

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.252 OF 2019

DISTRICT : PUNE

Shri Kantilal Damodar Shah,)
Age 74 yrs, Retired Regional Dairy Development Officer))
Dairy Development Department,))
R/at Flat No.1, Fountain Head Apartments,))
Opp. Sangam Press, Near Karishma Complex,))
Kothrud, Pune 411038)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Agriculture, Animal)
Husbandry, Dairy Development and Fisheries)
Department, Mantralaya, Mumbai 400032))
2. The Deputy Commissioner (Administration),)
Dairy Development Department,)
Administrative Building, A.G. Khan Marg,)
Worli Seaface, Worli, Mumbai 400018)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 15th October, 2019

PRONOUNCED ON : 22nd October, 2019

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

Brief facts of the case:

2. The applicant was working in the establishment of respondent no.2 (Dairy Development Department) and retired on 30.6.2003. There were two DEs against the applicant. In the first DE punishment was inflicted on him on 28.7.2010. The applicant preferred appeal against the same and the appellate authority after modification of the order partially confirmed and communicated the same on 25.2.2015. The applicant approached the Tribunal against the same vide OA No.692 of 2014. On 29.8.2016 the OA was allowed and the punishment order was quashed and set aside. In the second DE against the applicant the final order was issued on 8.1.2015. The applicant moved the same before this Tribunal in OA No.834 of 2016. The OA was allowed on 1.2.2017 and the punishment order was quashed. The Tribunal observed, "The deduction, if any, made from his pension or gratuity, shall be refunded to him within four weeks from today". Accordingly on 22.5.2018 the applicant submitted a representation for payment of interest for delayed payment due to administrative reasons (Annexure A-14 page 96). Respondent no.1 rejected the same vide communication dated 29.9.2018 addressed to respondent no.2 (Annexure A-15). The relevant portion of the same reads as under:

“आयुक्त दुग्धव्यवसाय विकास कार्यालयाने संदर्भीय क्र.२ च्या पत्रान्वये सादर केलेल्या अहवालनुसार श्री. के.डी. शहा यांना अंशराशीकरण व उपदान यासंबंधीच्या रकमा मिळण्यासाठी झालेला विलंब हा प्रशासकीय विलंब दिसून येत नाही. तसेच मनासे नियम, १९८२ मधील नियम

१३०-१(सी) मधील तरतूद पाहता सादर रकमांवर श्री. शहा यांना कोणत्याही प्रकारचे व्याज अनुज्ञेय नाही. त्यामुळे श्री. शहा यांनी दि. २२.५.२०१८ च्या निवेदनाद्वारे अंशराशीकरण / उपदान रकमेवर व्याज देण्याबाबत केलेली मागणी उचित नाही. सबब, त्याप्रमाणे श्री.के.डी. शहा यांना आपल्या स्तरावरून कळविण्यात यावे.”

(Quoted from page 99 of OA)

3. Accordingly respondent no.2 informed applicant on 20.11.2018 as under:

“आपणांस अंशराशीकरण व उपदान या संबंधच्या रक्कमा मिळण्यास झालेला विलंब हा प्रशासकीय विलंब दिसून येत नाही. तसेच मनासे (सेवानिवृ-ती वेतन) नियम १९८२ मधील नियम १३०-१ (सी) मधील तरतूद पाहता सादर रकमावर आपणांस कोणत्याही प्रकारचे व्याज अनुज्ञेय नाही. त्यामुळे आपण आपल्या निवेदनाद्वारे अंशराशीकरण व इतर रकमेवर व्याज देणेबाबत केलेली मागणी उचित नाही.”

(Quoted from page 100 of OA)

4. The applicant has challenged the same with following prayers:

“9(a) That this Hon’ble Tribunal be pleased to quash and set aside the orders dated 29.9.2018 and dated 20.11.2018 and direct the respondents to pay interest on delayed payment of commutation of pension and gratuity at the rate of 12% p.a. from the date of retirement of the applicant i.e. 30.6.2003 along with all the consequential service benefits within a period of two months from the date of the order of this Hon’ble Tribunal.”

(Quoted from page 13 of OA)

5. Ld. Advocate for the applicant relies on following judgment:

(i) Prabhakar Marotirao Dalal Vs. State of Maharashtra & Anr. 2009(1) Mh.L.J. 209. Head notes and relevant part of para 6 reads as under:

“(a) Maharashtra Civil Services (Pension) Rules, 1982, RR. 129-A, 130(1)(c) and Government Resolution dt. 23.6.1986 – Interest on delayed payment of gratuity – Entitlement – Disciplinary inquiry pending against petitioner on the date of superannuation – Delay in payment of gratuity not attributable to administrative lapses – As per Rules gratuity not payable until conclusion of the departmental or judicial proceedings and issuance of final orders thereon – Petitioner not entitled for any interest on the payment of gratuity as there was no delay on the part of the authorities in releasing the gratuity amount. (Paras 5 and 6)

(b) Maharashtra Civil Services (Pension) Rules, 1982, R. 130(1)(c) – Gratuity cannot be authorized till the departmental proceedings are concluded and a final order passed thereon – Interest for delayed payment of gratuity is payable only in the event of the conclusion of the departmental proceedings and payment of gratuity is authorized and after such authorization it is not paid within three months. (Para 5)

6. In our opinion, correctly read para 3 of the said Government resolution 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 a person, then in those cases, on the competent authority authorizing the release of gratuity, it will be presumed that the gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. If it is so read, then the Government resolution would not fall foul of Rules 130(1)(c) and 129-A of the Pension Rules.”

(ii) State of Maharashtra & Ors. Vs. Satyadeo Nandakishore Awashti, 2014(2) Mh.L.J. 344. Head notes reads as under:

“(a) Maharashtra Civil Services (Pension) Rules, 1982, RR. 129-A and 129-B and Constitution of India, Art. 309 – Departmental enquiry – Once the employee is exonerated, the pensionary benefits and interest thereon just cannot be denied – Pensionary benefits is a constitutional right of employee, who has worked till the date of retirement – Once the employee is exonerated, he is entitled for pensionary amount with interest because this exoneration brings the position back. (Para2)

(b) Maharashtra Civil Services (Pension) Rules, 1982, RR. 129-A and 129-B and Constitution of India, Art. 309 – No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and/or issue of final orders thereon – But, once the employee is exonerated, there is no question of detaining the said amount. (Para 3)”

Submissions by the respondents:

6. The respondents have filed affidavit and contested the claim made by the applicant. The relevant portion of the same are summarized as under:

(i) Two DEs were pending against the applicant and hence gratuity and pension was withheld.

(ii) Rule 130(1)(c) of the MCS (Pension) Rules, 1982 mentions about withholding amount of gratuity, if DE or court case is pending against the applicant.

(iii) The orders issued by the Tribunal in OA No.692 of 2015 dated 29.8.2016, Government has challenged the same before the Hon'ble Bombay High Court by Writ Petition No.2188 of 2017 and the orders issued by this Tribunal on 1.2.2017 in OA No.834 of 2016 by challenging in Writ Petition No.6558 of 2017.

(iv) As the applicant was filing several rounds of litigation before the Tribunal and Hon'ble High Court he submitted his pension papers very late after the respondents asked him to do so repeatedly and thus there was no delay on the part of the respondents. There was also no administrative delay.

7. The affidavit further submits as under:

“21.1 Even before the finalization of court matters, the respondents had asked the applicant to submit his pension papers vide office letters dated 16.9.2015, 28.4.2016, 4.6.2016, 4.7.2016, 16.9.2016 and 16.1.2017. However, the applicant submitted these papers only on 20.2.2017. Hence the applicant is also responsible for the delay of 2 years in submitting the pension papers. The pension case of the applicant was forwarded to the Accountant General Office, Mumbai on 29.3.2017 for sanction of pension and other benefits excluding gratuity.

21.2 Two different departmental enquiries were pending against the applicant and hence his some of the retirement benefits were withheld as per rules. Now since both the Departmental Enquiries have been finalized, applicant has been paid all the retirement benefits time to time. Applicant is not entitled for interest on delayed payments due to above facts.”

(Quoted from page 106-107 of OA)

8. Hence, the respondents have prayed that the OA is without any foundation and the same deserves to be dismissed.

9. The applicant has filed rejoinder to the affidavit. Relevant portion of the same reads as under:

“14. With reference to para 14, I say and submit that respondent granted commutation only after directives of Hon’ble MAT in OA No.578 of 2015 and paid the amount on 12.1.2018 i.e. after a delay of about 7 ½ months over the period specified in Hon’ble MAT order dated 29.3.2016.

In fact there was no recovery proposed by respondent from commutation amount, it was necessary to pay the said amount immediately on retirement alike provisional pension, provisional commutation amount could have been paid. This was not done by the respondent hence I had to suffer financial loss. If the commutation would have been paid within three months after retirement I would have received commutation amount of Rs.2,83,926/- and recovery of that would have been 2262 p.m. X 12 X 15 years) Rs.407160/-. But the commutation amount has been paid on 12.1.2018 that to amount of Rs.1,71,008/- and recovery of that for next fifteen years is the same as Rs.407160/-. Hence, I am put to unnecessary loss of Rs.1,12,918.00 only due to delay in payment of commutation. This is calculated as per actual amount and due amount as Rs.4,07,1600.00 - Rs.2,83,926.00 = Rs.1,23,234.00 and Rs.4,07,160.00 - Rs.1,71,009.00 = Rs.2,36,152.00 hence net loss is Rs.2,36,152.00 - Rs.1,23,234.00 = Rs.1,12,918.00. This unnecessary loss needs consideration while granting relief under this OA.”

(Quoted from page 112 of OA)

10. The applicant has further submitted that the delay in payment of commutation is attributable to the inordinate delay by the respondents to finalize pending DE cases.

Findings and observations:

11. I have perused the relevant record as well as rules. Rule 130(1)(c) of the MCS (Pension) Rules, 1982 reads as under:

“130 (1)(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.”

12. The Hon’ble Bombay High Court in the case of *Prabhakar Marotirao Dalal* (supra) has observed as under:

6. In our opinion, correctly read para 3 of the said Government resolution 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 a person, then in those cases, on the competent authority authorizing the release of gratuity, it will be presumed that the gratuity is deemed to have fallen due on the date immediately following the date of retirement for the purpose of interest. If it is so read, then the Government resolution would not fall foul of Rules 130(1)(c) and 129-A of the Pension Rules.”

13. In the instant case, disbursement of payment of gratuity is delayed not due to administrative lapses but due to pendency of disciplinary enquiry against the applicant on the date of superannuation. As the facts of the case reveal, gratuity was withheld because of the DEs in which the disciplinary authority as well as the appellate authority had confirmed the judgment. The punishment imposed on the applicant was quashed and set aside by this Tribunal. However, the respondents have challenged the same vide W.P. No.2188 of 2017 and W.P. No.6558 of 2017. The decision regarding the same is still awaited. Meanwhile the respondents have asked the applicant to complete the pension papers repeatedly and the

applicant submitted the same on 20.2.2017. As soon as the papers were completed the pension papers were submitted to the office of AG on 29.3.2017 and the same has been sanctioned on 12.5.2017. The pension was sanctioned on 20.6.2017. The amount of gratuity has been disbursed to the applicant on 6.5.2018 and commutation of pension was released on 13.1.2018.

14. In the case of *State of Maharashtra & Ors. Vs. Satyadeo Nandakishore Awashti* (supra) the applicant had died while DE was on. The balance amount on account of remaining pension amount was deposited. The Hon'ble Bombay High Court had observed that, "the respondent-employee is entitled for the amount with accrued interest. The Hon'ble High Court further observed that the respondent-employee/legal representative is permitted to withdraw the same...". Thus the facts of this case are different and therefore not considered relevant in the present matter.

15. The argument of the applicant is that the delay in this payment is due to administrative reasons. However, examination of the record reveals that the delay is due to pending DEs against him and the rounds of litigation. It cannot be categorized as delay due to administrative reasons. Hence, as per Rule 130(1)(c) of MCS (Pension) Rules, 1982 the respondents were justified in not releasing the gratuity earlier. The judicial order by this Tribunal quashing the punishment has been pronounced in OA No.692 of 2015 on 29.8.2016 and in OA No.834 of 2016 on 1.2.2017. As is clear from these facts the delay therefore cannot be attributed to administrative reasons. Hence, there is no merit in the prayers made by the applicant, warranting interference in the impugned order.

16. For the above reasons as there is no merit in the OA and no sound reasons are forthcoming to interfere with the impugned order, the OA is dismissed. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
22.10.2019

Dictation taken by: S.G. Jawalkar.

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