

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.763/2016

DISTRICT: - AURANGABAD

Santosh s/o. Balwantrao Ghorpade,
Age : 63 years, Occu. : Retd. Govt. Servant (Talathi),
Residing at 97/98, Nisarg Colony,
Pethe Vagar, Bhavsingpura,
Tq. & Dist. Aurangabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Collector,
Collector Office, Aurangabad,
Tq. & Dist. Aurangabad.
- 3) Sub Divisional Officer,
Office of Sub Divisional Officer Kannad,
Tq. Kannad, Dist. Aurangabad.
- 4) Tahasildar,
Tahasil Office Khultabad,
Tq. Khultabad, Dist. Aurangabad. ...RESPONDENTS

APPEARANCE :Shri A.S.Shejwal Advocate for the
Applicant.

:Shri I.S.Thorat Presenting Officer for the
respondents.

CORAM : B. P. Patil, Member (J)

DATE : 23rd November, 2017

J U D G M E N T
[Delivered on 23rd day of November, 2017]

The applicant has challenged order/communication dated 06-12-2013 issued by the respondent no.3 rejecting his prayer to allow him encashment of 300 days' earned leave at his credit and prayed to quash and set aside the said order and direct the respondents to pay amount of leave encashment of 300 days by filing the present O.A.

2. The applicant was serving as Talathi, Khultabad, Tq. Khultabad, Dist. Aurangabad. He was retired on 31-03-2011 on attaining age of superannuation from the post of Talathi, Khultabad. At the time of his retirement, 383 days' earned leave was to his credit. He is entitled for encashment of earned leave to the extent of 300 days as per Rule 68(1) of the Maharashtra Civil Services (Leave) Rules, 1981 ("MCS (Leave) Rules, 1981" for short). The applicant, has therefore, filed representation with the respondent no.4 for encashment of 300 days earned leave on 28-08-2013.

3. It is contention of the applicant that he was convicted by Special Judge, Aurangabad in Special Case No.23/1998 by judgment and order dated 30-09-2003 for the offences punishable u/s.7, 13(1)(d) and 13(2) of the Prevention of

Corruption, Act, 1988 and sentenced to suffer rigorous imprisonment for a period of 6 months with fine of Rs.150/- on the first count and sentenced to suffer rigorous imprisonment for 1 year and fine of Rs.150/- on the second count. The applicant has challenged the said order before the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad by filing Criminal Appeal No.707/2003. The appeal was admitted before the Hon'ble High Court Bench at Aurangabad by its order dated 14-11-2003 and the sentence imposed by the Trial Court has been suspended and he has been released on bail. Appeal is still pending before the Hon'ble High Court.

4. Applicant has further contended that respondent no.4 submitted the said information about pendency of the criminal appeal preferred by the applicant to the respondent no.3 at the time of sending his proposal for encashment of earned leave. After considering the said fact, respondent no.3 denied encashment of earned leave to the applicant relying on the provisions of Rule 68(5) of the MCS (Leave) Rules, 1981 without proper perspective. It is his contention that the trial court has imposed total fine of Rs.300/- in the criminal case and the applicant has paid the said fine. Therefore, nothing is recoverable from him,

and therefore, the impugned order issued by the respondent no.3 is not maintainable. Therefore, he prayed to quash the impugned order by allowing the O.A. and also prayed to direct the respondents to pay the amount towards encashment of earned leave to the extent of 300 days, which is at his credit.

5. Respondent nos.1 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have not denied the fact that the applicant had retired as Talathi, Khultabad, Tq. Khultabad, Dist. Aurangabad on superannuation on 31-03-2011. They have admitted the fact that the applicant was convicted for the offences punishable u/s.7, 13(1)(d) and 13(2) of the Prevention of Corruption, Act, 1988 and sentenced to suffer rigorous imprisonment for a period of 6 months with fine of Rs.150/- on the first count and to suffer rigorous imprisonment for 1 year and fine of Rs.150/- on the second count. They have also admitted the fact that the applicant has challenged the said order by paying fine amount before the Hon'ble High Court and his appeal was admitted and he was released on bail and the Hon'ble High Court suspended the sentence awarded to the applicant. They have also admitted the fact that respondent no.4 has submitted proposal for

encashment of 300 days earned leave of the applicant to the respondent no.3 and the respondent no.3 rejected the proposal by communication dated 06-12-2013. It is their contention that the said decision has been taken by respondent no.3 in accordance with the provisions of Rule 68(6)(a) and 68(5)(6) of MCS (Leave) Rules, 1981. It is their contention that there is no illegality in the impugned communication, and therefore, they have prayed to reject the O.A.

6. I have heard Shri A.S.Shejwal Advocate for the Applicant and Shri I.S.Thorat Presenting Officer for the respondents. Perused the documents placed on record by the parties.

7. Most of the facts in the matter are admitted to either of the parties. Admittedly, the applicant was serving as Talathi, Khultabad and he was retired on superannuation w.e.f. 31-03-2011. Admittedly, 383 days earned leave was at his credit at the time of his retirement. The applicant applied for encashment of 300 days' earned leave as per rules on his retirement to the respondent no.4, and thereafter, respondent no.4 submitted proposal to respondent no.3 but the respondent no.3 rejected the

proposal by impugned communication dated 06-12-2013. Admittedly Special Case No.23/1993 for the offences punishable u/s.7, 13(1)(d) and 13(2) of the Prevention of Corruption, Act, 1988 has been filed against the applicant before the Special Judge, Aurangabad and it was decided on 30-09-2003 and the applicant was convicted of the offences punishable u/s. u/s.7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer rigorous imprisonment for a period of 6 months and to fine of Rs.150/- on the first count and sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.150/- on the other count.

8. Admittedly, the applicant has paid total fine of Rs.300/- and challenged the order by filing criminal appeal no.707/2003 before the Hon'ble High Court and the Hon'ble High Court suspended the sentence by its order dated 14-11-2003 and released the applicant on bail. Admittedly, the said appeal is still pending before the Hon'ble High Court and it is fixed for final hearing. It is also admitted fact that the respondent no.3 passed the impugned order and denied the leave encashment for 300 days earned leave on his retirement in view of the

provisions of Rule 68(5) and 68(6)(a) of the MCS (Leave) Rules, 1981.

9. Learned Advocate of the applicant has submitted that the respondent no.3 has not considered provisions of Rule 68 of the MCS (Leave) Rules, 1981 with proper perspective. He has submitted that no money or government money is recoverable from the applicant, and therefore, the amount of encashment of leave cannot be withheld in view of rule 68(6)(a) of the MCS (Leave) Rules, 1981.

10. Learned Advocate for the applicant has further submitted that the Special Judge has convicted the applicant and sentenced to suffer rigorous imprisonment for 1 year and fine of Rs.300 in total. He has submitted that the applicant has paid the fine amount and his sentence has been suspended by the Hon'ble High Court. He has submitted that nothing is due from the applicant and no money is recoverable from him on conclusion of the proceedings pending before the Hon'ble High Court, and therefore, the impugned order issued by the respondent no.3 is not legal, and therefore, he prayed to quash the said order by allowing the O.A.

11. Learned P.O. has submitted that respondent no.3 passed the impugned order and withheld the amount of encashment till conclusion of the criminal case pending against the applicant. He has submitted that the appeal preferred by the applicant is pending before the Hon'ble High Court and it is kept for final hearing. He has submitted that on the decision of the Hon'ble High Court it would be determined whether any money can be recovered from the applicant or not and therefore the order passed by the respondent no.3 withholding the amount of encashment of earned leave of the applicant is legal in view of the provisions of Rule 68(6)(a) of MCS (Leave) Rules, 1981. Therefore, he prayed to reject the O.A.

12. On going through the documents on record, it is crystal clear that the criminal appeal preferred by the applicant challenging the judgment and order passed by the Special Judge on 30-09-2003 in Special Case No.23/1998 is pending before the Hon'ble High Court. Responsibility of the applicant whether he is liable to pay any money to the Government can be decided after decision on the appeal by the Hon'ble High Court. As the appeal is pending, the respondent no.3 has denied permission to the applicant to encash the earned leave till final conclusion of the appeal.

The order passed by the respondent no.3 is in accordance with the provisions of Rule 68(6)(a) of the MCS (Leave) Rules, 1981, which is reproduced as follows:

"68. Cash equivalent of leave salary in respect of earned leave at the credit at the time of retirement on superannuation-"

(6)(a) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any."

13. Considering the said provisions, in my view the impugned order passed by the respondent no.3 cannot be said to be illegal. Respondent no.3 has rightly rejected the application of the applicant for encashment of earned leave in view of the provisions of Rule 68(6)(a) and withheld the amount till conclusion of the criminal proceedings i.e. Criminal Appeal No.707/2003 pending before the Hon'ble

High Court. Therefore, I do not find any illegality in the impugned order. Consequently, no interference is called for in the order. There is no merit in the O.A. Hence, it deserves to be dismissed.

14. In view of the above facts and circumstances of the case, O.A. stands dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 23-11-2017.