

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 713/2022 (S.B.)

Diwakar s/o Wasudeorao Dehankar,
Aged 60 years, Occupation : Retired,
Deputy Engineer, resident of Plot No.88-A,
Jawahar Nagar, In front of State Bank of India,
Manewada Road,
Nagpur - 440024.

Applicant.

Versus

1. The State of Maharashtra,
through its Chief Secretary,
Public Works Department,
Mantralaya, Mumbai -400 032.

2. The Executive Engineer,
National Highway Division Amravati,
Bandhkam Bhavan, Camp Amravati.

Respondents

Shri B.Kulkarni, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 23rd June, 2023.

Judgment is pronounced on 28th June, 2023.

Heard Shri Bharat Kulkarni, ld. counsel for the applicant and Shri S.A.Sainis, ld. P.O. for the Respondents.

2. The applicant was holding the post of Deputy Engineer in the respondent department. By order dated 28.04.2017 (A-2) departmental enquiry was initiated against him. He retired on 30.06.2022.

3. It is the grievance of the applicant that he is only getting provisional pension and not regular pension, and his gratuity, too, has been unjustifiably withheld. He prays for releasing the same with interest, by relying on the judgment of Principal Bench of this Tribunal in O.A. No. 53/2022 (A-1).

4. Stand of respondent no. 2 is that Departmental Enquiry against the applicant was initiated when he was in service and, therefore, the Judgement in O.A. No. 53/2022 will not be applicable, and in view of Rule 130 (1) (c) of the Maharashtra Civil Services (Pension) Rules, 1982, gratuity was rightly withheld.

5. The respondents have placed on record at A-R-2 a certificate that though on the date of retirement of the applicant Departmental Enquiry was not pending, a criminal case under the prevention of corruption act was pending against him.

6. In the Judgement in O.A. No. 53/2022 it was held:-

“In view of aforesaid discussion, the inevitable position emerges that there being no initiation of D.E. on the date of retirement, the respondents could not have withheld gratuity and regular pension.”

In the instant case gratuity is withheld due to pendency of a criminal case which was registered against the applicant when he was in service.

7. The applicant has further relied on Judgement of the Hon'ble Bombay High Court dated 12.01.2023 in W.P. No. 3656/2021. In the said case terminal benefits of the applicant were withheld due to pendency of departmental enquiry against him. In O.A. No. 122/2021 this Tribunal directed the respondents to complete the enquiry within 30 days and further observed that if the enquiry was not completed within 30 days the applicant would stand exonerated. This order, for want of challenge, attained finality. The applicant retired. His terminal benefits were not released. The respondents then filed M.C.A.. By order dated 20.05.2021 the M.C.A. was allowed and further time of 60 days was given to the respondents to complete the enquiry. Thereafter, on application of the applicant order dated 20.05.2021 was modified and time limit to complete the enquiry was reduced to 30 days. Again, on application of

the respondents further extension to complete the enquiry was granted by order dated 19.07.2021. The applicant applied for review of order dated 19.07.2021. The Review Application was disposed of by observing that it had become infructuous. Retiral benefits of the applicant were still not released. In this factual background the High Court set aside orders of this Tribunal and directed the department to release all retiral benefits.

8. It is apparent that neither of the rulings is applicable to the facts of case in hand.

9. Heading of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 and sub rule 3 of said rule are as under:-

“130. Provisional pension where departmental or judicial proceedings may be pending

(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.”

Aforequoted provisions show that there is no merit in this O.A.. Hence, it is dismissed with no order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 28/06/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 28/06/2023.
and pronounced on

Uploaded on : 30/06/2023.