

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.346 OF 2021
(Subject:- Pension and Pensionary Benefits)**

DISTRICT: - Aurangabad.

Dilip S/o Parbat Patil,.)
Age: 59 years, Occu: Pensioner,)
R/o. Flat No.6, Suyog Complex,)
Deshmukhnagar,)
Taluka and District Aurangabad.)
Mob. No.8805015719.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Additional Chief Secretary)
Home Department, C.S. Office,)
Main Building Mantralaya, 6th Floor,)
Madamkama Road,)
Hutatma Rajguru Chowk,)
Nariman Point, Mumbai-400032.)
Maharashtra State.)
 - 2. The Director General of Police,**)
Police Head Quarters, Old Council Hall,)
Shahid Bhagatsingh Marg, Kulaba,)
Mumbai -400001 Maharashtra State.)
 - 3. The Superintendent of Police,**)
Office of Superintendent of Police,)
Vazirabad Square, Nanded-431602.)
 - 4. The Accountant General (Accounts & Entitlement),**)
Office of the Accountant General,)
(Accounts & Entitlements)-I,)
Pension Wing, Old Building,)
P.B. No.114. GPO, Civil Lines,)
Nagpur-440001.)...**RESPONDENTS**
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APPEARANCE : Shri V.B. Wagh, learned Advocate
for the applicant.
: Shri B.S. Deokar, learned Presenting
Officer for the respondents.

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

DATE : **17.07.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned communication dated 08.06.2021 (Annex. 'A-2') issued by the respondent No.3 i.e. the Superintendent of Police, Nanded thereby refusing to release the leave encashment amount of the applicant and also seeking direction against the respondent to prepare pension papers of the applicant and to forward to the office of respondent No.4 i.e. the Accountant General, Nagpur for sanction and to release all the retirement benefits i.e. Leave Encashment, Gratuity, Pension and Commutation of Pension etc. forthwith which was denied to the applicant in view of criminal proceeding pending against the applicant.

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

- (i) The applicant was initially appointed as Police Sub-Inspector vide appointment order dated 31.03.1995. He was promoted vide order dated 01.01.2009 to the post of Assistant Police Inspector and further promoted to the post of Police Inspector on 18.06.2014 and was posted under the office of Superintendent of Police, Nanded i.e. respondent No.3 and he retired therefrom on superannuation on 28.02.2021 as reflected in retirement notice dated 26.02.2021 (Annexh. 'A-1').
- (ii) It is further contended that after his retirement on superannuation, the respondent authorizes released only the amount of G.I.S. and G.P.F, but withhold the amount of leave encashment citing Rule 68 of Maharashtra Civil Services (Leave) Rules, 1981 by issuing impugned communication dated 08.06.2021 (Annex. 'A-2') and the said communication is issued by the respondent No.3 i.e. the Superintendent of Police, Nanded stating that Crime No.429/2019 under Section 279, 337, 304(A) of Indian Penal Code is registered

against the applicant at Police Station Akhada Balapur, District Hingoli and the criminal case thereof is pending against the applicant.

- (iii) It is further stated that while he was working on the post of Police Inspector, he was allotted the election duty which was scheduled on 21.10.2019. While he was traveling in respect of that from Nanded to Hadgaon, incident of vehicular accident took place and the crime came to be registered against him as stated above. The said crime came to be registered at Police Station Alkhada Balapur, District Hingoli at the instance of the private person. Upon investigation of the said crime, charge sheet is filed against the applicant in respect of said vehicular accident as per Annex. 'A-3' and criminal case is pending against the applicant in the Court of learned Judicial Magistrate First Class, Kalamuri.
- (iv) However, yet charge is not framed against the applicant in the said criminal case and therefore, cognizance is not taken due to pandemic situation. The said case did not proceed further and it is still pending.

- (v) It is further stated that the applicant submitted his representation dated 01.03.2021 (Annex. 'A-4') to the respondent No.3 to release his retirement benefits as there was no enquiry or no recovery against him. Even on preliminary enquiry in respect of the said accident, minor punishment of Censure is imposed upon the applicant by the respondent No.3 by order dated 12.11.2020 (Annex. 'A-5'). It was not the case of committing misconduct while discharging the duties of the post held by the applicant as a Government Servant. Due to withholding of pension and pensionary benefits, the applicant has been deprived of his fundamental right as recognized under Article 300(A) of the Constitution of India.
- (vi) The respondent authorities ought to have considered that the criminal case in which the applicant is involved is not in respect of any misconduct while discharging the official duties and the applicant has been punished departmentally in that respect. Only after outcome of the criminal case, the respondent authorities at the most will have right to take necessary steps of withholding the pension and pensionay benefits, as the

applicant has already retired from service on superannuation. The action of the respondent authorities has violated Article 300(A) of the Constitution of India. The applicant has right to receive the pension, gratuity amount and other pensionary benefits on retirement as he has rendered 26 years of service. The respondent authorities said to have withhold all these benefits by taking recourse to Rule 27 of Pension Rules. However, the said provision would come into picture, if there is misconduct in discharging of official duties. In view of the same, impugned communication dated 08.06.2021 (Annex. 'A-2') issued by the respondent No.3 refusing to release the leave encashment and not processing the case of the applicant for pension and pensionary benefits is not legal and proper and the applicant is entitled for necessary directions against the respondents.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 to 3 by one Birappa Dhondiba Bhusnur working as Police Inspector (Control Room) in the office of the respondent No.3 i.e. the Superintendent of Police, Nanded. Thereby he

denied all the adverse contentions raised in the affidavit-in-reply and resisted the following specific contentions:-

- (i) It is admitted that in the year, 2019 there was election of Lok Sabha. In that regard, the applicant was entrusted an election duty at Hingoli. It was expected of the applicant to travel by Government vehicle, but at that time the applicant travelled in a private Alto Car bearing No.MH-15-BN-4069. The applicant himself was driving the said car. The applicant caused accident by driving the said vehicle in rash and negligent manner. In the said accident, one girl by name Bhagyshri died on the spot. In view of the same, Crime No. 429/2019 under Section 279, 337, 304(A) of Indian Penal Code 1869 r/w Section 3/181 of Motor Vehicle Act came to be registered against the applicant at Police Station Akhada Balapur District Hingoli. The trial in respect of the said crime is pending against the applicant in the Court of Judicial Magistrate, First Class at Kalamnuri, District Hingoli.
- (ii) In view of abovesaid incident of rash and negligent driving by the applicant resulted into causing death of one innocent girl, preliminary enquiry was held against

the applicant in respect of the said misconduct and the punishment of “Reprimand” / “Censure” was inflicted by the Special Inspector General of Police, Nanded Range, Nanded vide order dated 12.11.2020 by invoking Rule 25 of Maharashtra Police Act, 1951. Moreover, as a criminal case as stated above is pending against the applicant, the pension and pensionary benefits are withhold as stated by the applicant as per provisions of Rule 26 and 27 of Maharashtra Civil Services (Pension) Rules, 1982. In view of said Rules, administratively it is not possible to release regular pension to the applicant and hence, the respondent No.3 did not submit pension proposal of the applicant to the office of the Accountant General, Nagpur. In view of same, the applicant is not entitled for any of the reliefs as claimed in the Original Application and the application is liable to be dismissed.

4. Affidavit-in-rejoinder is filed on behalf of the applicant thereby denying the adverse contentions raised in the affidavit-in-reply and reiterating the contentions raised in the Original Application.

(i) It is specifically submitted that the respondent authorities failed to consider that no cognizance of the

matter is taken by the Judicial Magistrate, First Class, Kalamuri in the criminal case pending against the accused as the charge is not framed. In view of same, the respondents ought to have taken into consideration the provisions of Rule 27 (6) (a) and (b) of the Maharashtra Civil Services (Pension) Rules, 1982 which they have failed to do.

5. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer representing the respondents on the other hand.

6. Considering the rival pleadings and submissions, it is evident that this matter revolves around the provisions of Rule 26 dealing with pension subject to good conduct; Rule 27 dealing with right of Government to withhold or withdraw pension and Rule 130 dealing with provisional pension, where departmental or judicial proceedings may be pending.

7. Learned Advocate for the applicant submitted that Rule 26 dealing with pension subject to good conduct would definitely come into picture in case of future conviction of the applicant in the pending criminal case. Till then the pension

and pensionary benefits can be released in favour of the applicant by taking requisite undertaking from the applicant and by construing Rule 27 dealing with right of Government to withhold or withdraw pension and Rule 130 dealing with provisional pension where the departmental or judicial proceedings may be pending liberally.

8. In the case in hand, it is an admitted position that the applicant has been granted some of the retirement benefits i.e. G.I.S. and G.P.F. amount. However, pension papers for regular pension and other retirement benefits such as gratuity, leave encashment and commutation of pension are not processed by taking recourse of the provisions of Rule 27 and Rule 130 of M.C.S. (Pension) Rules. More particularly, by impugned order dated 08.06.2021 (Annex. 'A-2') issued by the respondent No.3 i.e. the Superintendent of Police, Nanded, leave encashment is refused in view of the provisions of Rule 68 (5) and (1) of M.C.S. (Leave) Rules, 1981. However, in fact Rule 68 (6) (a) of M.C.S. (Leave) Rules, 1981 deals with withholding of leave salary amount pending the disciplinary and criminal proceedings.

9. In view of above stated position, the learned Advocate for the applicant strenuously urged before me that criminal

proceeding which is pending against the applicant is not connected with the discharging of duties of the applicant of the post from which he has retired. It is not going to result into any recovery of amount towards any loss caused to the Government. In view of the same, according to him, the provisions of Rule 27 and 130 of M.C.S. (pension) Rules and Rule 28 of M.C.S.(Leave) Rules are not applicable strictly and in such situation the pension and pensionary benefits can be released by taking requisite undertaking from the applicant that in case of his conviction, he will refund the amount. He further submitted that withholding of pension and pensionary benefits due to the applicant by the Government are in contravention of the constitutional right bestowed upon the Government servant as per Article 300-A, which deals with the persons not to be deprived of property save by authority of law and definition as stated in Article 366 (17) of Constitution of India.

10. To substantiate the abovesaid submissions, he placed reliance on following citation:-

Writ Petition No.2630 of 2014 decided by the Hon'ble High Court of Judicature at Bombay Bench at

Aurangabad in the matter of **Purushottam Kashinath Kulkarni & Ors. Vs. The State of Maharashtra and Others**. decided on 16.04.2016.

In the said citation case by interpreting the provisions of Article 300-A and 366 (17) of Constitution of India and by relying upon the case law of the Hon'ble Apex Court in the matter of State of Jharkhand and Others reported in 1(2013) 12 S.C.C. 210, it is held that withholding the amount of pension, gratuity and leave encashment cannot be countenanced.

11. He further placed reliance on citation reported in 2017(3) Mh,L.J., page No.251 in case of **Nanuram S/o Dagdu Beldar Vs. State of Maharashtra and Ors.** wherein the Hon'ble High Court has been pleased to observe that suspension based on the incident unconnected with the discharging of the duties of the Government Servant is not sustainable in the eyes of the law and is liable to be set aside.

12. He further placed reliance on the decision of the Co-ordinate Bench of this Tribunal at Mumbai in O.A.No.1072 of 2017 in the matter of **Shri Raosaheb Channappa Mane Vs. The Commissioner of Police, Mumbai & two Ors.** decided

on 07.09.2018. In the case, the respondents therein declined to release the pensionary benefits to the applicant on account of criminal case pending against the applicant therein. The criminal case pending against the applicant therein was on the basis of complaint filed by the private party. The applicant challenged the criminal case by filing the Writ Petition before the Hon'ble High Court and the Hon'ble High Court was pleased to stay the said proceedings against the applicant. The said case was not at all connected with the official duty of the applicant. In view of same, relief was granted to the applicant by giving necessary direction to the competent authority for granting regular pensionary benefits to the applicant.

13. Learned Presenting Officer representing the respondents on the other hand submitted that from the contentions raised in the affidavit-in-reply, it is evident that at the material time of vehicular accident, the applicant was on election duty and instead of travelling by public transport, the applicant travelled in private Alto Car driven by the applicant himself and due to rash and negligent driving by the applicant, one innocent girl died. In view of the same, according to him it cannot be said to criminal case pending against the applicant

is unconnected with the discharging of the duty. Therefore, according to him withholding the pension and pensionary benefits is legal and proper and is in accordance with the provisions of Rules 27, 130 of M.C.S. (Pension) Rules and Rule 68 of (Leave) Rules.

14. After having considered rival submissions as above, in the background of the facts of the present case, it is seen that prima-facie it is evident that going to the place of election in private Alto car which met with an accident cannot be by any stretch of imagination can be said to be connected with discharging of the official duty by the applicant. From the nature of proceedings, it can be seen that even if the applicant is convicted in the trial of the said criminal case, it is not going to cause any monetary loss to the Government or leading to any recovery of money by the Government from the applicant. Otherwise also in case of conviction of the applicant, the provisions of Rule 26 (Pension) Rule at the most would come into play, but continuation of withholding the pension and pensionary benefits till decision of the Criminal proceedings unconnected with the official duty of

the applicant would be detrimental of the statutory right of the applicant to receive the pension and pensionary benefits arising out of his long standing service and otherwise also unblemished service rendered by the him. The balance can be struck by taking requisite undertaking from the applicant of refund of the amount in case he is held guilty in the criminal proceedings in accordance with law.

15. In the facts and circumstances of this case, the ratio laid down in the above citation cases relied upon by the learned Advocate for the applicant would be applicable. The contentions raised by the respondents for withholding the pension and pensionary benefits for indefinite period till the decision in a criminal case is not legal, tenable and acceptable. In such circumstances, impugned order dated 08.06.2021 (Annex. 'A-2') issued by the respondent No.3 i.e. the Superintendent of Police, Nanded denying leave encashment to the applicant is liable to be quashed and set aside and the applicant would be entitled for pension and pensionary benefits in accordance with law in a specific period subject to giving of requisite undertaking by him as

discussed above. I therefore, proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned communication dated 08.06.2021 (Annex. 'A-2') issued by the respondent No.3 i.e. the Superintendent of Police, Nanded is hereby quashed and set aside.
- (B) The respondents are directed to process the pension papers of the applicant and to forward the same to the office of the respondent No.4 i.e. the Accountant General, Nagpur for sanction and to release all the retirement benefits namely leave encashment, gratuity, commutation of pension and pension and pensionary benefits etc. immediately in accordance with law upon furnishing requisite undertaking by the applicant that if required, he would refund the amount of pensionary benefits paid to him within the period of two months in case, he is held guilty in the criminal proceedings pending against him.

(C) The respondent authorities are directed to complete the abovesaid endeavor within the period of four months after receipt of requisite undertaking from the applicant.

(D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 17.07.2022
SAS O.A.346/2021