

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.511 OF 2019
IN
ORIGINAL APPLICATION ST. NO.2058 OF 2019**

DISTRICT : BEED

Taj Mohamad Khan Ameer
Mohamed Khan Durani,
Age : 61 years, Occu. : Retired,
R/o. Rajiv Nagar, Dhanora Road, Beed. **...APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through : The Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Shahid Bhagatsing Marg, Mumbai.
- 3) The Superintendent of Police,
Beed.
- 4) The Pay Verification Unit,
Aurangabad. **...RESPONDENTS**

APPEARANCE : Shri Kakasaheb B. Jadhav, Advocate for
the Applicant.

: Smt. Deepali Deshpande, Presenting
Officer for the Respondents.

CORAM : **SHRI V.D.DONGRE, MEMBER (J)**

DECIDED ON : **09.07.2021.**

J U D G M E N T

1. By this application, the applicant is seeking condonation of delay of about 2 years and 02 month caused for filing the O.A. for the relief of quashing and setting aside the recovery order and for refund of the amount.

2. The applicant has retired on superannuation while working as Assistant Sub Inspector on 31-07-2016 under the control of respondent no.3. Before his retirement, Pay Verification Unit, Aurangabad i.e. respondent no.4 had raised objection regarding pay fixation and scale of the applicant and others and therefore case of the applicant was allotted to the office of respondent no.3 for re-fixation of the pay scale. The respondent no.3 re-fixed the pay of the applicant and directed to recover the excess payment from the applicant which was paid to the applicant due to wrong fixation of pay scale for the said period. The respondent no.3 prepared recovery statement. Thereby amount of Rs.61,060/- was shown as excess amount paid to the applicant during the period of 01-01-1996 to 01-07-2015. In pursuance of the said re-fixation, the respondent no.3 issued order dated 26-07-2016 (Annexure A-3) for recovery of the said amount. Thereafter, the respondent

no.3 recovered the said amount from the gratuity of the applicant after his retirement.

3. It is the contention of the applicant that the applicant belongs to Group-C category. Order of recovery is passed by virtue of wrong pay fixation of the applicant at the instance of the respondents. As per Hon'ble Supreme Court case law in the matter of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**] recovery of such amount is wrong and erroneous. No recovery is permissible for excess payment due to wrong fixation of pay by the respondent. Immediately after retirement, the applicant approached the respondents for refund of the said amount but the respondents did not respond. Thereafter, the applicant was suffering from illness. Even Director General of Police, Mumbai has issued Circular dated 05-09-2018 directing not to recover the amount of excess payment from employees as per the direction of the Hon'ble Supreme Court in case of **State of Punjab V/s. Rafiq Masih**. The applicant ultimately made representation dated 21-09-2019 (Annexure A-5) to the respondent no.3 for refund of the excess payment of the amount. The respondents, however, did not respond. Hence, the Original Application is filed with this application of condonation of delay caused for filing the O.A.

4. Affidavit in reply on behalf of respondent nos.1 to 3 is filed by Swapnil s/o Rajaram Rathod, Sub Divisional Police Officer, Sub Division Georai, Dist. Beed. Thereby he denied the adverse contentions and stated that ground of his illness and illness of his mother and wife stated by the applicant is not genuine. No document is produced to support the same. As per Section 5 of the Limitation Act day to day delay is to be explained by the applicant. No sufficient cause for condonation of delay is shown. Hence, the application for condonation of delay is liable to be dismissed.

5. Heard Shri Kakasaheb B. Jadhav learned Advocate for the applicant and Smt. Deepali Deshpande learned Presenting Officer (PO) for the respondents.

6. Learned Advocate for the applicant submitted that in order to support the ground of illness, the applicant has produced on record medical papers of his wife and mother at Annexure A-2 & A-3 collectively at page no.09 to 28 of the paper book. He submitted that the applicant has a good case on merit. To support his submissions he placed reliance on following three citations, wherein it is held that "expression sufficient cause is to be construed liberally and opportunity is to be given to the aggrieved person".

(1) **[(2013) 12 Supreme Court Cases 649]** in the matter of Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others.

(2) **[(1987) 2 Supreme Court Cases 107]** in the matter of Collector, Land Acquisition Anantnag & Another V/s. Ms. Katiji and Others.

(3) **[2008 AIR (SC) 2723]** in the matter of Ashok Kumar V/s. State of Bihar & Ors.

7. Learned PO on the other hand opposed the submissions made on behalf of the applicant contending that no sufficient cause has been shown for condonation of delay caused for filing O.A.

8. Record shows that the O.A. is filed challenging the recovery order issued by the respondent no.3 directing the applicant to deposit the excess payment made of Rs.61,060/- and recovery thereof and also to decide the representation of the applicant dated 21-09-2021. Said original application is filed on 10-10-2019 along with the present delay condonation application. Record further shows that actual recovery is made from gratuity of the applicant by order dated 26-07-2016. Hence, there is delay of about 2 years and 02 months.

9. Ground of illness is sought to be substantiated by producing on record the medical prescriptions. Apart from that it is a fact that the applicant retired from service on or about 31-07-2016. The applicant is relying upon the circular of the Director General of Police, respondent no.2 issued on 05-09-2018 directing not to recover the amount of excess payment from the employees as per the directions of the Hon'ble Apex Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014. In view of the same, sympathetic consideration should be given while considering the delay condonation also as per the ratio laid down under the case laws relied upon by the applicant.

10. The relief sought for by the applicant is of monetary nature and it does not affect the interest of other Government servants adversely. No doubt, there is delay in approaching the Tribunal, however, it cannot be said to be deliberate or intentional one. Refusing to give indulgence in the matter is likely to defeat the cause of justice at the threshold. Hence, in my opinion, it is a fit case to condone delay by imposing costs on the applicant. I compute costs of Rs.1500/- (Rs. One thousand five hundred only) for that purpose. Hence, I proceed to pass following order:

ORDER

(i) M.A. is allowed in following terms subject to payment of costs of Rs.1500/- by the applicant with Registry of the Tribunal on or before 31-07-2021 and delay in filing the O.A. is condoned.

(ii) Upon satisfaction of the costs as above, Office to register the O.A. in accordance with rules and after removal of office objections, if any. M.A. stands disposed of accordingly with costs.

(V.D.DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 09.07.2021.