

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.445 OF 2020  
(Subject:-Pension & Pensionary Benefits)**

**DISTRICT: - Nanded.**

Narshing s/o Narsayya Mudiraj , )  
Age : 65 Years, Occu. Retired, )  
R/o. House No. DRT 31, Near I.T.I., )  
Tq. & Dist. Nanded. )...**APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra** )  
Through Principle Secretary, )  
Excise Department, )  
Mantralaya, Mumbai-32. )
- 2. The Accountant General,** )  
Maharashtra (Accounts & Entitlement) )  
Civil Lines, Nagpur-44000. )
- 3. The Treasury Officer,** )  
Nanded, Dist. Nanded. )
- 4. The Commissioner,** )  
State Excise Department, )  
The Old Custom House, )  
Indian Oil building, 2nd Floor, )  
Fort, Horniman Circle, Mumbai. )  
Maharashtra State, Mumbai. )...**RESPONDENTS**

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**APPEARANCE** : Shri V.B. Dhage, learned Advocate for  
the applicant.  
: Shri D.R. Patil, learned Presenting  
Officer for the respondents.

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

**DATE** : **15.11.2022**  
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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 to release the full pension, gratuity and other pensionary benefit together with interest on delayed payment.

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

(i) The applicant was initially appointed on the post of Sub-Inspector of Excise Department on 27.07.1979. In the year 2001, he was promoted to the post of Inspector of Excise and in the year 2006, he was further promoted to the post of Deputy Superintendent of Excise and lastly in the year 2010, he was promoted on the post of Superintendent of Excise. After rendering more than 34 years of services, he retired on superannuation on 31.08.2012 as a Superintendent of Excise from Nanded District.

(ii) As per rules prior to retirement from the service, the proposal for grant of pension and pensionary benefits was processed by the department through the office of the respondent No.4 i.e. the Commissioner, State Excise

Department, Maharashtra State, Mumbai. The respondent No.4 submitted proposal to the respondent No.2 i.e. the Accountant General, Maharashtra (Accounts and Entitlement), Civil Lines, Nagpur for releasing Provident Fund amount to the applicant. No divisional enquiry certificate was required for processing the pension papers. The applicant, however, was informed that such certificate could not be issued as the applicant's name was involved in the criminal case of Godawari Chemicals Pvt. Ltd. bearing Crime No.47/1990 being registered under Section 65 & 66 of Bombay Prohibition Act, 1949 at Shivaji Nagar police station.

(iii) The applicant accordingly was granted only provisional pension. The applicant, therefore, made representations for releasing of regular pension and other pensionary benefits stating that his name was falsely mentioned in the crime. The criminal case was taking too much time and till then pension and pensionary benefits cannot be withheld as per the decision of the Hon'ble Supreme Court of India. He also made representation to the Lokayukta making his grievance. According to him, the other persons who were involved in the same crime were granted pension and pensionary benefits. In the proceeding before the Lokayukta, the respondent No.4

informed that no any Divisional Enquiry was proposed against the applicant. The respondent also contended that another employees involved in the said crime were sanctioned the pensionary benefits. In view of the same, the proceeding before the Lokayukta was disposed of. The applicant, however, was not given the pensionary benefits. The applicant, therefore, filed Writ Petition No.11791/2015 before the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad. The said Writ Petition was disposed of by order dated 02.03.2016 (Annex. 'A-3'), thereby directing the respondents to consider the representations submitted by the petitioner regarding release of pension and pensionary benefits and to take decision on merits on the said representations and communicate the same as expeditiously as possible, however, within eight weeks from the date of order.

(iv) In view of the same, the applicant communicated the order of the Hon'ble High Court on 05.04.2016 to the respondent authorities and requested to release pension and pensionary benefits. Thereafter, the respondent by letter dated 30.04.2016 (part of Annex. 'A-3' collectively) asked the applicant to submit undertaking. The applicant accordingly

submitted undertaking on 04.05.2016 (part of Annex. 'A-3' collectively). However, the respondent No.4, thereafter by impugned communication dated 27.05.2016 (part of Annex. 'A-3 collectively) refused to release the pension and pensionary benefits assigning the same reason of pendency of criminal case and non issuance of No Divisional Enquiry certificate.

(v) Being aggrieved by the said impugned communication, the applicant filed Writ Petition No.6479/2016 before the Hon'ble High court. The respondents opposed the said Writ Petition stating that the criminal case is pending against the applicant and the pension and pensionary benefits were withheld accordingly. The said Writ Petition was disposed of by order dated 06.03.2020 by giving direction to dispose of criminal case as earlier as possible.

(vi) It is further submitted that after trial of the criminal case bearing Regular Criminal Case No.352 of 1995, the applicant has been acquitted by order dated 09.03.2020 of the offences punishable under Section 65, 66, 77, 82, 83 and 109 of Bombay Prohibition Act, 1949. Thereafter, the applicant made several representations seeking relief of full pension and pensionary benefits; but in vain. The applicant,

thereafter, filed Writ Petition No.7106/2020 seeking to release pension and pensionary benefits. The said Writ Petition was disposed of by order dated 19.10.2020 by directing the applicant to approach this Tribunal. Hence, this application.

3. The affidavit-in-reply is filed on behalf of the respondent Nos.1 and 4 by one Pradip Hari Pawar working as the Divisional Deputy Commissioner, State Excise, Aurangabad. Thereby he denied all the adverse contentions raised in the application.

(i) It is specifically stated that the applicant while in service was one of the accused in crime registered under Section 65, 66, 77, 82, 83 and 109 of the Bombay Prohibition Act, 1949 and also offences under Section 420, 467, 468 read with 34 and 120 (b) of Indian Penal Code. He was accused No.9 in the said case. It is admitted that in the said Regular Criminal Case No.352/1995, the applicant has been acquitted as per order dated 09.03.2020 (Exh. 'R-1'). The applicant before that retired on superannuation on 31.08.2012. In view of the pendency of the said criminal case, the pension and pensionary benefits were rightly withheld in accordance with law.

(ii) After acquittal of the applicant in the said criminal case, Covid-19 pandemic situation was going on. The respondents were in the process of taking opinion of the appropriate authority of filing criminal appeal. In July 2021, the opinion was received that it is not a fit case for filing criminal appeal as revealed from the documents produced at Exh. 'R-2 to R-5'. Immediately thereafter, by obtaining no objection certificate, the process of preparing pension papers was completed. The proposal is pending before the respondent Nos.2 & 3. Hence, there is no merit in the contentions raised in the application and the application is liable to be dismissed.

4. Affidavit-in-reply is also filed on behalf of the respondent No.2 i.e. the Accountant General (A & E)-II, Maharashtra State, Nagpur, whereby it is contended that the respondent No.2 is not responsible for not getting pension and pensionary benefits payable to the applicant. No pension papers are yet received in respect of applicant by the said office.

5. I have heard at length the arguments advanced by Shri V.B. Dhage, learned Advocate for the applicant on one hand

and Shri D.R. Patil, learned Presenting Officer representing the respondents on other hand.

6. Considering the facts of the present case, the issue involved is as to whether the applicant is entitled for pension and pensionary benefits together with requisite interest thereon on alleged delayed payment?

7. Undisputedly the applicant retired on superannuation on 31.08.2021 as Superintendent of Excise from Nanded district. Thereafter, he was granted only provisional pension. Regular pension and pensionary benefits were not released to him in view of the background that his name was involved as accused No.9 in the Crime No.47/1990 being registered under Section 66, 66, 77, 82, 83 and 109 of Bombay Prohibition Act, 1949 and also under Section 420, 467, 468 read with 34 and 120 (b) of Indian Penal Code. After completion of investigation of the said crime, charge sheet came to be filed which case was tried as Regular Criminal Case No.352 of 1995. Record shows that after trial of the said case before 4<sup>th</sup> Additional Chief Judicial Magistrate, Nanded, all the accused including this applicant were acquitted of the offences punishable under Section 420, 467, 468 read with 34 and 120 (b) of Indian Penal Code and also



under Section 65, 66, 77, 82, 83 and 109 of Bombay Prohibition Act, 1949. In view of the said acquittal, the applicant made representations to the respondents and also made grievances before the Lokayukta seeking release of regular pension and pensionary benefits.

8. It is the contention of the applicant that other accused involved in the said very criminal case were granted pension and pensionary benefits during pendency of the said criminal case. The applicant, however was discriminated and was not paid pension and pensionary benefits in spite of obtaining the requisite undertaking dated 04.05.2016 (part of Annex. 'A-3' collectively).

9. In view of above, the present case would revolve around the provisions of Rule 27 (1) & (4) and Rule 130 (c) of Maharashtra Civil Services (Pension) Rules, 1982 which are 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 under the recovery from such pension, the whole or part of any pecuniary loss caused to Government, if an 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 re-employment after retirement:*

*Provided that the Maharashtra Public Service Commissioner 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) -----

(3) -----

(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.”*

**130. Provisional pension where departmental or judicial proceedings may be pending.- (1)-----**

(a) -----

(b) -----

(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.”*

10. In view of the abovesaid provisions, if the facts of the present case are examined, it is seen that when the applicant retired on superannuation on the post of Superintendent of Excise on 31.08.2012, Regular Criminal Case No.352/1995 of the offences punishable under Section 65, 66, 77, 82, 83 and 109 of Bombay Prohibition Act, 1949 was pending. The said case was arising out of discharge of duties of the applicant. In view of the same, the pension and gratuity were liable to be withheld more particularly in view of the provisions of Rule 27 (1) and 130 (c) of Maharashtra Civil Services (Pension) Rules, 1982. As per the said rules, the applicant would be entitled for pension and pensionary benefits after disposal of any such criminal or departmental proceedings. In this case, the departmental enquiry was not initiated against the applicant.

11. Further undisputedly the applicant has been acquitted in the said RCC No.352/1995 as per order dated 09.03.2020 passed by Ld. 4<sup>th</sup> Additional Chief Judicial Magistrate, Nanded. The copy of the said order is produced by the respondents at Exh. 'R-1'. As per the contentions of the respondents, they sought legal opinion as regards filing of criminal appeal. Legal opinion was received to the effect that

this is not a fit case for filing criminal appeal. The said opinion was received in July 2021. Thereafter, the pension papers are being processed. In view of the same, according to them, there is no illegality in withholding pension and pensionary benefits and the respondents are not liable to pay interest on delayed payment on pension and pensionary benefits on account of any administrative lapse.

12. Considering the facts and circumstances as above, it would be just and proper to refer to the decision of the Hon'ble Bombay High Court dated 03.04.2018 in Writ Petition No.12966/2017 in the matter of **Vinodkumar Narayan Dixit Vs. State of Maharashtra.** The aspect of entitlement of pension and pensionary benefits after acquittal of Government servant in criminal case or departmental enquiry and interest on delayed payment is dealt with in the said decision. In the said citation case, earlier decision of Hon'ble Bombay High Court of Judicature at Bombay Bench at Aurangabad dated 23.07.2008 in Writ Petition No.207/2008 in the matter of **Prabhakar Marotilal Dalal vs. State of Maharashtra & Anr.** is referred. The relevant paragraph

No.35 of the citation of **Vinodkumar Narayan Dixit** **(cited supra)** is as follows:-

*“35. In Prabhakar Dalal [2008(5) ALL MR 306] (supra), the Division Bench of this Court, in the context of Rules 129A, 130 (1)(c) of the MCS (Pension) Rules, 1982 and GR dated 23rd June 1986 has held that paragraph 3 of the GR will have to be construed to mean that on a person against whom disciplinary or judicial proceedings were pending, if he is discharged or the disciplinary authority comes to the conclusion that no punishment needs to be imposed and in case of judicial authority, such authority acquits such person, than in those cases, on the competent authority authorising the release of gratuity, it will be presumed that the gratuity is deemed to have been fallen due on the date immediately following the date of retirement for the purpose of interest. The Division Bench has commended harmonious construction of the statutory rules and the executive instructions in the GR, so that executive instructions would not fall foul of the rules.”*

13. In view of abovesaid ratio, it would be crystal clear that the applicant being acquitted in the criminal case would be entitled for pension and pensionary benefits. So far as the interest on the delayed payment of pension and pensionary benefits, the due date for receipt of pension and gratuity in such circumstances would be respectively after three months

and six months as per Rule 129-A and 129-B of Maharashtra Civil Services (Pension) Rules, 1982. The adverse contention raised by the respondents denying interest are unacceptable considering the law laid down by the Hon'ble Bombay High Court in the case of **Vinodkumar Narayan Dixit Vs. State of Maharashtra** (cited supra). In the result, the Original Application succeeds. I therefore, proceed to pass the following order:-

**ORDER**

The Original Application is allowed in following terms:-

- (A) The respondents are directed to release the amount of pension, gratuity and other pensionary benefits in accordance with law together with interest thereon as per Rule 129-A and 129-B of Maharashtra Civil Services (Pension) Rules, 1982 respectively firstly for gratuity and secondly for pension and other pensionary benefits within the period of two months from the date of this order.
- (B) No order as to costs.

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