

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 302 OF 2015**

**DISTRICT : NASIK**

Smt Hirabai Kacheshwar Davange, )  
Residing at C/o: Sharad K. Davange, )  
Shree Krishna Bungalow, Gayatri Nagar, )  
Dindori Road, Nasik 422 004. )...**Applicant**

**Versus**

1. Government of Maharashtra )  
Through Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )  
2. Director of Health Services, )  
Having office at St. Georges )  
Compound, Fort, Mumbai. )...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 05.07.2016**

**ORDER**

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking interest on delayed payment of her retiral dues as per her representation dated 30.11.2011 and challenges order dated 8.5.2014, issued by the Respondent no. 1.

3. Learned Counsel for the Applicant argued that the Applicant's husband was working as Office Superintendent in Civil Hospital, Nasik and he died on 20.11.1998. The Applicant was sanctioned Family Pension of Rs. 1070/- p.m from 21.11.1998 by P.P.O dated 21.1.1999. This was as per the Fourth Pay Commission. The gratuity was also deposited in the Bank account of the Applicant on 13.6.1999. There was delay of 8 months in actually depositing family pension, which was deposited on 24.7.1999. As per Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982, any delay of more than 3 months entails payment of interest.

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Learned Counsel for the Applicant contended that the family pension and gratuity were sanctioned as per the 4<sup>th</sup> Pay Commission, while the 5<sup>th</sup> Pay Commission was implemented from 1.1.1996. Proposal to revise the family pension of the Applicant was submitted by Civil Surgeon, Nasik on 20.5.2009. Arrears of family pension and gratuity was paid in 2011 only. The Applicant is, therefore, eligible to be paid interest on these delayed payments. Learned Counsel for the Applicant argued that the Respondents have not given any reason justifying refusal to pay interest on delayed payment. The Applicant is entitled to claim interest on delayed payment as claimed by her in the representation dated 30.11.2011.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has herself admitted that the family pension and gratuity was sanctioned to her on 21.1.1999, while her husband expired on 20.11.1998, i.e. within 2 months. There was some delay in actual depositing the amount of pension/gratuity in the bank account of the Applicant. Rule 129-A of the Maharashtra Civil Services (Pension) Rules, 1982 states if the payment of gratuity has been authorized after three months, and it is clearly established that the delay in payment was attributable to administrative lapse, only then interest is payable. The gratuity was authorized within two months and there is no material on record to suggest that delay was



attributable to administrative lapse. Similarly, under Rule 129-B of Pension Rules, delay in authorization of pension beyond six months and if delay is attributable to administrative lapse, only then interest is payable. As already mentioned, pension was authorized in two months. The claim of the Applicant is not tenable.

5. Learned Presenting Officer argued that the Fifth Pay Commission was implemented from 1.7.1999 and the Sixth Pay Commission in 2009, though the dates of implementation were 1.1.1996 and 1.1.2006 respectively. Learned Presenting Officer argued that there was delay in revising the family pension of the Applicant due to various reasons which have been explained in the letter dated 13.12.2013 from the Civil Surgeon, Nasik to the Applicant. After the recommendations of the Fifth and Sixth Pay Commission was implemented, pay and pension of more than 1000 staff in Civil Hospital, Nasik were required to be revised. It was a mammoth task, while the administrative staff was inadequate for this purpose. There was some delay due to factors attributable to the late husband of the Applicant. Some excess amount of Rs. 81,873/- was paid to the Applicant, and it was found recoverable by Accountant General in the year 2011-12. Late Husband of the Applicant was working as Assistant Superintendent at Rural Hospital, Peth from 27.5.1985 to 9.6.1992. Rs. 4,58,557-53 from Family Planning Programme were misappropriated from

P.H.C and Rural Hospital, Peth, when late Shri Dawange was working there. A criminal case RCC No. 188/1995 was filed in the Court of Chief Judicial Magistrate. Role of the husband of the Applicant was inquired into, but the case against him was closed as he had expired. This has also caused some delay. Learned Presenting Officer argued that there was no intentional delay and there is no provision in any rule for payment of interest on arrears as per Pay Commission recommendations.

6. It is seen that the Applicant is seeking interest on delayed payment of family pension and gratuity after her husband died on 20.11.1998, while in service. It is an admitted fact that the family pension and gratuity was authorized by Accountant General on 21.1.1999, i.e. almost in 2 months. Rule 129-A and 129-B talk of authorization of gratuity and pension respectively. Also delay in actual payment has to be attributable to administrative lapse, which after lapse of 16 years, will be difficult to verify. I agree with the contention of the learned Presenting Officer that no interest claim is established on delayed payment of family pension and gratuity in 1999. Coming to the arrears of pension on account of 5<sup>th</sup> & 6<sup>th</sup> Pay Commission, admittedly, the same were implemented in the State of Maharashtra from 1.7.1999 and from 2009 respectively. There was delay in payment of arrears to the Applicants, which were apparently sanctioned in the year 2010. The Applicant is

totally silent about the reasons for not making representation in the year 1999/2009. The Civil Surgeon has given some reasons for delay in sanctioning the arrears of Pension etc. Again after all these years, it is almost impossible to come to any definite conclusion whether the reasons for delay were genuine and justifiable. Such cases are clearly covered by judgment of Hon'ble Supreme Court in the case of M.K SARKAR Vs. UNION OF INDIA : LAW (SC)-2009-12-79. In such cases, Hon'ble Supreme Court has frowned upon the tendency of Courts/Tribunal to allow the first application to consider the representation without examining the merits and the issue of limitation. Hon'ble Supreme Court has observed as follows:-

“The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob Vs. Director of Geology and Mining and Anr. 2009 (10) SCC 115 :-

“The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the




representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee get a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/ High Courts routinely entertain such applications /petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

7. In the present case, after 16 years, it is not possible to come to any conclusion, whether the Respondents (Civil Surgeon, Nasik) was justified in ascertaining the role of the deceased husband of the Applicant in huge misappropriation of Government money, when he was working as Cashier in the concerned PHC/Rural Hospital at Peth. No doubt, after

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death of a Government servant, no criminal/departmental proceedings can survive against him. However, if any amount were directly misappropriated by a deceased Government servant, whether the same can be recovered is the moot question. This could have been a plausible cause of delay in payment of the arrears to the Applicant. Another reason for delay claimed by Civil Surgeon, Nasik is some recovery pointed out by the Accountant General in the year 2011-12 for excess payment. After all these years, it will not be possible to conclude whether the reasons given by the Civil Surgeon for delay are genuine or not. It is unrealistic to call for the records. The Civil Surgeon, Nasik is not even made a party in these proceedings.

8. The Applicant has not taken steps for timely payment of arrears of pension etc. when orders implementing 5<sup>th</sup> Pay Commission (in 1999) and 6<sup>th</sup> Pay Commission (in 2009) were issued. She had filed representation only on 30.1.2011, after receiving all the arrears. Not a whisper is there in the representation or in Original Application about the reasons for delay in seeking redressal of her grievances. The Applicant has not been able to establish that delay in payment of arrears was attributable to administrative lapses.





9. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 05.07.2016**

**Dictation taken by : A.K. Nair.**