

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.743 OF 2023

**DISTRICT: Raigad
Subject: Retirement
Benefits.**

Shri Sahebrao V. Sable)
Age: 59 yrs, Occ: retired Circle Officer,)
R/o.Revdanda, Narayan Ali, Tal. Alibagh,)
District Raigad.)....**Applicant**

VERSUS

The District Collector, Raigad, Alibagh,)
Near Heera Court Talav, Tal,. Alibagh,)
Dist. Raigad.)..**RESPONDENTS**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Ashutosh N. Karmarkar, Member (J)

DATE : 25.09.2024.

J U D G M E N T

1. This application is for directing the Respondents to grant amount towards leave encashment and gratuity to the Applicant with interest.

2. The Applicant was appointed as Talathi on 04.04.1986. He was promoted as Circle Officer on 01.06.2012. The FIR vide CR No.24/2017 was registered against the Applicant for the offence under Section 13(1)(d) of Prevention of Corruption Act on 26.04.2017. The Applicant was suspended during the period from 26.04.2017 to 05.05.2017. The

Applicant was arrested on 28.04.2017. The Applicant was reinstated in service on 23.05.2018.

3. On 09.06.2021, second FIR vide CR No.141/2021 was registered under Section 7 of Prevention of Corruption Act against the Applicant. He was arrested on the same day and was released on bail on 14.06.2021. The Applicant was again suspended on 24.06.2021. He was reinstated in service on 28.03.2022. Applicant retired on superannuation on 31.03.2022.

4. The Applicant has submitted representation seeking leave encashment on 22.06.2022. He was informed that decision on leave encashment will be taken after finalization of D.E. According to Applicant impugned act of Respondent is illegal. In both the D.E.s, final statement of the Applicant was recorded and final order is to be passed. If the relief is not granted then Applicant will suffer irreparable loss.

5. The Respondents have filed Affidavit in Reply. According to them, communication of Respondents that decision of leave encashment will be taken after finalization of D.E. is legal and proper in view of provisions of Rule 68 (6A) of Maharashtra Civil Services (Leave) Rules, 1981. According to Respondents, the Memorandum of charges in D.E. dated 18.10.2021 is legal and proper. According to them, the final decision in both departmental enquires can be passed after the decision of the court in Criminal Case pending against the Applicant as per Chapter No. IV of Departmental Inquiry Rules, Forth Edition 1991.

6. According to learned Advocate for Applicant, the charges in the Criminal Case vide CR No.24/2017 and D.E. dated 02.11.2017 are identical. According to learned Advocate for Applicant, both the departmental enquiries are concluded and final order is awaited. According to him, there is no specific allegation in the charges in Criminal case or in D.E. that any amount is to be recovered from the Applicant. There is no possibility of any order of recovery of amount from Applicant. Criminal Case would take its time to conclude and hence the prayer may be allowed.

7. On the other hand, learned PO submits that in view of Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1981 the amount of gratuity cannot be given as the judicial proceeding is in existence. According to learned PO, so far as relief regarding leave encashment is concerned, an order at Exhibit 'I' page 33 is not challenged in this application.

8. During the pendency of matter, the Respondent has filed charges in D.E. (Exhibit I) in the year 2021. The parties were heard after its production.

9. The Applicant has not disputed the fact that he was initially appointed as 'Talathi' on 04.04.1986 and was promoted to the post of 'Circle Officer' vide order dated 30.05.2012. It is also undisputed fact that FIR vide C.R.No.24/2017 for offences under Section 13(1)(d) of Prevention of Corruption Act was registered against the Applicant on 26.04.2017. It is also admitted that due to registration of crime, the

Applicant was under suspension from the period from 26.04.2017 to 23.05.2018. It is also admitted that another FIR vide CR No.141/2021 was registered against Applicant on 09.06.2021 for the offences under Section 7 of Prevention of Corruption Act and on that count, he was under suspension for the period from 24.06.2021 to 28.03.2022.

10. The Applicant has sought relief of direction to the Respondents to grant leave encashment and gratuity. Firstly, I will deal with the issue regarding grant of gratuity. For this purpose, Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 is reproduced which is as under:-

“130(1) (c) : No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.

11. It is clear from this Rule that no gratuity can be paid to the Government servant until the conclusion of D.E. or judicial proceeding and the issue of final orders thereon. The word ‘Government servant’ used in this clause itself suggests that if any D.E. or judicial proceeding is pending against Government servant on the day of retirement, he will not be entitled to get amount towards gratuity. The Applicant himself has contended in the petition that the charge sheet in two departmental enquires and final statements were served on him. It appears on document at ‘Court Exhibit 1’ that the charges in D.E. was given to the Applicant in November 2017. The document at ‘Exhibit J’ from page No.34 to 47 of paper book shows that charges in another D.E. was given to the Applicant in October 2021. So, it is clear that before retirement of

the Applicant, the departmental proceedings were already initiated against him. It also appears from the argument of the learned Advocate for Applicant that two Criminal Cases under Prevention of Corruption Act are pending. So in view of Rule 130(1)(c) of Maharashtra Civil Services (Pension) Rules, 1982 the Applicant is not entitled for getting amount towards gratuity.

12. Now, I will deal with the aspect regarding amount towards 'leave encashment'. The relevant Rule 68 (6)(a) of Maharashtra Civil Services (Leave) Rules is reproduced which reads under :-

"Rule 68 (6) (a) : The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he shall become eligible to the amount so withheld after adjustment of Government dues, if any."

13. In view of above Rule 68 of Maharashtra Civil Services (Leave) Rules, 1982, the competent authority needs to sanction leave encashment *suo-moto* on attaining the age of superannuation. But as per Rule 68(6)(a), the competent authority can withhold whole or part of cash equivalent of earned leave in the case of Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceeding are pending against him, if in view of the said authority, there is possibility of some money becoming recoverable from him on conclusion of proceeding against him. The Respondents has just contended in P ara No.18 of the Affidavit in Reply

that the decision vide letter dated 11.04.2023 on leave encashment (Exhibit I, page 33 of OA) is legal and proper. On perusal of the charges against the Applicant in the departmental enquiries that is document at 'Court Exhibit 1' does not reveal that there is possibility of recovery of some amount from the Applicant at the time of conclusion of D.E. The recitals in charges in departmental enquiries are about demand of bribe and apprehending of the Applicant while accepting the same. Therefore, refusal to pay amount towards leave encashment vide order/letter dated 11.04.2022 (Page 33 of OA) does not appears to be valid.

14. At the most, concerned authority could have obtained necessary undertaking from the Applicant. Therefore, in my view, the Applicant is entitled to get amount towards leave encashment. It is not specific stand of the Respondent that there is any charge of causing monetary loss to the Government so as to recover the amount from applicant on conclusion of D.E. So, the Applicant can be said to be entitled to get amount towards leave encashment. The Applicant has also claimed interest on unpaid amount towards leave encashment. For that purpose, the learned Advocate for Applicant has placed reliance on the judgment of this Tribunal in O.A.No.13/2023 with 202/2023, dated 02.05.2023. It is already held that refusal on part of Respondent to grant leave encashment vide letter dated 11.04.2023 as invalid. It would be proper to direct the Respondents to pay interest at the rate applicable to G.P.F. It appears that Applicant has claimed the amount on 22.06.2022. It would be proper to direct respondents to pay interest from 22.06.2022 for delay

in payment towards leave encashment. Therefore, the Original Application deserves to be allowed partly. Hence the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents to pay the amount towards leave encashment @ applicable to GPF from 22.06.2022 till the date of its payment and it be paid within two months from this order.
- (C) No order as to costs.

**Sd/-
(Ashutosh N. Karmarkar)
Member (J)**

Place: Mumbai

Date: 25.09.2024.

Dictation taken by: V.S. Mane

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