

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1211 OF 2019

DISTRICT : THANE

Shri Rajendra Laxman Kulkarni.)
Age : 58 Yrs., Occu.: Retired,)
R/at : B/205, Tulsiram Gangeswar)
Villa, Near Swami Samarth Math,)
Nandivali Road, Dombivali (E),)
Thane - 421 203.)...**Applicant**

Versus

1. The Director General of Police.)
Shahid Bhagat Singh Road,)
Mumbai - 400 025.)
2. The Addl. Director General of Police)
(ATS), having office at Anti-Terrorist)
Squad Office, Opposite Richardson)
& Crudas Company, Nagpada,)
Mumbai - 400 008.)...**Respondents**

Applicant in person.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 22.01.2021

JUDGMENT

1. In this Original Application, the Applicant claims interest on delayed payment of retiral benefits invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

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2. The Applicant stands retired on 31.03.2019 as Assistant Commissioner of Police from the establishment of Respondent No.2 – Additional Director General of Police (ATS), Mumbai. Though he stands retired on 31.03.2019, the retiral benefits were not paid though there was no departmental enquiry or any other proceeding pending against the Applicant. As such, his retiral benefits were delayed without any cause and no steps were taken to release the same within reasonable time. On the contrary, the Respondent No.2 had issued belated communication dated 14.11.2019 stating that in the period from 29.11.2005 to 31.03.2019 due to wrong fixation of pay scale, the excess payment of Rs.1,99,376/- was made to him and he was directed to deposit the said amount by Cheque, and thereafter, only file will be processed for retiral benefits. Since there was no such excess payment and retiral benefits were delayed without any cause, the Applicant has filed the present O.A. challenging the legality of order dated 14.11.2019 and for direction to release retiral benefits with interest.

3. It is during the pendency of O.A. only, in view of stern orders passed by this Tribunal, the Respondent No.2 initiated the action for releasing retiral benefits of the Applicant. Material to note that Respondent No.2 realized that there was no excess payment to the Applicant, as claimed by communication dated 14.11.2019 and has withdrawn the said communication on its own. As such, there was no reason much less legal and valid to delay the retiral benefits of the Applicant.

4. It is on the above background, it is only during the pendency of O.A, retiral benefits viz. pension, gratuity, etc. were released belatedly. The Applicant, therefore, amended the O.A. restricting his claim for interest on delayed payment of GIS, Earned Leave Encashment and Gratuity. He received G.I.S. Rs.2,17,722/- on 16.01.2020 which was due on 01.07.2019, Earned Leave Encashment Rs.9,52,660/- on 13.02.2020 which was due on his retirement on 31.03.2019 and received

Rs.13,98,400 of gratuity on 14.02.2000, which was to be paid within three months from retirement. He, therefore, claimed interest on the delayed payment. In so far as interest on commutation is concerned, during the course of hearing, he fairly conceded that he received full pension till the date of commutation, and therefore, the question of interest on commutation does not survive.

5. Heard Applicant in person and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

6. The learned P.O. fairly concedes that the amount of retiral benefits were not paid strictly on the date on which it was payable, but sought to contend that there was some issue of recovery, and therefore, it took some time. In reply, the Respondent No.2 has indicated the steps taken for finalization of retiral benefits of the Applicant.

7. Thus small issue posed for consideration is whether the Applicant is entitled to interest on delayed payment of retiral benefits.

8. At the very outset, it needs to be stated that, in terms of Rule 120 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity), the obligation is cast upon the Head of Office to undertake the work of preparation of pension papers two years before the date on which employee is due to retire on superannuation. In this behalf, Rule 120 reads as under :-

"120. Preparation of pension papers.- (1) Every Head of Office shall undertake the work of preparation of pension papers in Form 6 in respect of Non-gazetted Government servant as well as Gazetted Government servant, whose pay and allowances the drawn by him on establishment bills, two years before the date on which they are due to retire on superannuation; or on the date on which they proceed on leave preparatory to retirement, whichever is earlier.

(2) The Audit Officer shall undertake the work of preparation of pension papers in Form 6, two years before the date on which a Gazetted Government servant, other than mentioned in sub-rule (1), above who is due to retire on superannuation or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.



(3) The time schedule and procedure prescribed in these rules shall be followed by the Audit Officer on whom the responsibility for preparation of pension papers in respect of Gazetted Government servants under sub-rule (2), has been entrusted.

(4) In the case of a Government servant holding a lien or a suspended lien on a Non-gazetted post and holding a Gazetted post in a temporary or officiating capacity at the time of retirement and whose pay and allowances are not drawn by the Head of Office on establishment bills, the Head of Office shall send the service book of the Government servant concerned to the Audit Officer two years in advance of the date of retirement of such Government servant or as soon as possible, if such Government servant is promoted to officiate in a Gazetted post only during the last year of his service, after verifying that the certificate of verification relating to non-gazetted service has been recorded and that the service book is complete in all respects.”

9. As such, duty is cast upon the concerned Head of Office to initiate the process for preparation of pension papers well in advance i.e. two years before the date on which a Government servant is due to retire. This provision is made obviously to take care of formalities and anticipated delay in complying with the objections, if any. Whereas, in the present case, it is obvious from reply that Service Book of the Applicant was sent to Pay Verification Unit belatedly on 09.02.2018. The Applicant was due to retire on 31.03.2019, and therefore, the preparation ought to have been started by 31.03.2017. As such, there is was inordinate delay of more than one year in sending Service Book of the Applicant to Pay Verification Unit.

10. Apart, the Respondent No.2 had unnecessarily raised the issue of excess payment by communication dated 14.11.2019 which was later withdrawn realizing the mistake in issuance of such communication. It is nowhere the case of the Respondents that any DE was contemplated or there was any other obstacle for grant of retiral benefits. This being the position, it is explicit that retiral benefits were delayed due to sheer laxity and negligence.

11. Needless to mention that retiral benefits are not bounty. At this juncture, material to note that the Hon'ble Supreme Court in **2008 (3) SCC 44 (S.K. Dua Vs. State of Haryana)** held that in case of delay in payment of retiral benefits to Government servant is entitled to interest on the basis of statutory rules occupying the field and further held that even in absence of statutory Rules, administrative instructions or guidelines, an employee can claim interest under Part III of Constitution relying on Articles 14, 19 and 21 of the Constitution. In deed Government of Maharashtra had issued various G.R. acknowledging the liability to pay retiral benefits within stipulated time and entitlement of employee if it is delayed due to administrative lapses.

12. As per G.R. dated 27th May, 1992 issued by Finance Department, Government of Maharashtra, the GIS was to be paid within three months and if it is not paid within stipulated period of three months, then it will carry interest. Thus, GIS was payable to the Applicant after three months from retirement, which comes 01.07.2019 whereas, it was paid on 16.01.2020. Thus, it was delayed by more than six months.

13. As regard delay in payment of Leave Encashment, in terms of G.R. dated 20th June, 1996 issued by Finance Department, Government of Maharashtra, the Leave Encashment was payable after one month from the date of retirement and if it is delayed due to administrative reasons or fault, then the employee is entitled to interest payable on GPF. The Applicant was paid sum of Rs.9,52,660/- on 13.02.2020 which was to be paid within a month from the date of retirement. Thus, it was delayed by more than 9 months.

14. As regard Gratuity, in terms of Rule 129-A, it was to be paid within three months from the date of retirement and where the payment has been delayed beyond the period of three months and the delay is attributable to the administrative lapses, an employee is entitled to interest at the rate applicable to GPF Fund. Whereas, in the present

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case, Gratuity of Rs.13,98,400/- was admittedly paid on 14.02.2020, which was payable on 01.07.2019. Thus, it has been delayed by more than 7 months.

15. As stated above, the Respondent No.2 had initiated the process of preparation of pension papers belatedly and then issued wrong communication alleging excess payment which was withdrawn having found incorrect. There was no hurdle in grant of retiral benefits to the Applicant since there was no DE or any other proceeding against him. As such, it is explicit that administrative lapses and negligence was the only reason for undue delay in payment of retiral benefits. The Government itself issued G.Rs referred to above that interest will have to be paid in case of delay beyond stipulated period. The retiral benefits were required to be paid mandatorily within fixed time period and if not paid, an employee is definitely entitled to interest. It is said that "money alone buys money". The amount of interest deemed to have been accrued after the expiration of stipulated period. In the present case, the delay is caused due to sheer administrative lapses and negligence. The Applicant is, therefore, entitled to interest on delayed payments.

16. The totality of aforesaid discussion leads me to sum-up that the Applicant is entitled to interest on delayed payment and O.A. deserves to be allowed. Hence, I proceed to pass following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondents are directed to pay interest on the amount of GIS at the rate payable for GPF for the period from 01.07.2019 till actual date of payment i.e. 16.01.2020.
- (C) The Respondents are further directed to pay interest on the amount of Encashment of Earned Leave for the period from

01.05.2019 at the rate payable on GPF till actual date of payment i.e. 13.02.2020.

- (D) The Respondents are also directed to pay interest to the Applicant on gratuity amount payable at the rate applicable to GPF for the period from 01.07.2019 till actual date of payment i.e. 14.02.2020.
- (E) Interest as directed above shall be paid within a month from today.
- (F) No order as to costs.

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Sd/-

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(A.P. KURHEKAR)
Member-J

Mumbai

Date : 22.01.2021

Dictation taken by :

S.K. Wamanse.

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