

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.37 OF 2016

DISTRICT : SIDHUDURG

Shri Madhav Prabhakar Prabhukhanolkar)
Deputy Superintendent of Police (Retd.))
at Jambharmala, Post : Salgaon,)
Tal.: Kudal, District : Sindhudurg.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Principal Accountant General.)
(Accounts & Entitlements)-I,)
2nd Floor, Pratistha Bhavan, New)
Marine Lines, 101, M.K. Road,)
Mumbai 400 020.)
3. The Director General of Police.)
State of Maharashtra, S.B. Marg,)
Mumbai 400 001.)
4. The Superintendent of Police.)
At : Oros, District : Sindhudurg.)...**Respondents**

Shri A.R. Joshi, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.



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

DATE : 18.01.2017

JUDGMENT

1. The dispute raised by a retired Dy. Superintendent of Police (Dy.S.P.) in this Original Application (OA) pertains to the calculation of commuted value of pension (CVP). He claims it at the ratio of 10.46 as against 8.5 granted to him for which he seeks relaxation under Rule 33 read with Rule 4 of Maharashtra Civil Services (Commutation of Pension) Rule, 1984 (to be hereinafter called the said Rules).

2. The Applicant served the Police Force in various capacities and reached up to the level of Dy.S.P. He was serving in Sindhudurg District at the time he superannuated on 31st March, 2004. On the date of his retirement at about 5.00 p.m, he came to be served with a Charge-sheet which according to him was the product of revenge taken against him by his immediate superior at that place. According to him, all the charges were completely frivolous like allowing the Hotels to function beyond the deadline and allowing gambling to go on. Further, those events were almost stale going by the



averments in the OA. It appears that in view of the said Charge-sheet, the post retiral benefits were held up in the tracks. The Applicant claims that otherwise he had a most meritorious service record full of awards and rewards. The Charge-sheet dated 30.3.2004 served on 31.3.2004 was then not pursued and for a period of about six and half years, even an Enquiry Officer (EO) was not appointed. However, the reply to the Charge-sheet was furnished by him just within one month of the receipt thereof and that was on 22.9.2004. Ultimately, when he did not get his terminal benefits like pension, gratuity and CVP despite several representations, he brought OA 166/2010 before this Tribunal and the Bench of the then Hon'ble Vice-Chairman by an order of 2nd March, 2010 disposed of the said OA with a short order, which reads as follows ;


"Heard.

It is hereby directed that the DE pending since 31.3.2004 be completed within four months from the date of receipt of this order. OA disposed of accordingly. Hamdast.

Sd/-
(S.R. Sathe)
Member-J

Sd/-
(R.B. Budhiraja)
Vice-Chairman"

3. Despite this order, the Enquiry Officer was appointed only on 5.10.2010. The EO found no substance



in any of the allegations against the Applicant and he recommended exoneration of the Applicant. That report was approved and accepted with the result, the Applicant became entitled to all his held-up dues. It was in this state of affairs that the order herein impugned dated 4.1.2012 (Exh. 'B', Page 28 of the Paper Book (PB)) was made by the Respondent No.2 – Principal Accountant General whereby the Applicant was informed *inter-alia* that the DE against him concluded on 30.12.2010 and only thereafter could he have applied for the commutation of pension though it was dated 19.6.2004 in case of the Applicant. As per the said Rules, if the DE was pending against a Government servant, his application for commutation can be submitted only on its completion, and therefore, the request of the Applicant contained in his communication therein set out could not be accepted. The ratio of 59 years of CVP could not be authorized as the DE concluded on 30.12.2010. It concluded on 30.12.2010 and the age on the next birth date thereafter of the Applicant was 65 years and it was on that basis that the commutation was authorized and the action taken in the matter was thus supported. The Applicant while challenging the stand of the Respondents seeks relief of the grant of CVP at the ratio of 10.46 at his age of 59 basically on the ground that if the enquiry was delayed, it was entirely on account of the governmental

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inaction because even the Enquiry Officer had not been appointed for ages. A further prayer is for a direction to the Respondent No.1 - State of Maharashtra and Respondent No.2 to calculate and pay a difference of Rs.41,936/- with interest at 12% p.a. By way of amendment, a further prayer is added for direction to the Respondents 1 and 2 to pay to the Applicant damages of Rs.2 Lakh and exemplary cost of Rs.1 Lakh and cost of litigation of Rs.50,000/- and any other sum determined by this Tribunal. The 3rd Respondent is the Director General of Police, State of Maharashtra and the 4th Respondent is the Superintendent of Police, Oros in District Sindhudurg.

4. I shall discuss to the extent necessary the salient features of the Affidavits-in-reply filed by the Respondents 1 and 2 presently.

5. I have perused the record and proceedings and heard Mr. A.R. Joshi, the learned Advocate for the Applicant and Ms. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.

6. The above discussed facts would make it quite clear that the Applicant was served with the Charge-sheet on the last day of his career just before he demitted office.

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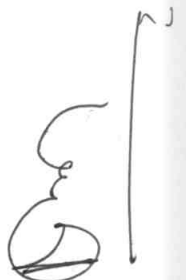


The allegations were in the manner of speaking not all that serious. But for the reasons which are completely obscure the DE went on and on and on and even the Enquiry Officer was appointed after more than six and half years despite a clear direction from this Tribunal in the OA 166/2010, dated 2.3.2010. To cap it all, the Applicant ultimately was exonerated.

7. At this stage, it will be appropriate in my view to reproduce Rules 4 and 33 of the said Rules.

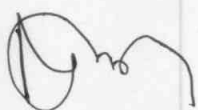
“4. Restriction on commutation of pension.- No Government servant, against whom departmental or judicial proceedings have been instituted before the date of his retirement, or the pension against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of is provisional pension authorised or the pension, as the case may be, during the pendency of such proceedings.

33. Power of relaxation.- Where any Departmental of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, that Department may, by order, for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent



and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in a just and equitable manner.”

8. The above quoted Rule 4 prescribes a negative mandate for a Government servant against whom DE or judicial proceedings had been instituted before his retirement and in case of pension, it would be as therein mentioned. During such pendency, he would not be able to commute his pension so to say. However, under Rule 33 which falls in Chapter V of the said Rules under miscellaneous provisions, the powers are reserved for the Government to relax any of the Rules in the said Rules, if it causes undue hardship in any particular case and for that the reasons, would have to be recorded. It is quite clear that Rule 33 does not prescribe any exhaustive list of events that would need to the exercise of power by the Government and that is the significance of the words, “any particular case”. It is completely fact specific. In other words, therefore, the rigors of Rule 4 depending upon the facts of a particular case could safely be relaxed under Rule 33 of the said Rules. The above discussed factual narration would in my view make it quite clear that there should be fewer cases like the present one to justify the invocation of Rule 33 of the said Rules.

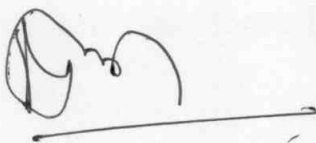


9. The Affidavit-in-reply to the amended OA on behalf of the State has been filed by its Under Secretary in Home Department Shri Deepak U. Pokale. According to him, the Government was in no position to enlighten this Tribunal as to the reasons for which the enquiry against the Applicant got inordinately delayed because the said record got engulfed in the fire in Mantralaya that broke out on 21.6.2012. For want of record, it was difficult for the State to place before this Tribunal the causes for the delay. Now, as to this aspect of the matter, I find that much as the State would like to plead impossibility, the said attempt is clearly futile because after-all, there are certain facts which stare one in the judicial face and they can be ignored only at the risk of the process being labeled as completely and totally pedantic and artificial. That I propose not to do. On the face of it, a period of more than six and half years even for appointment of the Enquiry Officer is completely inexplicable and the record even if it had survived the fire and I am assuming that it did not, it still would not have helped the cause of the State.

10. The said Affidavit of the 1st Respondent – State then pleads that the request of the Applicant with regard to the CVP at 10.46% was referred to the Finance Department but the Finance Department opined that the action of the

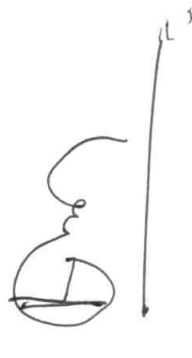


Respondent No.2 of fixing it at 8.5% was correct. Now, quite pertinently, the Affidavit-in-reply on behalf of Respondent No.2 filed by Shri Govind B. Kholge, Senior Accounts Officer has quite clearly pleaded in Para 10 that the issue of CVP at the ratio of 10.46% did not come under the purview of Respondent No.2 and in that behalf, Rule 33 of the said Rules hereinabove quoted has been invoked. Even otherwise, I think the Respondent No.2 is quite justified in adopting the stand that it has done because under the scheme of things, there is a specific role to the Respondent No.2 and the matter at hand would depend on the action that the Government being the 1st Respondent would take. I am, therefore, quite firmly of the opinion that the attempt on behalf of the 1st Respondent to abdicate its responsibility and try to shift it on to the 2nd Respondent would not sail it through. In other words, as far as I am concerned, the present facts quite clearly indicate that the Applicant was entitled to be considered for the ratio of 10.46% rather than 8.5% because the events that took place which according to the Respondents would peg it to 8.5% for all practical purposes were because of the complete lack of diligence and promptitude in the conduct of the DE by the Respondents other than Respondent No.2 and I hold it accordingly.

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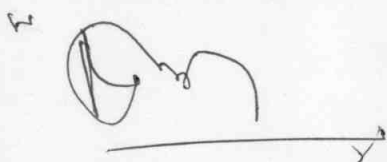
11. Now, by way of amendment, the Applicant in the set of circumstances such as they are seeks compensation of the amount already set out hereinabove. One may call it compensation, damages or whatever. Now, be it made quite clear that as far as any such liability is concerned, it can never be fastened on Respondent No.2 - Principal Accountant General (Accounts & Enlistment), therefore, they are out of all these problems.

12. As far as the other Respondents are concerned, in my opinion, even in disposing of this OA, it is always within the powers of the Tribunal to award cost. An appropriate amount in that behalf may be granted to the Applicant. However, if one has to consider the grant of damages or compensation, then there has to be on record some material to indicate a much stronger vitiating mindset requiring the imposition of heavy monetary burden. Now, whatever may ultimately have happened resulting undoubtedly in the severe hardship to the Applicant at the end of the day, the said Respondents acted in accordance with the letter of Rule 4 though they could have easily have but they did not pay attention to the provisions of the Rule 33 but in view of the state of record such as it is, I do not think, it is a case of grant of exemplary financial reparation to the Applicant against the




Respondents. Here again, if one has recourse to the provision of Rule 129-A and 129-B of the Pension Rules, it would become clear that any delay therein is fraught with the consequences of imposition of interest and in the manner of speaking and in actual fact, though called as interest, it is also basically a penalty imposed for the delay having been caused. Therefore, examining the matter from any angle and in the present set of facts, I do not think that it is a case for grant of the huge amounts that the Applicant has claimed by way of amendment.

13. Mr. A.R. Joshi, the learned Advocate for the Applicant relied upon two unreported Judgments of the Hon'ble Supreme Court of India in **Writ Petition (Civil) No.933/2014 (Dr. Ram Lakhan Singh Vs. State Government of Uttar Pradesh through Chief Secretary, dated 17th November, 2015** and **Ramesh G. Jadhav Vs. Secretary, Late S.G.S.P. Mandal & Ors, AIR 2010 SC 3502.** **Dr. Ram Lakhan Singh's** case arose out of a state of unsupportable crime investigation having been unleashed by the Government of UP on the Petitioner of the Hon'ble Supreme Court through the FIR, etc. Mr. Joshi relied upon the observations of Their Lordships in Para 14 in which Para, while dealing with the claim of compensation and damages, it was observed that the Hon'ble Supreme Court would be reluctant in determining



or granting any compensation while exercising its jurisdiction under Article 32 of the Constitution, but would leave the parties to approach the competent Courts for adjudicating those issues. **Ramesh Jadhav** (supra) arose out of a case where a candidate belonging to Open category was wrongly appointed on a seat reserved for the Scheduled Caste candidate and his services had been terminated. In Para 7, Their Lordships were pleased to observe that the Appellant of Their Lordships was no doubt subjected to inconvenience and prejudice and his remedy for damages and other relief was open to be taken, but that aspect of the matter could not be considered by the Hon'ble Supreme Court within the purview of the proceeding such as it was before Their Lordships.

14. It is undoubtedly true that the law laid down by the Hon'ble Supreme Court in **Ram Lakhan Singh** (supra) and **Ramesh G. Jadhav** (supra) is that even in service matters, the Court of competent jurisdiction can surely consider the grant of and in a deserving case, actually grant compensation or damages. It is, therefore, clear that it is not as if the Applicant was not entitled to lay a claim for compensation or damages. However, as discussed hereinabove, in the present set of facts, no case is made out therefor and whatever hardship has been caused to the Applicant could safely be taken care of by award of cost.



15. For the foregoing, it is hereby held and declared that the Applicant was entitled to commute value of pension at the ratio of 10.46% at the age of 59 and a case was made out for relaxation under Rule 33 of MCS (Commutation and Pension) Rules, 1984. The Respondents 1, 3 and 4 shall make the appropriate calculations in this behalf in accordance herewith and forward the papers to the Respondent No.2 and shall also make sure that they worked out the difference of the actual quantum and also pay the amount thus accruing to the Applicant. The compliance within two months from today. The OA is allowed in these terms with cost of Rs.10,000/- (Rs. Ten Thousand Only) to be paid by Respondent No.1 by way of deposit in this Tribunal, which amount on proper identification would be paid over to the Applicant. This compliance also be made within two months from today. The Original Application is allowed in these terms.

Sd/-
(R.B. Malik)
Member-J
18.01.2017

Mumbai
Date : 18.01.2017
Dictation taken by :
S.K. Wamanse.