

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**M.A.NO.236 OF 2021 IN O.A.ST.NO.950 OF 2021
(Subject:- Condonation of Delay)**

DISTRICT:- AURANGABAD

Suresh S/o Manohar Jagtap,)
Age:- 63 years, Occu: Retired as A.S.I.,)
R/o : C-22, Chinar Garden, Padegaon,)
Tq. & Dist. Aurangabad.)
Mob. 7798599393.)...**Applicant**

V E R S U S

1. **State of Maharashtra,**)
Through: The Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
2. **The Director General of Police,**)
Old Vidhan Bhavan,)
Shahid Bhagatsing Marg, Kulaba,)
Mumbai-39.)
3. **The Superintendent of Police (Rural),**)
Aurangabad.)
4. **The Accountant General-II,**)
Civil Lines, Nagpur.)...**Respondents**

APPEARANCE : Shri K.B. Jadhav, learned Advocate for
the Applicant.
: Shri M.P. Gude, learned Presenting
Officer for the Respondents.

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

DATE : **03.03.2022.**

O R D E R

1. By this Misc. Application, the applicant is seeking condonation of delay of about 3 years and 5 months in filing the Original Application seeking direction to the respondent Nos.3 and 4 to refund the amount of Rs.59,894/- to the applicant which is recovered from the D.C.R.G./gratuity of the applicant after his retirement. The applicant also seeks to challenge the pay fixation order dated 13.10.2015 issued by the respondent No.3 directing recovery.

2. The applicant retired from the establishment of Respondent No.3 on the post of Assistant Police Sub-Inspector (A.S.I.) on 31.08.2016. The applicant was promoted to the post of A.S.I. in the year, 2011. Before his retirement, the respondent No.3 issued order of pay fixation dated 13.10.2015 (Annex. 'A-1' in O.A.). Thereby, recovery of excess payment was ordered w.e.f. 01.01.1993 to 01.07.2015 stating that the excess payment was made due to wrong pay fixation. Total recovery of Rs.59,894/- was ordered. After retirement, the said amount is recovered from the retrial benefits of the applicant.

3. It is the contention of the applicant that he is Group 'C' employee. As per the law laid down in the case of **State of Punjab & others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334**, recovery of any excess amount from the Group 'C' and 'D' employees is impermissible. After retirement, the applicant

was suffering from heart disease. Moreover, since March 2020, the Covid-19 pandemic situation was prevailing. Hence, there is delay in making the application. There is no deliberate delay on the part of the applicant. Hence this Misc. Application.

4. Affidavit-in-reply is jointly filed on behalf of the respondent Nos.1 to 3. It is at page nos. 48 to 53 of Paper Book. Separate affidavit-in-reply is filed on behalf of the respondent No.4. It is at page Nos.44 to 46 of Paper Book. By the said replies, the respondents have opposed the application stating that there is huge delay in approaching the Tribunal and in filing the Original Application. No sufficient cause is shown. The application is therefore, liable to be dismissed.

5. I have heard the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on other hand.

6. The applicant seeks to challenge the recovery order in respect of excess payment made to the applicant. It is dated 13.10.2015. At that time the applicant was in service. He retired on 31.08.2016. Pursuant to the said order dated 13.10.2015, the recovery of the excess amount is effected on 19.09.2016 as per the certificate of deduction dated 28.09.2016 (Annex. 'A-5' in O.A.). The applicant seeks refund of the said amount.

7. The Original Application along with delay condonation application is filed on or about 02.08.2021. The applicant seeks to challenge order of pay fixation and recovery dated 13.10.2015 (Annex. 'A-1' in O.A.) and also seeks refund of the recovered amount of Rs.59,894/- as per certificate issued by the respondent No.3 i.e. the Superintendent of Police (Rural), Aurangabad dated 28.09.2016 (Annex. 'A-5' in O.A.). The excess amount is recovered on 19.09.2016 from the gratuity amount. The limitation period of challenging the order dated 13.10.2015 (Annex. 'A-1' in O.A.) expired on 12.10.2016 i.e. after one year. Meanwhile, the applicant retired on 31.08.2016. The recovery of excess amount said to have been done on 19.09.2016. In view of the same, there is delay of four years and nine months.

8. From the facts and circumstances on record, prima facie, it appears that the applicant being from the category of Group 'C' employee, the case requires consideration as per the case law of the Hon'ble Apex Court cited by the applicant in the application.

9. It is a settled principle of law that the expression "sufficient cause" is to be construed liberally. Considering the facts on record the applicant has substantiated the ground of illness by producing medical papers from January, 2017 to May, 2021. In these circumstances, in my considered opinion, this is a fit case to condone the delay of four years and nine months in filing the Original Application by imposing moderate costs upon the

applicant. I compute the costs of Rs.2,000/-(Rs. Two Thousand only) on the applicant and proceed to pass the following order: -

ORDER

The Misc. Application No. 236/2021 in O.A.St.No.950/2021 is allowed in following terms:-

- (i) The delay of 4 years 9 months in filing the accompanying O.A. under Section 19 of the Administrative Tribunals Act, 1985 is hereby condoned subject to payment of costs of Rs. 2,000/- (Rs. Two Thousand only) by the applicant. The amount of costs shall be deposited in the Registry of this Tribunal within a period of one month from the date of this order.
- (ii) Upon satisfaction of the costs as above, the accompanying O.A. be registered and numbered by taking in to account other office objection/s, if any.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad

Date :- 03.03.2022

SAS. M.A.236/2021 In O.A.St.950/2021