

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.981 OF 2018**

DISTRICT : PUNE

Shri Sunil Sahadu Gargote,)
Police Sub Inspector (Retired), age 62 years,)
R/at 87/4A/1, Shri Ganesha Residency, Flat No.1,)
Azad Nagar, Kothrud, Pune 411038)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai-32)
2. The Director General of Police, (MS))
S.B. Road, Mumbai 400001)
3. The Commissioner of Police for Navi Mumbai,)
Konkan Bhavan, CBD, Belapur, Navi Mumbai)..Respondents

Shri A.R. Joshi – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

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

DATE : 6th December, 2019

J U D G M E N T

1. Heard Shri A.R. Joshi, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. The applicant has approached this Tribunal for allegedly delayed payment of retiral benefits and prays for interest on the same.
3. The applicant was entitled for retiral benefits including payment of pension, provisional pension, gratuity, provisional gratuity and leave salary.

Admitted facts of the case:

4. The applicant was allegedly involved in a case of anti-corruption in which he was acquitted and he had moved this Tribunal by way of Review Application No.10 of 2010 in OA No.1332 of 2009 and this Tribunal by its order dated 5.8.2010 had set aside his suspension. Accordingly the respondents had issued order on 26.11.2015 treating that period as duty period. On 17.11.2015 the respondents took a decision to drop the departmental proceedings against him. On 25.1.2016 the respondents decided to treat his suspension period between 1.11.2010 to 26.5.2014 as duty period. On 11.5.2016 the respondents issued orders for his pay fixation. In between the applicant retired on 30.6.2014.
5. The applicant had moved this Tribunal by way of Original Application No.774 of 2017 pertaining to revision of pay and retirement benefits. On 16.10.2017 the applicant withdrew the OA with liberty to make representation pertaining to unsettled claims.

6. The respondents have filed their affidavit. According to the same the payments have been made of the retirement benefits as follows:

| Sr. No. | Type of Bill | Amount in Rs. | Voucher No.& Date |
|---------|--|--|--|
| 1 | GPF | 7,27,253/- | 119-13/10/2014 |
| 2 | GIS | 1,03,700/- | 61-19/11/2014 |
| 3 | Provisional Gratuity | 2,90,000/- | 3-01/07/2014 |
| 4 | Provisional pension 1.7.2014 to 31.12.2014 | 1,18,890/- six months collectively | 381-22/01/2015 |
| 5 | Provisional pension from AG, Mumbai 1.1.2015 to 30.6.2016 and regular thereafter | 3,98,501/- regularly each month as appended vide Exh.B | Initially for six months w.e.f. 1.7.2014 and thereafter in accordance with Exh.B |
| 6 | Leave Encashment | 4,51,400/- | 136-08/07/2016 |
| 7 | Final Gratuity | 82,405/- | 973-29/09/2016 |
| 8 | Bill of period of suspension | 14,79,439/- | 307-13/10/2017 |

7. The Ld. Advocate for the applicant submits that though the bill for leave encashment might have been submitted on 8.7.2016 but leave encashment was received by him on 17.1.2017. The respondents also did not dispute this date.

8. According to the Ld. Advocate for the applicant, the applicant retired on 30.6.2014 and payment regarding his leave encashment should have been processed as per Rule 68(1) of MCS (Leave) Rules, 1981. The Ld. Advocate for the applicant contended that the payment should have been made within a period of three months i.e. upto 1.10.2014.

9. Ld. PO submits that as per the amendment the payment of leave encashment may be withheld if there is a DE pending against the Government servant. In support of her contention she has relied on the

notification dated 29.6.2006 issued by the Finance Department. The relevant portion of the same reads as under:

- “२. महाराष्ट्र नागरी सेवा (रजा) नियम, १९८१ च्या नियम ६८ मध्ये -
 (अ) पोट-नियम (५) मध्ये, ‘शासकीय कर्मचाऱ्याला’ या मजकुराऐवजी, ‘पोट-नियम ६ च्या तरतुदीच्या अधीन राहून, शासकीय कर्मचाऱ्याला हा मजकूर समाविष्ट करण्यात यावा.
 (ब) पोट-नियम (५) नंतर पुढील पोट-नियम समाविष्ट करण्यात यावा -

‘६(ए) निलंबनाधीन असताना किंवा शिस्तभंगाची अथवा फौजदारी कार्यवाही प्रलंबित असताना, सेवानिवृत्तीचे वय झाल्यावर सेवानिवृत्त होणाऱ्या शासकीय कर्मचाऱ्यांच्या बाबतीत, रजा मंजूर करणाऱ्या सक्षम प्राधिकार्यास, जय त्याच्या मते, अशा कर्मचाऱ्याविरुद्धची कार्यवाही समाप्त झाल्यावर, त्याच्याकडून काही रक्कम वसुलीयोग्य होण्याची शक्ता असेल तर, अर्जित रजेची पूर्णतः किंवा अंशतः सममूल्य रोख रक्कम रोखून धरता येईल. कार्यवाही समाप्त झाल्यावर, तो शासकीय देण्याचे कोणत्याही असल्यास समायोजन केल्यावर अशा रीतीने रोखून धरलेल्या रकमेस पात्र असेल.

(बी) महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या तरतुदीनुसार एक शिक्षात्मक उपाय म्हणून शासकीय कर्मचाऱ्यास सक्तीने सेवानिवृत्त केल्यास, रजा मंजूर करणारा सक्षम प्राधिकारी, त्याला सेवानिवृत्तीच्या दिनांकास त्याच्या खाती अर्जित रजा जमा असल्यास ३०० दिवसांच्या कमाल मर्यादेपर्यंत या नियमात विनिर्दिष्ट केल्या रीतीने अर्जित रजेबद्दल रजा वेतनाची सममूल्य रोख रक्कम देणारा आदेश काढील.”

10. The decision regarding dropping the DE against him was taken on 17.11.2015 therefore the payment should have been made to him within six months thereafter viz. May, 2016. However, the payment has been made to him on 17.1.2017. Thus it is seen from 1.6.2016 till actual date of payment which is 17.1.2017 the amount of Rs.4,51,400/- has been delayed.

11. The Ld. Advocate for the applicant relies on the judgment of the Hon’ble Supreme Court in S.K. Dua Vs. State of Haryana & Anr. dated

9.1.2008 Appeal (Civil) No.184 of 2008. The relevant portion of the same in para 11 reads as under:

“11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge- sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal- practices and misconduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. If there are Statutory Rules occupying the field, the appellant could claim payment of interest relying on such Rules. If there are Administrative Instructions, Guidelines or Norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence Statutory Rules, Administrative Instructions or Guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of • bounty • is, in our opinion, well-founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court

was not right in dismissing the petition in limine even without issuing notice to the respondents.”

12. Thus delay is due to administrative reasons and cannot be satisfactorily explained. In view of the same and for the reasons stated above the respondents are directed to make payment of interest on the leave encashment amount of Rs.4,51,400/- for the period from 1.6.2016 to 17.1.2017 as per the then prevalent rules on the subject.

13. Ld. PO submits that the respondents may be given a period of three months as the matter would be approved by the State Government including Finance Department after fixing the responsibility of the persons concerned. She therefore submits that a period of three months may be granted for making payment.

14. I, therefore, direct that the payment of interest on leave encashment amount of Rs.4,51,400/- for the period from 1.6.2016 to 17.1.2017 should be made within a period of three months from the date of this order.

15. The OA is therefore, partly allowed. No order as to costs.

16. Ld. Advocate for the Applicant as well as Ld. PO submitted that Shri Vitthal Ananda Patil, Police Inspector from the office of Superintendent of Police, Railways, Pune has made significant help in assisting in the present matter. The same is appreciated.

(P.N. Dixit)
Vice-Chairman (A)
6.12.2019

Dictation taken by: S.G. Jawalkar.