

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 1228 OF 2019

DISTRICT: PUNE

Shri Ramchandra Krishan Jadhav,)
Age – 64 years, Retired as Librarian,)
R/at. H-14/195, Mahaganapati Apt, Shahu)
College Road, Paravti, Pune 411 009.) **....Applicant**

Versus

1. State of Maharashtra,)
Through Principal Secretary,)
Medical Education & Drugs Department,)
Gokuldas Tejpal Hospital Compound, New)
G.T. Sankul, 9th FL. B wing, Lokmanya Tilak Rd.)
Mumbai 400 002.)
2. The Director, Medical Educational &)
Research, Government Dental College Campus)
C.S.T. Mumbai 400 001.)
3. The Dean, B. J. Medical College, Jai Prakash)
Narayan Road, Railway Station Road,)
Pune 411 001.)
4. The Dean, Rajashree Chatrapati Shahu)
Maharaj, Government Medical College &)
Chatrapati Pramilaraje General Hospital)
Kolhapur, Bhausinghi Road, Dasara Chowk,)
Rajendra Nagar, Kolhapur 416013.) **...Respondents.**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER (J)

DATE : 12.02.2021.



J U D G M E N T

1. The Applicant has filed this Original Application claiming interest on retirement benefits mainly Gratuity, Leave Encashment, GIS invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was working as Librarian and stands retired on 30.06.2013. At the time of his retirement, the Department Enquiry (D.E.) was pending against him, and therefore, his retirement benefits including Provisional Pension were withheld. The Enquiry Officer had submitted report on 25.10.2014 to Respondent No.2 – Director General, Medical Education & Research, Mumbai but it was kept in cold storage. It is only by order dated 22.10.2018, the formal order was passed closing inquiry with directions to release retirement benefits. In the meantime, the amount of Leave Encashment, GIS was paid albeit belatedly. The Applicant then claimed interest on delayed payment but his request was rejected by the office of Respondent No.2 by order dated 06.07.2019 which the Applicant has challenged in the present Original Application.

3. Admittedly, the Enquiry Officer has exonerated the Applicant by submitting report dated 25.10.2014 but the Respondent No.2 did not pay any heed to the report and it is only after four years, he passed formal order of closing of D.E. thereby exonerating the Applicant with directions to release retirement benefits. As such, in the first place, there is inordinate delay of four years on the part of Respondent No.2 to take appropriate action on inquiry report and to pass further orders in accordance to law. Thus, laxity and negligence on the part of Respondent No.2 is writ at large which gives rise for the claim of interest to the Applicant.

4. The Applicant has claimed interest on belated payment of leave Encashment, GIS as well as Gratuity which are governed by various Government Resolutions laying down instructions in the manner of payment of retirement benefits, due date of payment etc.

5. Interest on Leave Encashment:-

Admittedly, Leave Encashment amount was paid to the Applicant on 22.04.2014. As per G.R. dated 20.06.1996, the Applicant being exonerated in D.E., the date for Leave Encashment was after one month from the date of retirement. In this behalf, Clause No. 2 of G.R. dated 20.06.1996 is material which is as follows:-

“व्याज प्रदानासाठी विलंबाचा कालावधी :-

(अ) नियमित प्रकरणी (विभागीय चौकशीची प्रकरणे वगळून) शासकीय कर्मचा-याच्या सेवानिवृत्तीच्या/सेवा समाप्तीच्या /मृत्युच्या दिनांकापासून, एक महिन्यानंतरचा असेल.

(ब) निलंबनाधीन असताना नियम वयोमानानुसार सेवानिवृत्त झालेल्या व अर्जित/अर्धवेतनी रजेच्या संबंधातील रजा वेतनाची सममूल्य रोख रक्कम रोखून ठेवण्यात आली आहे अशा प्रकरणी-

(i) संबंधित कर्मचा-याची विभागीय चौकशीअंती पुर्णपणे निर्दोष मुक्तता झाली असल्यास व त्याचे निलंबन असमर्थनीय ठरविण्यात आले असल्यास त्याच्या सेवानिवृत्तीच्या दिनांकापासून एक महिन्यानंतरचा असेल.

(ii) संबंधित कर्मचारी दोषी ठरताअसल्यास व त्याचे निलंबन समर्थनीय ठरविण्यात आले असल्यास विभागीय चौकशीसंबंधातील अंतिम आदेश निर्गमित झाल्याच्या दिनांकापासून एक महिन्यानंतरचा असेल.

(iii) विभागीय चौकशी सुरु असताना मृत्यु पावलेल्या कर्मचा-यांच्या प्रकरणी विभागीय चौकशी संपुष्टात आणणा-या आदेशाच्या दिनांकापासून एक महिन्यानंतरचा असेल.”

6. Thus, perusal of Clause -2 of G.R. clearly shows that where Leave Encashment is withheld on account of punishment of D.E. and later a Government servant fully exonerated and his suspension is held unjustified then due date for payment of Leave Encashment would be one month from the date of retirement. In other words, due date for such payment would relate back to one month after his retirement in view of his exoneration in

Unfair

D.E. Admittedly, in the present case, the Applicant was not kept under suspension. This being the position, due date for payment of Leave Encashment would be 01.08.2013 (after one month from 01.07.2013).

The submission advanced by learned P.O. that interest would be payable after one month from final decision in D.E. is totally misconceived. Once a Government servant is exonerated in D.E., his entitlement to withhold retirement benefits relate back to the date of retirement after a grace period of one month as specified in G.R.

7. Interest on Gratuity:-

Admittedly, the Gratuity was withheld on account of pendency of D.E. in terms of Rule 130 (C) of Maharashtra Civil Services (Pension) Rules, 1982. The issue of interest on account of delayed payment of gratuity where it is withheld on account of punishment in D.E. is regulated by G.R. dated 06.05.1991. As per the said G.R., if a Government servant is exonerated from the charges, the payment of Gratuity will be deemed to have fallen, on the date following the date of retirement and if the said amount is not paid within three months, a Government servant is entitled to interest. In this behalf Clause 2(a) of G.R. dated 06.05.1991 is material which is as follows:-

“2(a) In such cases, if the Government servant is exonerated of all charges and where the gratuity is paid on the conclusion of such proceedings, the payment of gratuity will be deemed to have authorised after 3 months from the date of retirement. Interest may be allowed beyond the period of 3 months from the date of retirement.”

Since the final order in D.E. was passed on 22.10.2018, the claim of interested relate back to the date of retirement. Thus, the amount of Gratuity had fallen due on 01.10.2013 (after three months from 01.07.2013). Whereas admittedly, it was paid belatedly on 07.01.2019 for no fault on the part of Applicant.

8. Learned Counsel for the Applicant has rightly referred to the decision in **2018 (6) Mh.L.J.(Vinodkumar V/s State of Maharashtra)**, wherein in view of Rule 129-A and 130 of Maharashtra Civil Services (Pension) Rule 1982, the petitioner whose retirement benefits were withheld on account of criminal case in which he was later acquitted, held entitled for interest for the period of delay beyond three months from the date of retirement. It is no where the case of Applicant that payment was delayed because of want of some compliance from the Applicant. This being the position, *ex-facie* there is administrative lapse on the part of executive for not processing the proceeding of D.E. despite negative report submitted by Enquiry Officer. Suffice to say, the Respondents cannot avoid liability to pay interest on the delayed payment.

9. **Interest on GIS:-**

In so far as amount of GIS is concerned, no rule or provision brought to the notice enabling the Respondents to withhold the amount of GIS. Indeed, a Government servant himself makes contribution in GIS, and therefore, the said amount is liable to be returned to him with appropriate interest on his retirement. G.R. dated 27.05.1992 indeed specifically provides that even if D.E. or judicial proceeding are pending, GIS should be paid within three months from the date of retirement. It further provides that if GIS is not paid due to administrative lapses then a Government Servant will be entitled for interest.

In the present case, admittedly the GIS was paid on 25.08.2014 though it was payable on 01.07.2013. This being the position, the Respondents cannot deny their liability to pay interest for the delayed period.

Amrinder

10. **Interest on Provisional Pension:-**

Needless to mention that where the final pension is withheld, a Government servant is entitled to Provisional Pension which is required to be released month to month. The Applicant though retired on 30.06.2013, he did not get Provisional Pension regularly. The Applicant has submitted the chart showing the period of Provisional Pension, the date of payment as well as delay caused in payment. The chart which is not disputed is as follows: -

Provisional Pension

Sr	Duration	Actual Payment on	delay
1	01.07.2013 to 31.12.2013	20.01.2015	1 year 6 month
2	01.01.2014 to 31.12.2015	16.08.2016	2 year 8 month
3	01.01.2016 to 30.06.2016	21.01.2017	1 year
4	01.07.2016 to 31.12.2016	24.02.2017	8 months
5	01.01.2017 to 30.06.2017	29.08.2017	8 months
6	01.07.2017 to 31.12.2017	25.01.2018	6 months
7	01.01.2018 to 31.01.2018	19.03.2018	2 months
8	01.02.2018 to 28.02.2018	19.03.2018	1 month
9	01.03.2018 to 31.03.2018	15.05.2018	2 months
10	01.04.2018 to 30.04.2018	13.07.2018	3 months
11	01.05.2018 to 31.05.2018	13.07.2018	3 months

12	01.06.2018 to 30.06.2018	14.08.2018	1 month
13	01.07.2018 to 31.07.2018	02.10.2018	2 months
14	01.08.2018 to 31.08.2018	02.11.2018	2 months
15	01.09.2018 to 30.09.2018	02.11.2018	2 months
16	01.10.2018 to 30.11.2018	01.01.2019	1 month

11. It is thus apparent that there was also inordinate delay in grant of Provisional Pension.

12. Learned Counsel for the Applicant has referred G.R. dated 22.11.1994 which *inter-alia* provides for payment of interest on delayed payment of D.E., increments etc. As such, it applies to interest on payment of D.E., increments etc. Whereas, in the present case, the issue of interest is on Provisional Pension which is admittedly not paid regularly. On some occasion, It is paid belatedly after more than one to two years as seen from the aforesaid chart.

13. No specific G.R. of payment on interest on Provisional Pension is pointed out. However, the fact remains that the Provisional Pension has been also paid quite belatedly, and therefore, the Applicant deserves to be granted interest on such belated payment. In this behalf, reference of the decision of Hon'ble Supreme Court in **AIR 2008 SC 1007 (S.K. Dua V/s State of Haryana & Anr.)** is material where the Hon'ble Supreme Court observed as under:-

"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 fade, 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,

Amrinder

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".

14. Learned Counsel for the Applicant in this behalf referred to **2008(6) Mh.L.J. 384 (Yuvraj Nathuji Rode V/s Chairman, Maharashtra State Electricity Board, Bombay & Ors.)** wherein the Hon'ble High Court held that where payment to the employee is not made on due date as per service conditions he is entitled to interest and accordingly granted interest at the rate 8% per annum. As such, the Respondents cannot deny their liability to pay interest on delayed period of payment of Provisional Pension.

15. As stated above, there is nothing to attribute delay on the part of Applicant so as to deny interest to him. It was for the Respondents to process the matter expeditiously without loss of time and to release retirement benefits. Though the Enquiry Officer has exonerated the Applicant by submitting report on 25.10.2014, it was not looked into for four years and only on 22.10.2018, the formal order of closing D.E. was passed which is necessarily pointer of laxity and administrative lapses on the part of Respondents. Indeed, in terms of various G.R.s issued by the Government dated 24.12.1985, Circular dated 15.05.1990, G.R. dated 07.02.2008 which was again reiterated by G.R. dated 30.10.2010, the D.E. ought to have been completed within six months and maximum within one year. In case it is not completed within one year, extension is required to be sought from the administrative head of the department. Whereas in the present case, though the Enquiry Officer exonerated the Applicant, no further orders were passed

for four years. Suffice to say, the Respondents cannot deny their liability to pay interest for belated period.

16. The totality of the aforesaid discussion leads me to conclude that the Applicant is entitled to interest on belated payment of Leave Encashment, GIS, Gratuity as well as Provisional Pension and O.A. deserves to be allowed and impugned order dated 06.07.2019 deserves to be quashed. Hence the following order:-

ORDER

- (A) Original Application is allowed.
- (B) Impugned order dated 06.07.2019 denying interest is quashed and set aside.
- (C) The Respondents are directed to pay interest to the Applicant at the rate applicable to GPF for belated period on Leave Encashment, GIS, Gratuity and Provisional Pension as well.
- (D) The Respondents shall calculate the period by which the payment was delayed and shall accordingly pay the interest within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member(J)