

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 977/2018(S.B.)

Shri Dindayalsing Gulabsingh Chauhan,
Aged about : 61 years, Occu. : Retired,
R/o. Pragati Colony, At Post :
Sendurwafa, Tah. : Sakoli,
Dist. Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Forest,
Mantralaya, Mumbai-32.
- 2) The Additional Principal Chief
Conservator of Forest, Nagpur.
- 3) The Chief Conservator of Forest
(Territorial), Nagpur.
- 4) The Deputy Conservator of Forest,
Bhandara Division, Bhandara.
- 5) The Deputy Conservator of Forest,
Bhandara Division, Bhandara.
- 6) The Range Forest Officer, Sadak Arjuni,
Dist. : Gondia.
- 7) The Accountant General-II, Nagpur.

Respondents

Shri G.G.Bade, Ld. counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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

Dated: - 30thAugust 2022.

JUDGMENT

Judgment is reserved on 24th August, 2022.

Judgment is pronounced on 30thAugust, 2022.

Heard Shri G.G.Bade, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

On 21.10.2015 when he was working as a Forester, an offence came to be registered against the applicant under the Prevention of Corruption Act. On 31.07.2016 he retired on superannuation. Because of aforesaid case only provisional pension i.e. 90% was sanctioned and gratuity was withheld. This was impermissible under the Rules. His representations dated 17.09.2016 (Annexure A-3) and 13.10.2016 (Annexure A-4) for releasing 100% pension and gratuity went unheeded. Instead of sanctioning full amount of travelling allowance of Rs.15,168/- only an amount of Rs.6,064/- was sanctioned. Respondent no.3, by letter dated 16.07.2014 (Annexure A-7) sanctioned medical bill of Rs.70,050/- but this amount is also not paid so far. Hence, this application for releasing 100% pension, gratuity, amount of medical bills and remaining amount of travelling allowance.

3. Reply of respondent no.5 is at pp.24 to 30. It is his contention that on account of pendency of Criminal case no.3032/2015 under the Prevention of Corruption Act provisional pension to the extent of 90% was sanctioned, and entire amount of gratuity was withheld under Rule 130(1)(c) of the MCS (Pension) Rules, 1982. His further contention is that out of the total claim of Rs.15,168/- towards travelling allowance claim of only Rs.6,064/- was found to be admissible and paid (Annexure R-1). According to this respondent, amount of medical bills could not be paid because original bills were not traceable in the office.

4. In his rejoinder at pp.34 to 38 the applicant has contended that in the Criminal Case charge is yet to be framed and hence, 100% pension will have to be paid, and gratuity amount cannot be withheld. He has further contended that original medical bills were filed in the office and for untraceability of the same he cannot be made to suffer.

5. Additional affidavit filed by the applicant is at pp.68 to 72. In this affidavit it is stated *inter alia* that in Criminal case no.3032/2015 charge came to be framed only on 29.09.2021.

6. To the additional affidavit the applicant has attached two judgments of this Tribunal (Principal Bench) and judgment of the Hon'ble Supreme Court at Annexures A-11, A-12 and A-13.

7. The judgment at Annexure A-11 (***Chandrakant N. Desale versus The Joint Director***) in O.A.No.13/2021 is dated 01.04.2021. In this case the Tribunal, *inter alia* considered Rule 130 (1)(c) of the MCS (Pension) Rules, 1982. Said Rule reads as under-

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

(a) X XX

(b) X XX

(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.

The Tribunal then held-

8. It is thus explicit that as per Rule 130(1)(c) of ‘Rules of 1982’, the gratuity can be withheld if on the date of retirement, the judicial proceedings or D.E. is pending. Whereas, in the present case, admittedly, even till date, no charge-sheet is filed in criminal offence registered against the Applicant in 2018. As such, the position emerges from the record that only FIR was registered against the Applicant and it has not translated into filing of charge-sheet in Court of law. The judicial proceedings can be said/ deemed to have been instituted where report of Police Officer (charge-sheet) has been filed and Magistrate has taken cognizance of the same. When the FIR is still under investigation and no charge-sheet is filed in the Court of law, it cannot be said that judicial proceedings are instituted. The Registration of FIR and pendency of investigation

cannot be equated with the judicial proceedings. Suffice to say, the judicial proceeding commences only when the Magistrate applies his mind to the allegation made in the charge-sheet under the provisions of Section 190 of Criminal Procedure Code.

It was further held-

In other words, there has to be initiation of departmental proceedings or institution of charge-sheet, so as to term it judicial proceeding on the date of retirement of a Government servant.

8. The judgment at Annexure A-12 (*Raosaheb Channappa Mane versus the Commissioner of Police and two others*) in O.A.No.1072/2017 is dated 7/09/2018. In para 18 relevant facts were set out as under-

18. In the present case, admittedly no departmental enquiry is pending against the Applicant and only one criminal case is pending which is instituted on private complaint of Mrs.Jounjal. Admittedly the Applicant has also filed criminal case against Mr. and Mrs. Jounjal and in that case they were acquitted. Therefore in such circumstances it is necessary to consider as to whether it will be proper to decline release of regular pensionary benefits to the Applicant and particularly when said proceedings are stayed by the Hon'ble High Court.

In para 20 it was reiterated-

20. In the present case, even though the FIR was registered against the Applicant, no cognizance has

been taken by the Magistrate and in fact the proceedings were stayed by the Hon'ble High Court vide order dated 4.8.2011. It is stayed and till today, no charges have been framed against the Applicant by the Magistrate.

It was also observed-

21. Learned Advocate for the Applicant also placed reliance on the judgment delivered by this Tribunal in O.A.No.883 of 2014 in case of Shri Mohd. Gaus Shaikh Vs. The Director of Vocational Education and Training on 3.11.2015. In para nos.9, 17 to 19 this Tribunal has observed as under :-

“9. As far as the issue of gratuity is concerned, in circumstances such as this one, the issue is squarely covered by a judgment of this Tribunal (Single Bench of the Hon'ble then Chairman) in O.A.1109/2010 (Shri Vasant A.Kadam Vs. State of Maharashtra, dated 4.10.2011. I have perused it. That was a matter where the Applicant was embroiled in a criminal case for which he was also under arrest for about $\frac{3}{4}$ days, and hence, under deemed suspension. In the meanwhile, he was made to stand as an accused before the Special Court. No charge was framed against him in that matter and in the meanwhile, he retired on 28th February, 2002. In that context, reliance was placed before this Tribunal on Rule 27 (2) (3) of Maharashtra Civil

Services (Pension) Rules, 1982 and case law was also cited and discussed. That was Moreshwar Vs. State of Maharashtra 1998 (1) MLJ 490. The issue was as to when it can be held that the criminal proceedings have commenced in the context of enabling the Respondent to withhold the post retiral benefits. It was apparently that the crucial date would be the date on which the cognizance was taken, which would be when the judicial mind was applied and framing the charge was considered. Merely lodging of the matter before the said Court cannot be said to be commencement of criminal proceedings.”

In para 22 it was observed-

22. The criminal case on the basis of private complaint against Applicant may be due to rivalry between Applicant and complainant and admittedly allegations in said criminal case are not at all related to discharge of any duties of the Applicant as public servant.

9. Judgment at Annexure A-13 is of the Hon’ble Supreme Court (*State of Jharkhand and Others versus Jitendra Kumar Srivastava (2013) 12 SCC 210*). In this case it is held-

14. Article 300 A of the Constitution of India reads as under :

300A Persons not to be deprived of property save by authority of law. - No person shall be

deprived of his property save by authority of law. Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

10. So far as the judgments at Annexures A-11 and A-12 are concerned, they are distinguishable on facts of the instant case. Criminal Case No.3032/2015 was pending at the time of retirement of the applicant on 31.07.2016. Aforesaid Criminal Case must have been registered and accordingly numbered on filing of charge sheet and at that stage of filing charge sheet the special Court must have taken cognisance of the case. Thus on the date of retirement of the applicant judicial proceeding as contemplated under Rule 130(1)(c) of the MCS (Pension) Rules, 1982 was pending against him authorising the employer to withhold the amount of gratuity.

11. An attempt was made on behalf of the applicant to put forth a proposition that judicial proceeding can be said to be pending as

contemplated under Rule 130(1) (c) only when charge is framed. This submission cannot be accepted. Once charge sheet is filed in the Court pendency of judicial proceeding for the purpose of Rule 130(1)(c) commences. I have already observed that in the instant case charge sheet was filed in the Special Court in the year 2015 itself. The applicant retired thereafter on 31.07.2016. Filing of charge sheet and framing of charge are distinct. To act under Rule 130(1)(c) what is needed is the former and not the latter.

12. The ruling of the Hon'ble Supreme Court at Annexure A-13 will also not help the applicant in contending that amount of gratuity cannot be withheld. In support of this conclusion reliance may be placed on **Mohan Madhavrao Khapke versus Ahmednagar Municipal Corporation 2018 (4) All MR 682 (Bombay High Court)** wherein it is held-

7. It is thus settled by the Apex Court that unless the Rules provide for withholding the gratuity, gratuity in the above said backdrop cannot be withheld on the basis of a circular issued by the employer. In the instant case, Rule 130(1)(c) specifically provides that until the departmental or judicial proceedings are concluded and final orders are issued, gratuity could be withheld.

(Emphasis Supplied)

13. For the aforementioned reasons no fault could be found with release of provisional pension to the extent of 90%, and withholding of amount of gratuity.

14. Specific stand of respondent no.5 is that travelling allowance claim was found admissible only to the extent of Rs.6,064/- and the same has been paid. This contention has not been traversed by the applicant. Hence, prayer for grant of remaining amount of travelling allowance cannot be granted.

15. So far as the claim of reimbursement of medical bills is concerned, the respondent no.5 has averred as follows-

After the above said amount of medical bill was sanctioned to the applicant, respondents forwarded medical bills for payment to the Sub-Treasury Officer, Sadak Arjuni Dist : Gondia for release of payment to the applicant. However, the Sub -Treasury Officer, Sadak Arjuni Dist : Gondia raised technical objection that the above said amount of Rs.70,050/- cannot be released as original medical bills were not attached and xerox copies of the medical bills were attached by the respondent department. A copy of letter dated 08/03/2016 of the RFO, Sadak Arjuni, in this regard is annexed herewith as Annexure R2. However, since, original medical bills of the applicant are not traceable in the office of RFO, Sakoli, hence, RFO, Sakoli vide communication dated 16/12/2020 has

asked the applicant to supply either original medical bills or duplicate copies of the medical bills to enable the respondent to forward the same to the Sub-Treasury Officer, Sadak Arjuni Dist : Gondia for payment. A copy of the above communication dated 16/12/2020 is annexed herewith as Annexure R-3. It is thus, apparent from the above that, all admissible dues have been paid to the applicant except the medical claim of Rs.70,050/- which could not be released due to technical objection of the Sub-Treasury Officer, Sadak Arjuni and respondents have already approached the applicant for removal of the above said technical objection of the Sub-Treasury Officer, Sadak Arjuni.

These averments show that the applicant had furnished original bills but the same have been misplaced in the office. For this lapse the applicant cannot be made to suffer. Thus, the only relief which can be granted in favour of the applicant would be in the form of directions to the respondent department to release the amount of medical bills within the stipulated time. Hence, the order.

ORDER

The O.A. is allowed in the following terms-

The respondent department is directed to release the amount of medical bills in favour of the applicant within 30 days from the date of this order. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 30/08/2022

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 30/08/2022.
and pronounced on
Uploaded on : 30/08/2022.