

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.547 OF 2016

DISTRICT : PUNE

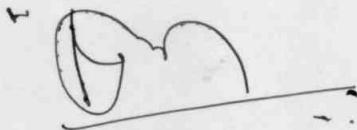
Shri Prakash Appaji Warpe.)
Age : 57 Yrs, Occu: Retired, R/at D-2/4,)
Sunder Garden Society, Manik Baug,)
Sinihagad Road, Pune 411 051.)...**Applicant**

Versus

1. The Principal Secretary.)
Water Supply & Sanitation Dept.,)
Mantralaya, Mumbai - 400 032.)
2. The Director.)
Ground Water Survey & Development)
Agency, MS, Bhujal Bhavan,)
Shivajinagar, Pune 411 005.)
3. Senior Geologist.)
Ground Water Survey & Development)
Agency, MS, Bhujal Bhavan,)
Shivajinagar, Pune 411 005.)
4. The Accountant General (1) Mah.,)
101, Maharshi Karve Road,)
Mumbai 400 020.)...**Respondents**

Mr. V.V. Joshi, Advocate for Applicant.

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

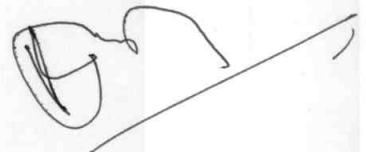


P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 31.01.2017

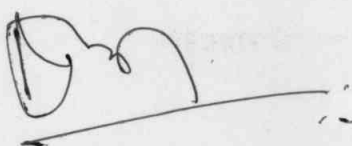
JUDGMENT

1. The claim in this Original Application (OA) is for interest for the delayed payment of post retirement benefits.
2. I have perused the record and proceedings and heard Mr. V.V. Joshi, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.
3. The Applicant took voluntary retirement w.e.f.4.11.2013 for which the Government in Water Supply & Sanitation Department made the official orders on 1st January, 2014. The post retiral benefits like arrears of pension for 11 months from 4.11.2013 to 18.10.2014, Leave Encashment, GPF, GIS and Gratuity were paid to him but they were not paid within the time that they should have been paid, and therefore, in this OA, interest is claimed on the allegedly delayed payments.
4. The sum and substance of the case of the Respondents vide the Affidavit-in-reply filed by Dr. Pramod



P. Reddy, Deputy Director in the office of Ground Water Survey and Development Agency, Pune *inter-alia* is that as per the relevant provisions of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules), the Applicant himself was responsible to prepare his pension papers because he was the Head of the Department at the time he applied for voluntary retirement. The liability to pay interest has thus been denied and it is specifically set out that commutation was declined by the Accountant General, Mumbai because a move therefor was made before the voluntary retirement proposal was accepted. The Applicant, however, has made it clear in the reply to the Affidavit-in-sur-rejoinder that he has not claimed any interest on payment of commutation pension and this stand has been taken by the Respondents only to mislead this Tribunal.

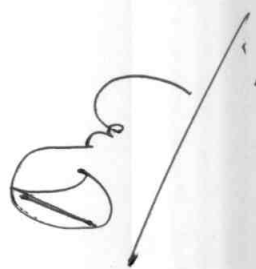
5. In so far as the interest for delayed payment of gratuity is concerned, the said aspect of the matter is governed by Rule 129-A of the Pension Rules. It provides *inter-alia* that the Retirement Gratuity should be paid within three months from the date of retirement and if it was established that the delay in payment was attributable to administrative lapse, then interest at the rate applicable to General Provident Fund Deposits shall be paid on



amount of gratuity for the period beyond three months. However, the proviso lays down that no interest would be payable, if the delay was attributable to the Government servant himself. It will also not be payable, if the provisional gratuity was paid. Rule 2 provides that every case of delayed payment of Retirement Gratuity would be *suo-motu* considered by the concerned Administrative Department and if there were grounds to satisfy that the delay was on account of administrative lapse, the Department shall sanction the payment of interest for which admissibility report would be obtained from Accountant General (Accounts and Entitlement). Sub-rule 3 lays down that personal responsibility shall be fixed in the matter of delay and the amount could be recovered from the defaulting personnel.

6. Rule 129-B of the Pension Rules deals with interest on delayed payment of pension. The provision is more or less akin to that dealing with Gratuity with the difference that the interest would become payable if the payment of pension was delayed for more than six months.

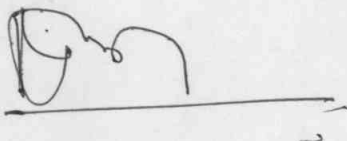
7. In this particular matter, the date of voluntary retirement is 4.11.2013. The arrears of pension came to be paid on 18.10.2014. The delay was 5 months and 15 days.



In so far Gratuity is concerned, again the date of retirement is 4.11.2013 and the Gratuity was paid on 7.7.2014 and the delay was 5 months and 3 days.

8. The Respondents apparently wanted to make some distinction in case of normal retirement and voluntary retirement. I can find no justification in such a distinction being drawn because in the relevant Rules, no such distinction is possible to be made. The plain and simple word, "retirement" has been used. The Rules are exhaustive and detailed and if the Rule maker wanted to make some distinction, there is no reason why a categorical and clear provision should not have been incorporated.

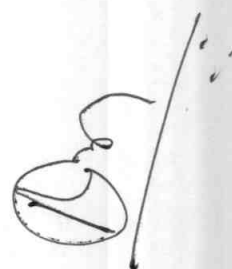
9. Another aspect of the Respondents' case is that the Applicant himself did not in time complete and submit his Service Book for which the case is that he was the In-charge or Head of the Department. Now, in my opinion, going by the record such as it is, it is not possible to accept this aspect of Respondents' case. The proposal for voluntary retirement was submitted by the Applicant on 3.8.2013 and it was accepted on 1.1.2014 w.e.f. 4.11.2013. It is nobody's case that there was nobody holding the charge of the post vacated by the Applicant. Therefore,



while it is clear that concrete evidence was possible to be had, none has been adduced, either to hold expressly or by implication that the Applicant was the author of his own miseries. That being the state of affairs, it is quite clear that the Applicant cannot be in any manner held responsible for the delay and as a necessary consequence, the blame has to be laid at the door-steps of the Establishment. This Tribunal, therefore, will have to, in exercise of its powers, extend remedy in so far as the Gratuity and arrears of pension are concerned.

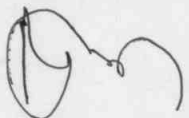
10. Mr. Joshi, the learned Advocate for the Applicant referred me to a Home Department GR of 29th April, 2016 which refers to the earlier GRs of 18.4.2000, 13.8.2004, 30.11.2004, 20.10.2005, 20.11.2006, 17.6.2008 and 24.9.2012. It reiterates that the matters of post retirement benefits must be given top-most priority *inter-alia* to avoid hardship to the retired or retiring employee, to save litigation and public time and also to save money because the Government may have to pay for the lapses of its employees.

11. Mr. Joshi also relied upon **Vijay L. Mehrotra Vs. State of U.P. and others, AIR 2000 SC 3513(2)**. In that matter, it was held by the Hon'ble Supreme Court that the



retiral benefits must be paid on the date of retirement or soon thereafter, if for some unforeseen circumstances, the payments could not be made on the date of retirement. In that matter where the retirement took place on 31st August, 1997, the payment of GPF on 27.11.1997 (90%), 25.4.1998 (10%), GIS on 27.2.1998, Leave Encashment on 27.9.1998, Arrears of Pay on 27.9.1998, Gratuity on 5.12.1998, Commuted Pension also on the same date and detained amount on 5.11.1999 were held to have been delayed bringing in its wake the interest liability. Mr. Joshi relied upon another Judgment of the Hon'ble Supreme Court in **State of Kerala and others Vs. M. Padmanabhan Nair, AIR 1985 SC 356**, wherein it was held by Their Lordships that in the event of delay in paying the post retiral benefits even penal interest could be awarded. Their Lordships were inclined to hold as a principle that interest at the rate of 12% p.a. could have been in order though in the facts of that matter, the interest awarded by the Hon'ble High Court was not interfered with which was 6% p.a.

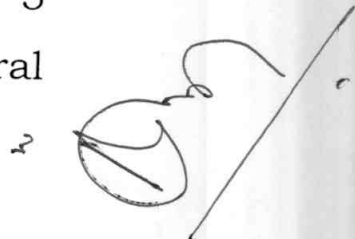
12. Now, as far as the Gratuity and pension are concerned, the Applicant would surely be entitled to the interest and in this particular matter, the Rules provide the rate of interest as applicable to General Provident Fund



Deposits, and therefore, it will be at that rate that the interest would have to be awarded. As far as the Leave Encashment is concerned, the payment was made on 30.12.2014 and it was delayed by more than one year. An amount of Rs.68,448/- has been claimed under that Head and in my opinion, going by the law laid down by the Hon'ble Supreme Court in the matter of **Vijay Mehrotra** (supra) and **Padmanabhan Nair** (supra), the interest will have to be awarded.

13. However, as far as GPF and GIS are concerned, the documents from Indian Audit and Accounts Department (Exh. 'A-4') and an order from the Respondent No.3 - Senior Geologist, Ground Water Survey and Development Agency would show that under these Heads, the interest was already awarded. This fact is exemplified by the Hindi and Marathi words, the English equivalent whereof "inclusive of interest", and therefore, in my opinion, the Applicant would only be entitled to the interest on the arrears of pension, Gratuity and Leave Encashment.

14. The Respondents are, therefore, directed to work out and pay to the Applicant the interest on arrears of pension for 5 months and 15 days and for gratuity for 5 months and 3 days at the rate applicable to General



Provident Fund Deposits. They are also directed to pay the interest at the rate of Rs.12% p.a. on the Leave Encashment amounting to Rs.68,448/-. The compliance within two months from today. The Respondents shall be free to act in accordance with the Rules above discussed to fix the responsibility and recover the amount from the individual Officer / Officers found to have caused the necessity to pay interest. The Original Application is allowed in these terms and to this extent with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
31.01.2017

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Mumbai

Date : 31.01.2017

Dictation taken by :

S.K. Wamanse.

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