

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

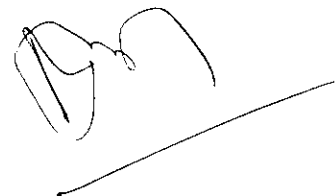
ORIGINAL APPLICATION NO.312 OF 2013

DISTRICT : PUNE

Masuood Alam Khan Ismail Khan Pathan.)
Age 82 years, Occ.: Pensioner-cum-)
Practicing Lawyer, Residing at House No.)
36, Phulenagar, Yerawada,)
Pune 411 006.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary to Govt.)
Public Health Department, G.T.)
Hospital Compound, 8th Floor,)
Mumbai - 400 001.)
2. The Commissioner.)
Employees' State Insurance Scheme,)
Maharashtra Bhawan, 6th Floor,)
Panchdeep Bhavan, N.M. Joshi Marg,)
Lower Parel, Mumbai 400 013.)
3. Director (Administration) ESIS,)
6th Floor, Panchdeep Bhavan,)
N.M. Joshi Marg, Lower Parel,)
Mumbai 400 013.)
4. Administrative Medical Officer.)
Mumbai Region, ESIS Hospital,)



3rd Floor, Ganpat Jadhav Marg,
Worli, Mumbai – 400 018.)

)...Respondents

Shri M.D. Lonkar, Advocate for Applicant.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 07.06.2016

JUDGMENT

1. The Applicant in the 82nd year of his life is still grappling with his post retiral benefits mainly because of the fact that despite the adjudication of the matter by the highest Court of the State, once in Writ Petition No.2611/2008 (Shri Masuood Alam Khan Pathan Vs. State of Maharashtra & 2 others, dated 7th May, 2009) and Contempt Petition No.313/2010 (Masuood Alam Khan Pathan Vs. Smt. Sharwari Gokhale and 1 another, dated 25th January, 2012). The matter has apparently not been settled once and for all. This would be exemplified by the needless recalcitrant attitude exhibited in the Affidavit-in-reply to this OA filed by Dr. B.S. Rangdal on behalf of Respondent No.4 – Administrative Medical Officer, ESIS who has unnecessarily tried to give his own interpretation which has a tendency to stand in contest with the order of


the Hon'ble Bombay High Court in the Writ Petition. I shall keep calling the order on the Writ Petition as such and the order on the Contempt Petition as High Court Contempt matter.

2. The Applicant in his OA has not systematically set out the facts which could be because of the fact that he is also an Advocate and I was told that he is not keeping well. May be heart has taken better of mind in his case. Therefore, the best course of action would be to take the facts from the judgment of the Hon'ble Bombay High Court in the Writ Petition. The Applicant was working as Administrative Officer, ESIS when he got embroiled in two prosecutions and one departmental enquiry (DE) arising out of almost the same set of facts. He was placed under suspension on the administrative front. The criminal cases that came to be registered against him were bearing Nos.111/1984 and 112/1984. He was subsequently acquitted in those two prosecutions. However, on the DE front except for one he was held guilty of the rest of 5 out of 6 charges. It was mentioned by the Hon'ble Bombay High Court in the judgment in Writ Petition that his suspension period was treated as such implying not as a period spent on duty. The matter was brought before this Tribunal. This Tribunal apparently concurred with the



findings of the authorities below that the Applicant becaused loss of public funds. However, in so far as treating the period of suspension as under suspension, this Tribunal held that principles of natural justice having been violated, the matter was remanded to the administrative authorities. The aggrieved Applicant filed the Writ Petition above detailed.


3. In deciding the above Writ Petition, the Division Bench of the Hon'ble Bombay High Court addressed itself to the issue as to whether this Tribunal was justified in upholding the DE and the punishment imposed on the Applicant. It was observed *inter-alia* that the provisions of sub-rule 20 of Rule 8 of Maharashtra Civil Service (Discipline & Appeal) Rules, 1979 were clearly violated, because the principles of natural justice were not properly observed. Such a finding was in the context of the fact that the adverse circumstances prejudicial to the interest of the Applicant were not put up to him to respond. The prejudice was successfully demonstrated by the Applicant was found by the Hon'ble High Court. It was also found that the punishment was disproportionate to the proved delinquency even if one were to gloss over the main failure of the authorities. It was observed that in any case, the punishment ought to have been much milder. Be it noted

1 

that the punishment imposed was withholding of 50% of the pension of the Applicant.

4. Paras 23 and 24 in fact need to be fully quoted which I hereby do.

"23. The learned Counsel for the Petitioner has submitted that the Petitioner has put in more than 22 years of service in the Department of Medical Education and Drugs and he has been superannuated in the year 1990. Almost for a period of 18 years, he has been deprived of his right to have pension to the extent of 50%. His total pensionable pay is Rs.3,010/-. Out of this amount, after deducting 50% of the amount, his pensionable pay comes to Rs. 1,505/-. Learned counsel for the petitioner submits that for past 18 years, Petitioner has lost monetary benefit of about Rs. 3,24,000/- + loss of 50% Gratuity. The submission advanced is that as against the alleged loss of Rs. 1,22,835.86, the State has recovered from the Petitioner more than the alleged loss suffered, as such the punishment is grossly disproportionate to the alleged misconduct committed by the Petitioner which

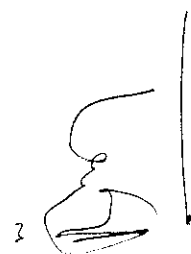
✓


needs to be set aside, may be with prospective effect in view of the undertaking given by the Petitioner.

24. During the course of arguments, the learned counsel of the Petitioner has filed an undertaking stating that he would not claim any arrears of pension, retirement benefits and/or other financial benefits including arrears of 50% gratuity other than what is already paid to him by the Respondents for the period upto 1-10-1999 when he was superannuated from the services."

Thereafter, the Hon'ble Bombay High Court was pleased to refer to a few judgments in the field rendered by the Hon'ble Apex Court. The following observations were made in Para 28 by the Hon'ble Bombay High Court in the Writ Petition.


"28. In the present case, the financial loss caused to the Government needs to be considered. In all, total loss caused to the Government is Rs. 1,22,836/-. Past 18 years, petitioner has been deprived of his pension to the



extent of 50% i.e. @ Rs.1,505/- per month. Till now, the government has recovered Rs.3,24,000/- from the pension of the petitioner together with 50% of gratuity amount as against the alleged loss of Rs.1,22,836/-. The Government has recovered more than 3 times of the alleged loss suffered by it. It is also to be considered that no financial gain was received by the Petitioner due to his negligence leading to alleged loss to the Government."

5. It was observed by the Hon'ble Bombay High Court that even if some blame could be laid at the door-steps of the Applicant, he had more than compensated the loss sustained by the exchequer. In Para 32, Their Lordships observed as follows :

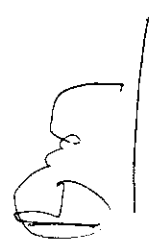
"32. For the reasons recorded herinabove, in our considered view the departmental enquiry itself is exposed to vice of nullity in view of infraction of sub-rule 20. Alternatively, even assuming that the enquiry proceedings are legal and valid, even then the punishment inflicted is disproportionate to the alleged misconduct alleged to have been



proved against the petitioner which is liable to be interfered with."

Then, in Para 33 was for all practical purposes, the concluding Paragraph which enshrines within itself the ultimate findings of the Hon'ble Bombay High Court. Let me quote the same here.

"33. The Petitioner since has given an undertaking not to claim past monetary benefits and the fact that the loss suffered by the State already stands recovered from the petitioner, who has also suffered heavy financial loss on account of non-payment of 50% amount of gratuity and pension almost for a period of 18 years, we are of the considered view that ends of justice would be met by accepting the undertaking given by the petitioner and setting aside the punishment and, to that extent, the order of the MAT affirming action of the respondents. It is declared that the petitioner would not be entitled to claim arrears of any monetary benefits for the period prior to the pronouncement of this judgment and further declare that petitioner shall be entitled to full pension with effect from 1st April, 2009."



6. Now, it is very clear that the Hon'ble Bombay High Court did not accept that the Applicant was liable to any punishment at all. It was found that the deductions made from his pension over the period of about 18 years were sufficient, "punishment". It must, therefore, be clearly understood that the net result of the judgment in the Writ Petition was that no other punishment could be imposed on the Applicant. Not only that, but at various intervening stages, no steps that could be akin to punishment like stoppage of increment or stoppage at Efficiency Bar could also have been made by the authorities. It is in order to highlight this particular aspect of the matter that I have quoted profusely from the judgment in the Writ Petition.

7. The record shows that the Applicant, alleging breach of the order of the Hon'ble Bombay High Court in the Writ Petition filed a Contempt Petition No.313/2010 (detailed above). The same apparently went by default on 11.8.2011. A Civil Application No.85/2011 in Contempt Petition No.313/2010 was moved by the Applicant to enliven the said Contempt Petition. The said Civil Application came to be disposed of by a Single Bench of the Hon'ble Bombay High Court on 25th January, 2012. The said order needs to be fully reproduced.



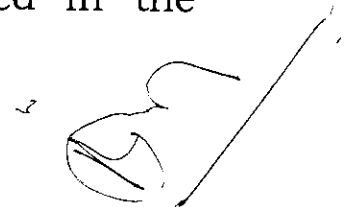
"P.C.

1. This is an application for condonation of delay and for restoration of the Contempt Petition No.313 of 2010 which was dismissed by the order dated 11.8.2011. On perusal of that order, it becomes clear that though the petitioner was not present, the record was perused by this Court and after being satisfied that the order in question was fully complied, it was found that nothing remained in the Petition and, therefore, it was dismissed. In such circumstances, the question of restoration of the Contempt Petition does not arise.

2. The learned Counsel for the petitioner contends that there has been some mistake in calculation of the amount to be paid to the petitioner. If it is so, he can approach the concerned department and make appropriate representation.

3. In view of the above, the Application stands dismissed."

8. It is worth noting that the Hon'ble High Court was pleased to note that the order in the Writ Petition was fully complied with and that nothing remained in the



Contempt Petition. It was thereafter observed in Para 2 in effect that the calculation mistakes, if any, would have to be corrected by the concerned Department for which the Applicant could make an appropriate representation.

9. Now, in this OA, the Respondents 1, 2 & 3 have decided against rendering a proper assistance to this Tribunal and they have apparently not even cared to file an appropriate Affidavit-in-reply. I shall to the extent necessary presently deal with the Affidavit-in-reply of 4th Respondent which makes a sad reading so to say. But then, it would be appropriate in my view to refer to certain Affidavits and papers which were apparently submitted before the Hon'ble High Court in the Contempt Petition.

10. An Affidavit-in-reply came to be filed by one Dr. Sanjay S. Dhavale on behalf of Respondent No.2 - Commissioner, ESIS in the High Court Contempt Petition. That was filed on behalf of all the Respondents. He referred to and relied upon the Affidavit-in-reply filed by one who apparently was his predecessor. He hailed that Affidavit to be based on correct facts. He stated on oath that the Applicant was given the pensionary benefits as per 6th Pay Commission. The Applicant had some problem in the matter of accepting it as true, and therefore, the



Hon'ble High Court in the Contempt Petition directed the authorities to submit a detailed calculation in the matter of computation of pensionary benefits. In Para 2 of the said Affidavit, it was mentioned inter-alia that the Applicant had been paid his pension in accordance with the 5th Pay Commission and the details were mentioned. In Para 4, it was mentioned that full pensionary benefits as per the 5th and 6th Pay Commission were paid to the Applicant.

11. Be it noted that the Applicant even now disputes the claim of the Respondents that all the payments have been made to him in deference to the order of the Hon'ble High Court.

12. I find in the record of this matter, at least two documents in Marathi which apparently came into existence after the judgment in the Writ Petition but before the order of the Hon'ble High Court in the Civil Application in the disposed of Contempt Petition. It gave out the details of the amount paid earlier namely before the judgment of the Writ Petition. In 3rd Paragraph, it was mentioned inter-alia that after the directions in the Contempt Petition given by the Hon'ble High Court, the necessary corrective measures were taken. This is the English translation, but it will be appropriate, if the Paras




3 and 4 are quoted in Marathi for having a proper grasp of the matter.

“श्री. पठाण यांनी माननीय उच्च न्यायालयाने सदर बाबत याचिका क्र. २६११/२००३ दाखल केलेली होती. सदर प्रकरणात त्यांना पूर्ण निवृत्ती वेतन (Full Pension) माहे एप्रिल २००९ पासून अदा करण्याबाबत माननीय उच्च न्यायालयाकडून निकाल देण्यात आलेला आहे. तथापि त्यांना सदर निवृत्ती वेतन अदा करण्याच्या कार्यवाहीस विलंब झाल्यामुळे श्री. पठाण यांनी माननीय उच्च न्यायालयामध्ये अवमान याचिका दाखल केली होती. त्याप्रमाणे माननीय संचालक (प्रशासन) रा.का.वि.यो., मुंबई यांच्या दि. २४/१२/२००९ च्या पत्रान्वये सूचित केल्याप्रमाणे श्री. पठाण यांचा पूर्ण निवृत्ती वेतन मंजूरीबाबतचा सुधारीत प्रस्ताव या कार्यालयाकडून महालेखापाल, मुंबई यांच्याकडे पाठविण्यात आला होता व त्यानुसार महालेखापाल, मुंबई यांनी त्यांचे दिनांक ११/०१/२०१० च्या मंजूरी आदेशान्वये श्री. पठाण यांना पूर्ण दराने मूळ निवृत्ती वेतन रु ११२६/- मंजूर करून मंजूरी आदेश निवृत्ती वेतन अदा करणेसाठी कोषागार कार्यालय, पुणे यांकडे पाठविण्यात आले होते.

कोषागार अधिकारी, पुणे यांचे पत्र क्र. कोष/पुणे/नि.वे.१/का.वि./१४ दिनांक ३/८/१० अन्वये श्री. पठाण यांना महालेखापाल, मुंबई यांच्या दिनांक ११/०१/२०१० च्या मंजूरी आदेशानुसार माननीय उच्च न्यायालयाच्या निकालानुसार मंजूर केलेले पूर्ण निवृत्तीवेतन रु ११२६/- ची ५ व्या व ६ व्या वेतन आयोगाप्रमाणे वेतन निश्चिती करून दिनांक १/४/२००९ ते ३०/०६/२०१० पर्यंतच्या कालावधीतील फरकाची रक्कम रु ७१६५५/- त्यांना अदा केल्याचे कळविले आहे. तसेच सहाय्या वेतन आयोगाप्रमाणे श्री. पठाण यांचे सुधारीत मुळ निवृत्ती वेतन रु ७७०१/- असून त्या दराप्रमाणे त्यांना निवृत्ती वेतन व त्यावरील अनुज्ञेय महागाई भता नियमित अदा करण्यात येत आहे.”

In another document in Marathi from Pages 71 to 75 of the paper book, detailed calculations have been set out to buttress the contention that there has not been any deduction and post judgment of the Hon'ble High Court; the necessary corrective measures have been taken.

13. So far so good. I must make it very clear at this stage itself that all concerned including this Tribunal is



bound by the express orders of the Hon'ble High Court in Writ Petition and the Contempt Petition including Civil Application and in fact, all concerned are also bound by the circumstances that smoothly emerge from the express text thereof.

14. If my task has been made a little complicated, it is mainly because of the Affidavit of Dr. Rangdal, who has in his own way in his Affidavit-in-reply in this OA tried to justify the earlier action of the authorities of reducing the pension of the Applicant in view of he having been held up of the Efficiency Bar and other punitive measures. It is quite clear that the said deponent did not even care to consult Respondents' own record such as it was in the Writ Petition and Contempt Petition before the Hon'ble High Court and has in the manner of speaking tried to give his own interpretation to the orders of the Hon'ble High Court which as I indicated at the outset has a tendency to stand in contest against the same. Apart from the fact that such a tendency is abhorrent to the civilized judicial system, it has also made the task of this Tribunal that much more difficult. It is very clear from the documents, more particularly those in Marathi that the authorities had correctly grasped the facts and circumstances hereof.



15. In this view of the matter, therefore, it is not really possible for me at this stage here in this Tribunal to enter into the minute calculations and the process in that behalf. It will be better in my view to give a direction to the authorities to make sure that the orders of the Hon'ble High Court in the Writ Petition as well in the Contempt Petition have been faithfully complied with and in that connection, if need be, the Applicant may be heard and the entire process be completed within a period of three months from today. The Original Application stands accordingly disposed of in these terms with no order as to costs. The displeasure of this Tribunal may be conveyed to the deponent of the Affidavit-in-reply on behalf of Respondent No.2. Registrar to comply.

Sd/-

(R.B. Malik)
Member-J
07.06.2016

Mumbai

Date : 07.06.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\O.A.312.13.w.6.2016.doc