

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD****MISC. APPLICATION NO. 261 OF 2017  
WITH  
ORIGINAL APPLICATION ST. NO. 528 OF 2017  
DISTRICT: AURANGABAD**

**Deorao S/o Namdeo Dawane,** )  
Age: 71 years, Occu. : Retired (Pensioner))  
R/o Plot No. 20, Jai Durga Housing )  
Society, Vijay Nagar, Vijay Chowk, )  
Garkheda East, Aurangabad. ) .. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through its Chief Secretary, )  
Mantralaya, Mumbai. )
- 2) **The Principal Secretary,** )  
Home Department (Pensions), )  
Mantralaya, Mumbai- 32. )
- 3) **The Inspector General of** )  
**Prisons,** )  
Central Building, Pune. ) .. **RESPONDENTS**

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**APPEARANCE** : Shri V.P. Golewar, learned Advocate for the  
Applicant.

: Smt. Sanjivani K.Deshmukh-Ghate, Presenting  
Officer for the Respondents.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)**  
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**O R D E R**

**(Delivered on this 16<sup>th</sup> day of February, 2018.)**

1. The applicant has filed the Misc. Application No. 261/2017 for condonation of delay of 1034 days i.e. 2 years 10 months caused for filing the present Original Application St. No. 528/2017.

2. The applicant was retired from the Government service w.e.f. 30.06.2004, but his retirement benefits had not been released to him, though there was no fault on his part. The Departmental Enquiry was initiated against him and he was exonerated from the charges, but the punishment of recovery of Rs. 20/- from the pension was imposed on him. It is his contention that as per the guidelines issued by the Government from time to time, the pension, Gratuity and other pensionary benefits has to be released to the retired Government employee within one month from the date of retirement and it should not be withheld. It is his contention that the Departmental Enquiry had been completed in the year 2007 and he was exonerated from all the enquiries but minor punishment of recovery of Rs. 20/- from his pension was imposed. But the respondents had not released pensionary benefits to the applicant and therefore, he approached to the National Human Right Commission to put his grievance. After hearing the grievance of the applicant, the National Human Right Commission directed the respondent to release the pension to the applicant and accordingly, respondent No. 2 issued letter dated 04.04.2013 to the respondent No. 3 directing to release the pension and other pensionary benefits to him. Accordingly, on 13.06.2013, all retiral benefits had been paid to the applicant. It is his contention that there was delay in making payment of the pension and pensionary benefits to him and therefore, he had

filed an application dated 13.09.2013 before the National Human Right Commission claiming interest on delayed payment of pension and retiral benefits. The matter was heard by the National Human Right Commission and lastly on 09.08.2016, the National Human Right Commission passed the order and directed the respondent No. 1 i.e. the Secretary, Government of Maharashtra to examine and decide the grievance of the applicant on merit and communicate the outcome of the same to the applicant within six weeks. Thereafter, the applicant made repeated representations to the respondents, but the respondents had not taken decision regarding his grievance about the interest on delayed payment of pension and retiral benefits. Therefore, the applicant approached this Tribunal by filing the present O.A. St. No. 528/2017 claiming interest on delayed payment of pension and pensionary benefits. But there is a delay of 1034 days in filing the accompanying O.A. It is the contention of the applicant that the said delay has been caused as he was prosecuting the matter before the National Human Right Commission and due to the said bona-fide reason, the delay has been caused. There was no intentional and deliberate delay on his part in not filing the present O.A. within stipulated time. Therefore, he prayed to condone the delay by allowing the present Misc. Application.

3. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contention of the applicant. They have admitted the fact that the applicant retired from the service w.e.f. 30.06.2004 on superannuation and at the time of his retirement, three Departmental Enquiries were pending and therefore, provisional pension of Rs. 7148/- and allowances has been sanctioned to the applicant initially for a period of six months and thereafter, provisional pension order was extended by the Accountant General (A & E), Nagpur-II by communication dated 18.01.2005. It is their contention that as per the provisions of Rule 27 (1) of the Maharashtra Civil Services (Pension) Rules, 1982, the pension amount or any part of it can be withheld for a specific period or withdrawn for any serious misconduct or negligence committed during the service by a public servant. In view of the provisions of Rule 130 (1)(c) the Death Cum Retirement Gratuity amount cannot be given to the Government servant unless any departmental or judicial proceedings are completed and final orders are passed. It is their contention that the charges against the applicant were of serious in nature. There were charges of misconduct and negligence of the part of the applicant and therefore, the Death Cum Retirement Gratuity had not been paid to him till finalization of the departmental proceedings. It is their contention that in the Departmental Enquiry regarding irregularities in blood donation camp case, the

Government of Maharashtra passed the order dated 10.04.2007 to reduce Rs. 20/- permanently from the pension of the applicant. The last and final case of the Departmental Enquiry was disposed by the Government on 22.03.2013. After finalization of all cases of Departmental Enquiries, the office submitted pension case of the applicant to the Accountant General-II, Nagpur. The Accountant General directed to fix his pay and to recover excess payment paid to the applicant till retirement from his DCRG's amount. Accordingly, the office recovered the excess payment of Rs. 6278/- from his DCRG amount and submitted bill to the Pune Treasury on 05.09.2013 and D.C.R.G. amount of Rs. 2,19,222/- was paid to the him on 07.11.2013. It is their contention that they filed report to the Assistant Registrar (Law), NHRC, New Delhi on 03.11.2015 contending that the applicant is not entitled for interest on delayed payment of pension and pensionary benefits. It is their contention that there is no just reason to condone the delay and merely filing representation after representation by the applicant is not a sufficient ground to condone the delay. It is their contention that the inordinate delay of 1034 days has been caused in filing the present Original Application and it has not been explained by the applicant by giving just reason. Therefore, they prayed to reject the present Misc. Application.

4. I have heard Shri V.P. Golewar, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

5. Admittedly, the applicant was retired from the Government service w.e.f. 30.06.2004. Admittedly, at the time of retirement, three Departmental Enquiries were pending against him. There is no dispute about the fact that the provisional pension was sanctioned to the applicant immediately for the period of six months initially and thereafter it was extended by the order of the Accountant General-II, Nagpur. Admittedly, the last Departmental Enquiry has finally been disposed of on 22.03.2013. Admittedly, in one of the Departmental Enquiry punishment to recover amount of Rs. 20/- permanently from the pension of the applicant has been imposed. Admittedly, after disposal of the last Departmental Enquiry, pension papers of the applicant has been processed and accordingly, regular pension has been paid to him from 13.06.2013. Admittedly, the amount of DCRG has been paid to him on 07.11.2013. It is not much disputed that the applicant approached to the National Human Right Commission putting his grievance regarding the nonpayment of regular pension and retiral benefits and the National Human Right Commission issued directions to the

respondent No. 1 from time to time. Admittedly, on 13.09.2013 the applicant moved another application before the National Human Right Commission claiming interest on the delayed pension and retiral benefits and in that proceedings, the National Human Right Commission directed the respondent No. 1 by its order dated 09.08.2016 to examine and decide the grievance of the applicant on merit and communicate the outcome to the applicant within six weeks. The applicant thereafter, approached the respondent No. 1 from time to time, but the respondent No. 1 had not been taken decision on it. Therefore, the applicant approached this Tribunal by filing the present O.A. Admittedly, the delay of 1034 days i.e. more than 2 years and 10 months had been occurred in filing the O.A. St. No. 528/2017. The applicant ought to have filed the O.A. on or before 13.09.2014, but he has filed the present Original Application before this Tribunal on 18.04.2017.

6. Learned Advocate for the applicant has submitted that the applicant prosecuted the proceedings before the National Human Right Commission and put his grievance claiming interest on the delayed payment of pension and pensionary benefits before the National Human Right Commission and the National Human Right Commission issued directions to the respondent No. 1 from time to time and lastly on 09.08.2016 directed the respondent No.

1 to consider the grievance of the applicant and communicate the outcome to the applicant within six weeks, but no decision has been taken by the respondents in that regard. He has submitted that the applicant approached the National Human Right Commission to put his grievance. He has submitted that the delay has been caused due to said bona-fide reason. He has further argued that the applicant had belief that his grievance might have been redressed by the National Human Right Commission and therefore, he had not approached this Tribunal earlier. He has submitted that the applicant has a merit in the original claim and therefore, in the circumstances, he prayed to condone the delay for the just reason mentioned by the applicant to advance the cause of substantial and real justice.

7. Learned Advocate for the applicant has placed reliance on the judgment in case of **Baswant Devidas Nandgavali Vs. Secretary and Ors.** reported in **2013(5) Bom. C.R. 464 in W.P. No. 10241 of 2012**, wherein it is observed as follows:-

*“4. In (State of Uttar Pradesh v/s Harish Chandra) AIR 1996 SC 2173, it was observed by the Apex Court:*

*It is undoubtedly true that the applicant seeking for condonation of delay is duty bound to explain the reasons for the delay but as has been held by this Court in several cases, the very manner in which the bureaucratic process moves, if*

*the case deserves merit the Court should consider the question of condonation from that perspective.*

*On the facts of that case it was observed:*

*That apart the respondents themselves approached the High Court in the year 1990 making grievance that they had not been appointed even though they are included in the Select List of 1987 and 1987 list itself expired under the Rules on 4.4.1988. In this view of the matter and in view of the merits of the case we are of the opinion that sufficient cause has been shown for condoning the delay and accordingly we have condoned the delay.*

5. *In N. Balakrishnan v/s M. Krishnamurthy JT 1998 (6) SC 242, the Hon'ble the Supreme Court observed:*

*"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory... .*

*The law was summed up in the following words:*

*Rules of limitation are not meant to destroy the right of the parties.*

*In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door of substantial and real justice against him so as to render him remediless.”*

He has submitted that the delay caused in filing the present O.A. is not inordinate delay and it cannot be solely attributed to the applicant and therefore, he prayed to condone the delay by allowing the present Misc. Application.

8. Learned Presenting Officer has submitted that the applicant was serving as a Deputy Inspector General of Prisons at the time of his retirement. He was aware about the Departmental Enquiries pending against him. She has argued that the last D.E. was finally disposed of in the year 2013 and thereafter, pension papers have been processed and accordingly, regular pension has been sanctioned and retiral benefits have been paid to the applicant. She has submitted that initially the provisional pension was granted to the applicant and it was extended from time to time by the order of Accountant General-II, Nagpur. She has submitted that because of pendency of the D.E. pensionary benefits has not been paid to the applicant in view of the provisions of the Maharashtra Civil Services (Pension) Rules,

1982. She has argued that the applicant approached the National Human Right Commission putting his grievance claiming interest on delayed payment of pension and pensionary benefits. She has submitted that the applicant was aware about the fact that the present O.A. ought to have been filed within one year from the date of payment of pensionary benefits given to him, but he has not approached this Tribunal within a prescribed period of limitation. Instead he had approached the National Human Right Commission. The applicant had not approached this Tribunal intentionally and deliberately. Therefore, the delay caused in filing the present Original Application is intentional and deliberate and therefore, the said cannot be condoned. Therefore, she prayed to reject the present Misc. Application.

9. She has further submitted that no satisfactory explanation has been given by the applicant for not filing the present O.A. in time and therefore, she prayed to reject the present Misc. Application as well as O.A.

10. On perusal of the documents on record, it reveals that the applicant was aware about the legal proceedings. He was aware about the fact that after getting regular pension and pensionary benefits in the year 2013, he ought to have approached this Tribunal within prescribed period of limitation claiming interest on delayed payment of pension and pensionary

benefits. Instead of approaching this Tribunal, he has intentionally chosen forum i.e. National Human Right Commission to put his grievance and sought directions from it from time to time. Lastly the National Human Right Commission directed the respondent No. 1 to take decision regarding grievance of the applicant and communicate the outcome to the applicant within six weeks, but the respondents had not taken decision and therefore, the applicant has approached this Tribunal. This shows that the applicant intentionally avoided to approach this Tribunal in time. He was aware about the fact that this is a proper forum to consider his grievance regarding interest on delayed payment of pension and pensionary benefits. But he prosecuted the matter before wrong forum knowing fully well that the National Human Right Commission is not a proper forum to claim interest on the delayed payment. This fact shows that the applicant had not approached this Tribunal intentionally and deliberately within prescribed period of limitation and therefore, the delay has been caused. The applicant has not given satisfactory explanation for condoning the delay. He has not given bona-fide reason for condoning delay. As discussed above, the applicant has not been given satisfactory explanation to condone the delay. Therefore, in my opinion, there is no just ground to condone the inordinate delay of 1034 days i.e. 2 years and 10

months caused for filing the accompanying O.A. Therefore, the same cannot be condoned.

11. I have gone through the above decision referred by the learned Advocate for the applicant. I have no dispute about the legal principles laid down therein. Keeping in mind the said principles, I have to consider the facts in this case. As discussed above, no satisfactory and acceptable explanation has been given by the applicant for condoning the inordinate delay caused for filing the present O.A. Therefore, in my opinion, it is not a fit case to condone the delay. Therefore, the said decision is not much useful to the applicant in the instant case.

12. In view of the above circumstances, it is not a fit case to condone the delay, as the applicant has not given sufficient and acceptable explanation for condoning the same. Therefore, the M.A. deserves to be rejected.

13. Hence, the M.A. stands dismissed with no order as to costs. Consequently the O.A. stands rejected. There shall be no order as to costs.

**(B.P. PATIL)**  
**MEMBER (J)**

**PLACE : AURANGABAD.**

**DATE : 16.02.2018.**