

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.373 OF 2017
(Subject – Recovery)**

DISTRICT: JALNA

Shri Kashinath S/o Gopinath Pawar,)
Age: 58years,Occu. :Retired,)
R/o Mauli Row House,)
Canol Road, Shinde Nagar, Beed.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,)**
Through :The Secretary,)
Home Department, Mantralaya,)
Mumbai-32.)
- 2) **The Superintendent of Police,)**
Beed.)
- 3) **The Superintendent of Police,)**
Jalna.)
- 4) **The Account Officer,)**
Pay Verification Unit, Aurangabad) **.. RESPONDENTS**

APPEARANCE : Shri Kakasaheb B. Jadhav, learned Advocate
for theApplicant.

: Shri I.S. Thorat, Presenting Officer for the
Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 04.04.2018.

O R A L - O R D E R

1. Heard Shri Kakasaheb B. Jadhav, learned Advocate for
the applicant and Shri I.S. Thorat, learned Presenting Officer for
respondents.

2. The applicant has filed the present O.A. and challenged the impugned order dated 21/23. 01.2017 issued by the respondent No. 2 re-fixing his pay. The applicant has also prayed to declare that the action of respondent Nos. 2 and 3 directing recovery of excess payment due to wrong pay fixation from him is illegal. He has also prayed to direct the respondents to pay regular pension and pensionary benefits.

3. During the course of the arguments, the learned Advocate for the applicant has submitted that the applicant is not pressing the prayer clause (B). He has further submitted that so far as prayer clause (C) is concerned, the applicant is not pressing the same relief as on today and he will approach this Tribunal as and when cause of action will arise and therefore, he prayed to grant liberty to the applicant to approach this Tribunal in respect of the said prayer.

4. Learned Advocate for the applicant has submitted that the applicant is receiving the provisional pension, since the criminal case for the offences punishable u/s 7, 13 (1)(D) with 13(2) of Prevention of Corruption Act 1968 is pending. He has submitted that the applicant is not pressing the relief regarding directions to be issued to the respondents to release regular pension in view of the pendency of the Criminal Case. He has

submitted that in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982, the respondent is empowered to withhold the gratuity amount till conclusion of the Criminal Case and therefore, the applicant is not pressing his claim to issue direction to the respondents to release gratuity amount. He has also submitted that the applicant is entitled to get other pensionary benefits i.e. amount of leave encashment, commutation and therefore, it is just and proper to direct the respondent No. 3 i.e. the Superintendent of Police, Jalna to release the above said pensionary benefits to the applicant forthwith.

5. Learned Presenting Officer has submitted that the pay has been re-fixed in view of the impugned order by the Superintendent of Police, Beed i.e. respondent No. 2 and he communicated the said order to the Superintendent of Police, Jalna for further action. He has submitted that the Superintendent of Police, Jalna had not assessed the amount to be recovered from the applicant. He has submitted that the remaining pensionary benefits payable to the applicant will be disbursed to the applicant after recovery of amount to be recovered from him. Because of pendency of the O.A., the respondent No. 3 had not proceeded in the matter further. He has submitted that if such direction is given to the respondent

No. 3, then the respondent No. 3 will release the pensionary benefits to the applicant after recovering the amount due from the applicant as per the pay fixed by the Superintendent of Police, Beed by impugned order dated 21/23.01.2017.

6. On going through the submissions advanced by both the parties, it reveals that the applicant retired from the service w.e.f. 28.02.2017. He is getting provisional pension and in view of the pendency of the criminal case, gratuity amount has not been released to the applicant. The applicant has no objection to withhold that amount in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 till conclusion of the Criminal Case. But the respondent No. 3 had not released the other pensionary benefits i.e. amount of leave encashment and other pensionary benefits to which the applicant is legally entitled. There is no legal impediment in releasing the said amount to the applicant and therefore, it is just and proper to direct the respondent No. 3 i.e. the Superintendent of Police, Jalna to release the pensionary benefits i.e. leave encashment and other pensionary benefits to which the applicant is legally entitled excluding the amount of gratuity within a period of two months from the date of this order. It is also made clear that as the applicant is not pressing prayer clause (C) regarding recovery of excess amount to be recovered from pensionary benefits and

seeking liberty to approach this Tribunal in that regard as and when cause of action will arise, liberty as prayed for by the applicant is granted.

7. The respondent No. 3 i.e. the Superintendent of Police, Jalna is directed to take appropriate decision as regards gratuity amount in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982.

8. In view thereof, the O.A. is disposed of with a direction to the respondent No. 3 i.e. the Superintendent of Police, Jalna to release the pensionary benefits to which the applicant is legally entitled and to take decision regarding gratuity amount in view of the provisions of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 within a period of two months from the date of this order. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 04.04.2018.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 373 of 2017 BPP 2018 Recovery