the petitioner 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 amount.

15. Learned Advocate for the applicant has further placed reliance on the decision of this Tribunal in O.A.No.346/2021 dated 17.07.2022 in the matter of **Dilip Parbat Patil Vs. The State of Maharashtra & Ors.** In the similar situation the respondents were directed to release the pension and pensionary benefits by taking requisite undertaking by the applicant. the facts of the present case are identical to the facts of the above said case law. In this case the criminal appeal against the order of acquittal of the applicant is pending. The departmental enquiry was finalized as the imposition of minor punishment of Censure is confirmed in the departmental appeal. In the circumstances, there is no plausible reason to withhold pension and pensionary benefits which are payable to the applicant in accordance with law. Withholding of pension and pensionary benefits is governed by Rule 27 of (Pension) Rules, 1982. It is as follows:-

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

*(1) Government may, by order in writing, withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and also*

*order the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon reemployment after retirement:*

*Provided that the Maharashtra Public Service Commission shall be consulted before any final orders are passed in respect of officers holding posts within their purview:*

*Provided further that where a part of pension is withheld or withdrawn, the amount of remaining pension shall not be reduced below the minimum fixed by Government.*

- (2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.*
- (b) The departmental proceedings, if not instituted while the Government servant was in service,*

*whether before his retirement or during his re-employment-*

- (i) shall not be instituted save with the sanction of the Government,*
  - (ii) shall not be in respect of any event which took place more than four years before such institution, and*
  - (iii) shall be conducted by such authority and at such place as the Government may direct and in accordance with the procedure applicable to the departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.*
- (3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or in respect of an event which took place, more than four years before such institution.*
- (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.*

- (5) *Where Government decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not, subject to the provision of sub-rule (I) of this rule, ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.*
- (6) *For the purpose of this rule-*
- (a) *departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date: and*
- (b) *judicial proceedings shall be deemed to be instituted-*
- (i) *in the case of criminal proceedings, on the date on which the complaint or report of a police officer of which the Magistrate takes cognizance in made, and*
- (ii) *in the case of civil proceedings, on the date of presenting the plaint in the court.”*

16. The applicant is acquitted in criminal case. In the departmental enquiry, minor punishment of Censure is

imposed upon the applicant. There is no mention of any criminal appeal in this provision. In view of the same, in my considered opinion, this is a fit case to direct the respondents to release pension and pensionary benefits of the applicant in accordance with law within the stipulated period subject to taking undertaking from the applicant that if he suffers an adverse order in the pending proceedings of challenging the acquittal and his acquittal is converted into conviction, she shall return the entire amount. Hence I proceed to pass the following order.

**ORDER**

The Original Application is allowed in following terms:-

- (A) The impugned communication dated 14.10.2019 (Annex. 'A-1') issued by the respondent No.3 is thereby quashed and set aside.
- (B) The competent authority i.e. the respondent No.3 is directed to decide the nature of period of suspension of the applicant in accordance with law within the period of two months from the date of this order.

- (C) The respondents are directed to process the pension papers of the applicant and forward the same to the requisite office for compliance and to release the regular pension, pensionary benefits and all consequential service benefits thereof to the applicant immediately in accordance with law upon furnishing requisite undertaking by the applicant that if required, she would refund the amount of pension and pensionary benefits paid to her within the period of one month in case she suffers an adverse order in the pending proceedings before the Hon'ble High Court.
- (D) The respondent authorities are directed to complete the abovesaid endeavour within the period of four months after receipt of requisite undertaking from the applicant.
- (E) No order as to costs.

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