

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 750 OF 2021
(Subject – Pension and Pensionary Benefits)**

DISTRICT : AHMEDNAGAR

Subhash s/o Babu Choudhary,)
Age : 65 Years, Occ. : Retired as Constable,)
R/o. Gurudatta Housing Society, Plot No. 18,))
Shree Dattaprasa, Near Gadgebaba Ashram,)
Shahada, Tq. Shahada, Dist. Nandurbar.)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary,)
Excise Department,)
Mantralaya, Mumbai- 32.)

2. The Superintendent,)
State Excise Department,)
Ahmednagar, Dist. Ahmednagar.)

3. The Accountant General,)
101, Maharshi Karve Road,)
Maharashtra State, Mumbai.)

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Smt. Resha Deshmukh, Presenting Officer for
respondent authorities.

CORAM : **Justice Shri Vinay Joshi, Member (J)**

DATE : **13.12.2024**

ORDER

1. Heard Shri K.B. Jadhav, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for respondent authorities.

2. The applicant has challenged the impugned communication dated 11.01.2021 by invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. By way of impugned communication, gratuity, regular pension and retiral benefits of the applicant have been withheld on account of registration of two crimes against him.

3. Facts of the case can be briefly stated that the applicant was initially appointed with the Zilla Parishad, Nandurbar as Class-IV employee. Later on vide order dated 27.01.2004, he was transferred to respondent No. 2 Excise Department as a Constable. The applicant stood retired on 31.05.2015 by way of superannuation. The applicant has approached to the authority for grant of retiral benefits, on which respondent No. 2 has forwarded proposal for grant of sanction. The applicant learnt that due to registration of two First Investigation Reports (FIRs), the authorities have withheld the pensionary benefits. Though the applicant received provisional

pension, however, he did not receive regular pension and all consequential retiral benefits. It is the applicant's contention that both crimes have been registered post retirement i.e. on 17.08.2015 and 17.06.2016. So far as first crime is concerned, the Departmental Enquiry has been conducted in which respondent No. 2 has exonerated the applicant from all charges. Result of Departmental Enquiry was communicated, however, respondent No. 3 decline to grant pensionary benefits on account of registration of two crimes. It is the applicant's contention that on the date of retirement neither Departmental Enquiry nor criminal proceeding was pending and thus, the authority could not have declined to release retiral benefits.

4. Per contra, respondents have resisted the Original Application by filing affidavit in reply. It is not in dispute that the applicant stood retired by way of superannuation on 31.05.2015. Though initially it has been stated in affidavit in reply that the first Crime bearing C.R. No. 243/2015 was registered on 17.05.2015, however it is clarified that it was registered on 17.08.2015, of which certified copy of FIR has been produced. Second FIR bearing C.R. No. 186/2016 was registered on 17.06.2016. It is stated that in terms of Rule 130 of the Maharashtra Civil Services (Pension) Rules, 1982 (Rules of 1982),

the applicant is not entitled for receiving gratuity and other pensionary benefits on account of pendency of judicial proceedings.

5. The very short issue falls for consideration is that whether the respondents are justified in withholding regular pension and other retiral benefits on account of registration of crimes post retirement? For the sake of clarity, it is noted that the respondents conceded that both crimes have been registered post retirement of which certified copies are also produced on record.

Applicant's learned counsel took us through Rules 27 and 130 of the Rules of 1982 to contend that the respondent authority has no power to withhold pensionary benefits on account of post retirement registration of crimes. To substantiate said contention, applicant's learned counsel has relied on the decisions of the Principal Seat of this Tribunal at Mumbai in **O.A. No. 608/2020 (Shri Chandrakant Mahadeo Kadam Vs. The Director General (Judicial and Technical), Home Department and Anr.)**, decided on 09.06.2021, **O.A. No. 188/2020 (Shri Vilas Ramchandra Walgude Vs. The State of Maharashtra and Ors.)**, decided on 21.07.2020 and **O.A. No. 267/2021 (Shri**

Gajanan N. Tate Vs. The State of Maharashtra and Ors.),
decided on 27.07.2021.

6. It transpires from the admitted facts that on the date of retirement of the applicant neither there was initiation of Departmental Enquiry nor criminal proceedings were pending against him in the Court of law. It is well recognized that pendency of judicial proceeding shall be deemed to be instituted on the date when the Magistrate takes cognizance of the Police report. Herein facts are quite clear that both crimes have been registered after the date of retirement. Moreover, it is not in dispute that on the basis of first crime, Departmental Enquiry was initiated, which resulted into exoneration.

7. Rule 27 read with Rule 130 of the Rules of 1982 makes it clear that the gratuity or regular pension cannot be withheld, if there is no such initiation of Departmental Enquiry or criminal prosecution against the Government servant on the date of his retirement. In terms of Rule 27, it is only in the event of positive findings in the Departmental Enquiry or conviction in Criminal Case, the Government is empowered to withhold pension as it deem fit. Once the Government servant is retired, right to receive pension is inherent. In case of institution of Departmental

Enquiry post retirement, its outcome cannot travel beyond the scope of Rule 27(1) of the Rules of 1982. The gratuity or pension can be withheld only in case where Departmental Enquiry was pending at the time of retirement as contemplated under Rule 131(C)(1) of the Rules of 1982. This Tribunal has consistently taken a view in several decisions including which are referred above that if on the date of retirement no Departmental Enquiry or criminal proceeding is pending, retiral benefits cannot be withheld. The issue is no more *res integra*, as it was reiterated in several decisions. The respondents have not pointed out any specific provision or rule to substantiate that it could be withheld on the premise of post retirement registration of crime.

8. Though learned Presenting Officer relied on the decision of the Hon'ble High Court in a case of **The State of Maharashtra, Through its Secretary Irrigation Department, Mumbai and Ors. Vs. Mr. Baban Yashwant Ghuge in W.P. No. 14289/2017**, however, the said decision is distinguishable on facts. In the said case, Criminal Case was launched while Government servant was in service, but as he was acquitted, appeal against acquittal was pending. In the said context, the decision was rendered. There is material distinction that in the case in hand nothing was pending on the date of retirement of the

applicant and thus the said decision would not help to the applicant in any manner.

9. Having regard to the aforesaid discussion and settled legal position leads me to conclude that the impugned communication dated 11.01.2021 is bad in law and liable to be quashed. The respondents cannot withhold all retiral benefits on the premise of post retirement registration of criminal proceedings. In the result, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) Impugned communication dated 11.01.2021 is hereby quashed and set aside.
- (iii) The respondents are directed to release all pensionary benefits to the applicant within a period of three months from the date of this order.
- (iv) The respondents are at liberty to initiate action as permissible under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, if occasion arises so.
- (v) No order as to costs.

(Justice Vinay Joshi)
Member (J)

PLACE : Aurangabad.

DATE : 13.12.2024

KPB S.B. O.A. No. 750 of 2021 VJ Pension and Pensionary benefits