

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.277 OF 2020
WITH
ORIGINAL APPLICATION NO.612 OF 2020**

Shri Sadashiv Vithoba Jadhav.)
Age : 66 Yrs., Occu.: Retired Police)
Inspector and residing at Vardhaman Soc.)
Sasany Nagar, C/10-4, Hadapsar, Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Special Inspector General of Police)
(Administration), Pune.)
3. The Deputy Commissioner of Police,)
Pune City, Pune.)
4. Additional Director General of Police)
State C.I.D. Pune, Pashan Road,)
University Chowk, Pune 411 021.)...**Respondents**

Mr. M.B. Kadam, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 03.09.2021

JUDGMENT

1. M.A.No.277/2020 which is for condonation of delay and O.A.No.612/2020 challenging the order dated 30.03.2012 for recovery of Rs.7,46,323/- are being decided by the common order in view of order passed by this Tribunal that in the facts and circumstances of the matter, it is necessary to hear together.

2. Shortly stated facts giving rise to M.A. as well as O.A. are asunder:-

The Applicant retired as a Police Inspector on attaining age of superannuation on 31.03.2012 while he was serving on the establishment of Commissioner of Police, Pune. In 2004, while Applicant was serving at Satara, he was transferred to Pune and posted in Criminal Investigation Department, M.S, Pune. Accordingly, he joined at Pune on 13.01.2004 and applied for Government accommodation. Accordingly, by order dated 19.03.2004, Block No.13, Building No. 'C', Ramnagar Housing Society, Gavanivasti, Bhosari, Pune was allotted to him by the order of Additional Superintendent of Police, Crime Investigation Department, Pune. Later, the Applicant was transferred to Head Quarter, Office of Commissioner of Police, Pune in 2006 and was posted in Bhosari Police Station, Pune. Therefore, by letter dated 04.07.2007, he requested Director General of Police, M.S. to permit him to continue the said quarter since he is not transferred out of Pune. In application, he further stated that in 2000, he suffered paralysis attack causing 51% disability and taking treatment of Naturopathy Center, Bhosari and sons were also learning in Bhosari School. On this ground, he requested to permit him to continue the said quarter. On receipt of the said letter, the Director General of Police called for information from the establishment of Additional Director General of Police, Crime Investigation Department, Pune. However, nothing happened thereafter in respect of the request for continuation of the quarter made by the Applicant.

3. Instead of considering the request made by the Applicant, the Crime Investigation Department by letter dated 11.06.2007 asked the Applicant to vacate the quarter else he will be liable for penal charges. No further action was taken in pursuance of the said notice and Applicant continued the possession of the quarter till his retirement upto 31.03.2012. After retirement, within three months grace period, he vacated the quarter on 10.05.2012.

4. It is on the above background, the Respondent No.4 – Additional Director General of Police, Crime Investigation Department issued notice dated 30.03.2012 to the Applicant directing him to pay sum of Rs.7,46,323/- towards unauthorized occupation of the quarter for the period from 02.06.2006 to 31.03.2012. Thereafter, the Applicant made various representations to the Respondents inter-alia contending that in view of his retirement, the impugned action of recovery of Rs.7,46,323/- is unjust and is unable to pay the said amount. He has further pointed out that after his transfer from Crime Investigation Department to Head Quarter, Commissioner of Police, he did not receive HRA and was under *bonafide* impression that his request for continuation of quarter has been accepted. However, the Respondents did not take cognizance of his representation and on the contrary, withheld his gratuity. Therefore, the Applicant has filed these proceedings i.e. M.A. for condonation of delay of 7 years and to set aside the impugned order of recovery of penal charges.

5. When M.A. was taken up for hearing, the learned Advocate for the Applicant pointed out that in view of Circular dated 17.02.1967 issued by Inspector General of Police, State of Maharashtra, indeed, there was no need to vacate the quarter, since he was transferred in City itself, and therefore, he has good case on merit. He has further pointed out that even after transfer of the Applicant from Crime Investigation Department to Commissioner of Police, the HRA was regularly deducted from his monthly salary and further submitted that withholding of gratuity

amounts to recurring cause of action to the Applicant. Therefore, considering the ground raised, it was directed that M.A. and O.A. in the interest of justice will be heard together. Accordingly, M.A. and O.A. are heard together.

6. Shri M.B. Kadam, learned Advocate for the Applicant has pointed out that indisputably after transfer of the Applicant from Crime Investigation Department to Commissioner of Police, Pune, the HRA was regularly deducted from his salary and Applicant bonafidely believed that he was allowed to continue the quarter. He has further placed reliance on Circular issued by the then Inspector General of Police dated 17.02.1967 which *inter-alia* states that in case of local transfer, there would be no need to change the quarter. He has further pointed out that for five years i.e. from 2007 to 2012, no action was taken by the Respondents to get the quarter vacated, but at the fag end of service, the impugned notice was issued for recovery of penal charges, which is impossible to comply for the pensioner. He further submits that gratuity is withheld on account of notice of recovery and non-payment of gratuity amounts to continuous cause of action, since it is legal entitlement of the Applicant. He, therefore, prayed that in the peculiar facts and circumstance of the matter, the delay be condoned and impugned action of recovery be quashed.

7. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer submits that there is huge delay of seven years for challenging notice of recovery issued on 30.03.2012 and mere representation will not revive fresh cause of action. As regard non-payment of HRA for the period from 02.06.2006 to 31.03.2012, she fairly concedes that no HRA was paid for the said period. She, therefore, submits that there is no sufficient cause to condone the huge delay of seven years and the proceedings are liable to be dismissed.

8. True, there is delay of seven years in challenging the notice dated 30.03.2012. However, the facts and circumstances of the present case

are very peculiar which needs to be borne in mind while deciding the application for condonation of delay as well as O.A. filed challenging notice of recovery dated 30.03.2012. Needless to mention, while considering the application for condonation of delay made under Section 5 of Limitation Act, the Tribunal needs to see whether sufficient cause is made out for not making an application within prescribed time and discretion to condone the delay has to be exercised judiciously, so as to advance substantial justice. Where a good case is made out on merit, the Tribunal should not shut the doors of justice on the ground of limitation. As such, substantial justice must be criteria while considering the application for condonation of delay. It is well settled that the Tribunal should adopt justice oriented approach while deciding the application for condonation of delay instead of adopting technical approach so that interest of justice is served. No doubt, there is seven years' delay in filing O.A. However, what is material is sufficiency of reason as well as merits of the case and not length of delay caused in filing O.A. It is mere so, when matter pertains to withholding of gratuity of a retired Government servant and where impugned action of recovery of penal charges from gratuity found unsustainable in law.

9. Now turning to the facts of the present case, admittedly, the quarter was allotted to the Applicant while he was serving on the establishment of Respondent No.4 – Additional Director General of police, Crime Investigation Department, Pune. However, in 2006, he was transferred on the establishment of Commissioner of Police, Pune. As such, he was transferred in Pune City itself and there was only change of his office/establishment. After his transfer on the establishment of Commissioner of Police, Pune, he sent request letter dated 04.07.2007 addressed to Director General of Police, State of Maharashtra to permit him to continue the said quarter stating that he is taking treatment for his paralysis in Bhosari and his children are also taking education in Bhosari. In representation, he has further pointed out that 8 to 10 quarter are lying vacant in the said premises and his request be

considered sympathetically. On that letter, the Office of Director General of Police called for certain information from the establishment of Respondent No.4. However, nothing happened in that regard thereafter. Material to note that there was no such communication by the Office of Director General of Police rejecting his request for continuation of quarter at any point of time. It is Respondent No.4 who by order dated 11.06.2007 asked the Applicant to vacate the quarter in view of his transfer on the establishment of Commissioner of Police, Pune. However, the fact remains that there was no such communication rejecting his request for continuation in the quarter by Director General of Police, State of Maharashtra.

10. Apart, after issuance of notice dated 11.06.2007, no further steps were taken by Respondent No.4 either for asking penal charges or for vacation of the quarter. On the contrary, the HRA was deducted from the monthly salary of the Applicant after his transfer on the establishment of Commissioner of Police. Admittedly, in the period from 02.06.2006 to 31.03.2012, he was not paid HRA. As such, this is not a case where the Applicant retained the quarter and at the same time, received HRA. Besides, there is no denying that the Applicant was entitled to quarter though from the establishment of Commissioner of Police, Pune after Applicant's transfer on his establishment. As such, it appears that the Applicant bonafidely believed that his request for continuation of quarter is considered and he was not required to vacate the quarter.

11. The Applicant has also placed on record the copies of various representations addressed to Respondents dated 26.09.2012 and 03.09.2013 which are at Page Nos.19 and 18 of the P.B. However, it was not responded.

12. At this juncture, it would be apposite to refer Circular dated 17.02.1967 which is crucial in the present situation, which at Page No.15 of P.B.

“Sub : Housing accommodation for Policemen attached to the Specialized Branches (like CID, ACB, Traffic Branch)

Inspite of the instructions issued in the above Circular to treat the Policemen attached to the State CID, Anti Corruption and Prohibition, Intelligence Bureau, on part with the local police and accommodate them in the Police Lines. It is observed that in certain districts the Police Officers and men attached to the above branches vacate the Govt. quarters allotted to them prior to their transfer to the above branches. It is not proper to make such personnel to vacate the Govt. quarters when their places of duty does not change. The staff attached to the above branches have no separate lines of quarter excepting a few places like Poona, Thana and it is necessary to treat them on same level as that of the staff of the District Police Force.

All officers are, therefore, requested to see that the staff attached to the above branches (including the State Traffic Branch) and continued to stay in the Police place when there is no change in their Head Quarters.

Sd/-
For Inspector General of Police”

13. From the perusal of aforesaid Circular issued by the then Inspector General of Police, it is explicit that Police Personnel attached to Specialized Branch like CID, ACB, Traffic Branch if transferred in the city itself and they can continue the quarters allotted to them prior to their transfer to the said branches. Such directions were found necessitated since staff attached to these branches have no separate quarter accepting at few places. Thus, the object of this Circular is to continue the same service quarter even if they have transferred to different branches of law within same city. In the present case also, the Applicant is from Crime Investigation Department to Commissioner of Police and no separate quarter was allotted to him by the establishment of Commissioner of Police. It is in reference to this Circular, the Applicant has made representation to Director General and Inspector General of

Police to permit him to continue the quarter, but it was not responded. Even thereafter also, he made various representations, but in vain.

14. True, mere representations as submitted by the learned P.O. on the basis of Judgment of Hon'ble Supreme Court will not furnish fresh cause of action. The learned P.O. referred the decision of Hon'ble Supreme Court in **Special Leave Petition No.25795 of 2008 [C. Jacob Vs. Director of Geology & Mining & Anr] decided on 03.10.2008** wherein in Para No.7, it has been held as under :-

“7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.”

15. In the present case, the matter pertains to withholding of gratuity because of impugned action of recovery towards penal charges for continuation of service quarter. Therefore, it has to be construed as a case of continuous cause of action, since Applicant is deprived of getting his gratuity to which he was entitled in law. In this behalf, reference may be made to the decision of Hon'ble Supreme Court **(2008) 8 SCC 648 (Union of India and others Vs. Tarsem Singh & Ors.)**. In Para No.7, it has been held as under :-

“7. To summarize, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a Writ Petition) or limitation (where remedy is sought by an application to the Administrative Tribunal. One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if reopening of the issue would affect settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of

pay or pension, relief may be granted inspite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc, affecting others, delay would render the claim stale and doctrine of latches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict consequential relief relating to arrears normally to a period of three years prior to the date of filing of the Writ Petition.

16. As such, in view of peculiar facts and circumstances, in my considered opinion, it is a case of continuous wrong and recurring cause of action.

17. As stated above, admittedly, the Applicant was not paid HRA from 02.06.2006 to 31.03.2012. In that period, he was not offered other service quarter by Commissioner of Police to which he was entitled. After issuance of notice in 2007 (Page No.49) dated 11.06.2007, no further action was taken by the Department to get the quarter vacated and HRA was being deducted from the salary of the Applicant. The Applicant found entitled to continue the same service quarter in view of Circular dated 17.02.1967 referred to above. Therefore, indeed, there would be no such liability to pay penal charges as claimed in the impugned notice. Wrong is always wrong and passage of time will not convert it into right. This being the position, the impugned action of recovery for penal charges is totally unjust, unfair and arbitrary.

18. The Applicant already stood retired in 2012 and is deprived of gratuity. His repeated representations for continuing him to service quarter on the basis of Circular dated 17.02.1967 were not responded. Therefore, it would be highly iniquitous to enforce such recovery from the retiral benefits of retired employee after long gap from his retirement. This is not a case where the Applicant has taken any undue advantage, so as to deny equitable relief to him.

19. As such considering the peculiar facts and circumstances of the case, where it is found that Applicant was entitled to continue the same service quarter and HRA was also deducted from his salary and it being the case of continuous cause of action, to sub-serve the interest of justice, it would be just and equitable to condone the delay caused in filing O.A. and to quash the impugned action of recovery.

20. The totality of aforesaid discussion leads me to sum-up that the impugned action of recovery is totally unjust and arbitrary, and therefore, liable to be quashed. Hence, the following order.

ORDER

- (A) The delay caused in filing O.A. is condoned.
- (B) The impugned order dated 30.03.2012 is quashed and set aside.
- (C) The retiral benefits which are withheld on account of alleged recovery be released within a month from today.
- (D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 03.09.2021
Dictation taken by :
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\September, 2021\M.A.277.20 with O.A.612.20.w.9.2021.doc

Uploaded on