

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.341 OF 2015

DISTRICT : MUMBAI

Shri Gangaram Munnala Shakti,)
Res. at, C/o. K.M. Shakti,)
M.S.E.B. Colony, Blg. No.3/37,)
Room No.4/1, Vashi Sector – 15,)
Navi Mumbai 400 703)

...APPLICANT

VERSUS

1. The State of Maharashtra,)
Through Addl. Chief Secretary,)
Public Health Department,)
Mantralaya, Mumbai)
2. The Commissioner,)
E.S.I. Scheme, (Govt. of Maharashtra),)
Panchdeep Bhavan, 6th floor,)
N.M. Joshi Marg, Lower Parel,)
Mumbai 400 013)
3. The Administrative Officer (Medical),)
E.S.I. Scheme, (Govt. of Maharashtra),)
3rd floor, E.S.I. Scheme Hospital,)
Ganpat Rao Marg, Worli,)
Mumbai 400 018)

....RESPONDENTS

Shri Rahul Sinha, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 20.04.2016.

J U D G M E N T

1. Heard Shri Rahul Sinha, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This O.A. has been filed by the Applicant seeking promotions from back dates, which could not be granted to him as he was under suspension. The Applicant is seeking differential 80 days of earned leave, bonus, pay as per 6th pay commission, 4 years gratuity and refund of Rs.26,879/- deducted from him towards income tax.

3. Learned Counsel for the Applicant argued that the Applicant joined service as Peon on 10.04.1973. The Applicant was arrested on charge under Section 302 of the Indian Penal Code (I.P.C.). He was convicted by Learned Sessions Judge, Thane by order dated 24.11.1981 in case No.146 of 1981. He was placed under suspension w.e.f. 20.12.1980. He was reinstated in service on 08.01.2000, as he was acquitted in this case by Hon'ble Bombay High Court in Criminal Appeal No.1081/1981 by judgment dated 07.06.1996. Learned Counsel for the Applicant stated that

11

the suspension period from 20.12.1980 to 18.01.2000 has been regularized as duty period by order dated 28.04.2011 and he has been paid salary for that period. The Applicant was again placed under suspension from 08.04.2006, as another case under Section 302 of I.P.C. came to be registered against the Applicant. By order dated 03.04.2010, the Applicant was acquitted by the Additional Sessions Judge 3, Kalyan. The suspension period from 08.04.2006 to 30.04.2010 was regularized by order dated 05.03.2012. Learned Counsel for the Applicant argued that the Applicant retired on superannuation on 30.04.2010, while under suspension. Learned Counsel for the Applicant argued that the Applicant's service book has not been completed. He has, not been paid salary as per his entitlement. He was eligible for three promotion during his service, but no promotions have been granted to him. Learned Counsel for the Applicant stated that earlier the Applicant had filed O.A.No.369 of 2011 before this Tribunal. The Respondent No.3 had stated in the affidavit-in-reply that the suspension period from 21.12.1980 to 17.01.2000 was regularized and that his gratuity and regular pension have been sanctioned. The O.A.No.369 of 2011 was accordingly disposed of by order dated 23.01.2013. Learned Counsel for the Applicant argued that there is no reason for the Respondents now, not to sanction gratuity, regular pension and consequential benefits as prayed for in this O.A. to the Applicant.

2-1

4. Learned Presenting Officer (P.O.) argued that it is a fact that the suspension period of the Applicant from 21.12.1980 to 17.01.2000 was treated as duty period by order dated 28.04.2011 which has been cancelled by order dated 18.11.2015 and the period of suspension from 21.12.1980 to 17.01.2000 is treated as suspension period. The Applicant's eligibility from pensionary benefits is required to be reassessed. The Applicant has not challenged the aforesaid order dated 18.11.2015, which has been passed under Rule 72(3) of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payment during Suspension, Dismissal and Removal) Rule, 1981. Learned P.O. argued that the Applicant is not eligible to get the reliefs sought to him in the present O.A. in view of this development.

5. Learned Counsel for the Applicant argued that the order dated 18.11.2015 is *void ab-initio* and the Tribunal need not take cognizance of the same. The order dated 28.04.2011 treating the suspension period from 21.12.1980 to 17.01.2000 could not have been cancelled without giving an opportunity to the Applicant of being heard. Even Rule 72(5) provides that any order under Rule 72(3) can be passed only after considering the representation of the Govt. servant. The order dated 18.11.2015 is, therefore bad in law and may be quashed and set aside.

6. The order dated 18.11.2015 is passed under Rule 72(3) of the aforesaid Rules. This Rule provides that the order will

be passed after giving the Government servant opportunity of making representation. Such an opportunity was not given to the Applicant. The order is, therefore, issued in violation of the principles of natural justice and cannot be sustained. Rule 73(4) provides that in case of order sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes. The Respondents, are therefore, duty bound to pay the pensionary dues of the Applicant on this basis. The Applicant has sought the following reliefs in this O.A., which are discussed below :-

- (i) The Applicant was eligible 3 promotions. It is not clear as to how the Applicant was eligible for three promotions. No rules / G.R. has been quoted in support of this claim. No details about the junior persons, who were promoted and the dates of such promotions have been mentioned. It is also not mentioned that the Applicant holds necessary qualifications for any such promotion. This relief cannot be granted to the Applicant.
- (ii) The Applicant is claiming bonus awarded by the Government from time to time. No details when such bonus were granted have been given. The prayer is quite vague and in the absence of any specific details, it cannot be granted.

13

- (iii) The Applicant is claiming differential 80 days of earned leave. How the Applicant is eligible to get 80 days of Earned leave is nowhere explained. This relief is not maintainable.
- (iv) The Applicant is seeking interest on salary and allowance for the suspension period which were paid to him in the year 2012. The Applicant should first seek such relief from the Respondents.
- (v) The Respondents were directed to update the service book of the Applicant and if he is eligible for arrears, the same should be paid to him. This should be done within a period of 4 months from the date of this order.
- (vi) If the suspension period of the Applicant is regularized and admittedly, he has been paid salary and allowances for that period, there is no question of paying suspension allowance to him for that period.
- (vii) If the Applicant is eligible to get salary as per 6th pay commission, the same should be paid to him within a period of four months from the date of this year.



(viii) The Applicant claims that he has not been paid gratuity for the remaining four years. It seems that he has been paid the gratuity. What is meant by gratuity for remaining four years is not understood. This relief cannot be granted.

(ix) The Applicant is seeking refund of Rs.26,879/- which was deduced from him towards income-tax. This relief cannot be granted as the Respondents are duty bound to deduct Income Tax from salary etc. paid to him as per law. The Applicant can seek refund from the Income Tax Authorities, if he so desires. This relief cannot be granted.

7. This O.A. is disposed of accordingly, with no order as to costs.

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 20.04.2016
Typed by : PRK