

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 142 OF 2018**

**DISTRICT : AURANGABAD**

Shri Suresh Laxmikant Moholkar,  
Age : 74 years, Occu: Retired,  
R/O. Plot No. 19, Rachanakar Colony,  
Deogiri College Road, Aurangabad.

**.. APPLICANT**

**V E R S U S**

1. The State of Maharashtra,  
Through Principal Secretary,  
Urban Development Department,  
Mantralaya, Mumbai-32

2. The Director,  
Town Planning, M.S., Pune.

**.. RESPONDENTS**

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**APPEARANCE** : Shri K.B. Jadhav, Advocate for the Applicant.

: Shri S.K. Shirse, P.O. for respondents.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **03.02.2023**

**Pronounced on** : **14.03.2023**

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**O R D E R**

**(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application has been filed by one Shri Suresh Laxmikant Moholkar, resident of Aurangabad, invoking provisions of Section 19 of the Administrative Tribunals Act,

1985, being aggrieved by impugned order dated 17.01.2018 issued by respondent No. 2, thereby rejecting claims of the applicant for payment of interest on difference in amount of final pension and provisional pension.

**2. Admitted facts in the present matter :-**

(a) The applicant retired by superannuation from the post of Town Planning Officer, Beed on 31.08.2001. Later on, respondent no. 1 decided to initiate departmental enquiry against him under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 {in brief, “MCS (D & A) Rules”}. A charge-sheet was issued on 26.06.2002 which was admittedly duly served on the applicant. The applicant submitted his written say to the memorandum of charges on 28.10.2002. Special Enquiry officer was appointed on 06.11.2004 but subsequently, Special Enquiry Officer was changed vide order dated 21.02.2008. Joint Director, Town Planning was appointed as Presenting Officer by an even dated order.

(b) The applicant filed O.A. No. 220/2016 challenging the charge sheet issued by respondent no. 1 which was allowed by this Tribunal by order dated 18.10.2016 and the charge

sheet dated 26.06.2002 was quashed and set aside. The operating part of the order passed by this Tribunal in the said O.A. in terms of para Nos. 8 and 9 of the order is reproduced as follows for ready reference :-

*“8. Having Regard to the aforesaid facts and circumstances of the case, memorandum dated 26.06.2002, starting the D.E. against the Applicant is quashed and set aside. The respondents are directed to pay all retiral dues of the Applicant, not already paid to him within a period of 3 months from the date of this order. The Applicant’s pension may be appropriately revised in accordance with the recommendation of the 6<sup>th</sup> Pay Commission.*

*9. As the D.E. was pending against the Applicant on the day of his retirement, he was eligible to get all his retiral benefits from the date of his retirement on 31.08.2001. It also transpires that D.E. was initiated against him in violation of Rule 27 (2) (b) of M.C.S. (Pension) Rules, 1982. The Applicant is clearly eligible for interest on delayed payment of his retiral dues as per the relevant rules. These dues should also be paid to him within the period of 3 months from the date of this order. This O.A. is allowed accordingly with no order as to costs.”*

(c) The applicant had filed Miscellaneous Application No. 149/2017 in Contempt Petition (St.) No. 480/2017 in O.A.

No. 220/2017 to get the order passed by this Tribunal in O.A. No. 220/ 2017 implemented. This Tribunal only ordered that- *“The Applicant shall be free to apply for payment of interest on delayed payment as per rules.”*

(d) In view of departmental enquiry, proposals for release of post retiral benefits such as pension etc. were not submitted to the Accountant General, Nagpur for sanction of pension, gratuity etc. However, provisional pension was paid to him from September 2001 onwards. up to June 2017. Regular pension too was started w.e.f. June 2017 and arrears of pension (difference between final and provisional pension) from September 2001 to June 2017 was also paid on 28.09.2017.

**3. Reliefs Sought-** The Applicant has prayed for reliefs in terms of para (X) of the O.A. which is reproduced verbatim for ready reference, as below-

**“X) RELIEF(S) SOUGHT**

(A) *To allow the Original Application with costs.*

(B) *To quash and set aside the impugned letter dated 17.01.2018 issued by the respondent no. 2 the Director of Town Planning, M.S. Pune.*

(C) *To direct the respondents to pay the interest of Rs. 35,76,515/- on the delayed payment of arrears of regular pension to the applicant forthwith.*

- (D) *To direct the respondents to pay the interest @ 12% per annum on delayed payment of arrears of regular pension to the applicant forthwith.*
- (E) *To quash and set aside the second proviso of the rule 129-B (1) of the MCS (Pension) Rules, 1982.*
- (F) *Pending hearing and final disposal of original application, the respondents be directed to deposit the amount of interest on delayed payment of arrears of regular pension.*
- (G) *Any other equitable and suitable relief may kindly be granted in favour of Applicant in the interest of justice.”*

**4. Pleadings :-** Affidavit in reply was filed on behalf of respondent Nos. 1 and 2 on 18.09.2018 affidavit in rejoinder on behalf of the Applicant was filed on 30.10.2018. Thereafter, the two sides made oral arguments. The matter was thereafter, closed for orders on 03.02.2023.

**5. Analysis of Facts-**

(a) The applicant has given various grounds for seeking relief out of finally following two remain after oral arguments to be adjudicated as elaborated below :-

(i) As mentioned in Ground No. “Q” (page 16 of paper book) advanced by the Applicant justifying relief prayed for, the applicant contended as follows :-

*“Q) The second proviso of the amended rule 129- B (1) of the M.C.S. (Pension) Rules, 1982 is bad in law*

*and ultra-vires and liable to be struck down and cannot be made applicable to the case of the Applicant.”*

(ii) Amendment in MCS (Pension) Rules, 1982 which was notified by Finance Department vide gazette notification dated 01.11.2008 is not applicable with retrospective effect to the Applicant who retired in the year 2001.

(b) However, the learned Advocate for the applicant has not advanced any substantive and convincing argument to show that the second proviso of the amended rule 129- B (1) of the M.C.S. (Pension) Rules, 1982 is bad in law and ultra-vires and liable to be struck down.

(c) On the other hand, the learned Presenting Officer has presented a comparative position of the provisions of rule 129 (B) (1), 129 (B) (2) and 129 (C) as follows :-

**(i) In rule no. 129 (B) 1**, only the rate of interest payable on amount of delayed payment of pension / family pension has been amended. This is not material change as in the present case; no interest is liable to be paid to the applicant in the light of second proviso to this rule which reads as follows :-

“आणखी असे की, ज्या कालावधीसाठी तात्पुरते निवृत्तिवेतन प्रदान करण्यात आले असेल त्या कालावधीसाठी व्याज देय होणार नाही. ज्या शासकीय कर्मचाऱ्याला तात्पुरते निवृत्तिवेतन मंजूर केले असेल त्या प्रकरणी तात्पुरत्या निवृत्तिवेतनाचे प्रदान

बंद झाल्यानंतर सहा महिन्याचा कालावधी उलटल्यापासून अंतिम निवृत्तिवेतन प्राधिकृत करेपर्यंतच्या कालावधीसाठी विहित तरतुदीनुसार व्याज देण्यात येईल.”

(ii) **Rule 129 (B) (2)**- This rule does not deal with any kind of interest payable; rather it has relaxed the condition of getting sanction from Finance Department in certain cases.

(iii) **Old rule 129 (B) (3)**- required payment of interest amount, when admissible, to be made with concurrence of Finance Department.

(iv) **Old Rule 129 (B) (4)** - it has been renumbered as rule 129 (B) (3)- deals with fixing of responsibility in cases interest has to be paid due to delay in payment of pension/ family pension.

**6. Conclusion** - From the above analysis of facts on record and oral submissions made, in our considered opinion, the O.A. No. 142 of 2018 is misconceived and devoid of merit. Hence, following order :-

### **ORDER**

- (A) The Original Application No. 142 of 2018 is dismissed for reason of being misconceived and devoid of merit.
- (B) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**