

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.241 OF 2015**

DISTRICT : SOLAPUR

Shri Abdulaziz Mastansab Shaikh,)
Retired Junior Clerk from the office of the)
Respondent No.1)
R/o 448, Murarji Peth, Solapur)
Address for service of notice:)
Shri A.V. Bandiwadekar, Advocate,)
9, Ram Kripa, Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016)..Applicant

Versus

1. The Dean,)
Dr. V.M. Medical College, Solapur)

2. The Director of Medical Education and)
Research, Govt. Dental College and)
Hospital Building, 4th floor, St. George's)
Hospital Compound, Mumbai-1)..Respondents



Shri A.V. Bandiwadekar – Advocate for the Applicant
Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 22nd January, 2016

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant seeking payment of interest on the delayed payment of retiral benefits to him. paid

3. Learned counsel for the Applicant argued that he has earlier filed OA No.836 of 2013 before this Tribunal as he was denied any retiral benefits on the ground that he was over-age when he joined the Government service. This Tribunal by order dated 25.2.2014 allowed OA No.836 of 2013 and the respondents were ordered to treat the Applicant as eligible for age relaxation as a 'strike candidate' in terms of GR dated 29.9.1983. The Applicant was held eligible to be granted all retiral benefits. Learned counsel for the Applicant argued that the Applicant submitted a representation dated 16.2.2015 for

16

payment of interest on delayed payment of retiral dues to him. The Applicant had retired from Govt. service on 31.5.2012 and the pensionary benefits were ordered to be paid by order of this Tribunal by order dated 25.2.2014. The Applicant is, therefore, eligible for interest on delayed payment of dues as per MCS (Pension) Rules, 1982 and other related circulars and GRs from the date of retirement.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant has sought the same relief in his earlier OA No.836 of 2013. Though this Tribunal ordered granting of retiral dues to him, his request for interest on delayed payment was not considered by this Tribunal. The Applicant is not entitled to raise the same issue and seek the same relief by filing another OA, when it was not considered earlier. Learned PO argued that the request of the Applicant for payment of interest was rightly not considered by this Tribunal as there was no delay on the part of the Respondents. The issue whether the Applicant was eligible to be granted pension was required to be decided in OA No.836 of 2013. The Applicant had claimed that he was a 'strike candidate' eligible for relaxation in age in terms of GR dated 29.9.1983. The documentary evidence in this regard was far from clear. This Tribunal held that the Applicant was prima facie, a strike candidate. From this finding, it is quite clear that the Applicant's claim for age relaxation was not free from doubt and



the Respondents cannot be faulted for not granting his pensionary benefits, before this issue was decided by this Tribunal.

5. I find that in para 2 of the order dated 25.2.2014 in OA No.836 of 2013 this Tribunal has noted as below:

“2. In this Original Application No.836 of 2013 the applicant Shri Abdulaziz Mastansab Shaikh, has sought issuance of directions to the respondents to grant the second benefit under the Assured Career Progression Scheme (ACPS) (ACP Scheme) as prescribed in the GR dated 1.4.2010 and accordingly re-fix the pay and pension of the applicant. Further, he has sought 12% interest on consequential benefits. The applicant has also sought issuance of directions to quash and set aside the order dated 30.1.2013 by way of which the applicant was informed that the matter of his pensionary benefits cannot be finalized on account of the fact that he was over aged at the time of entering Government service.”

6. The contention of the Respondents that the Applicant had sought 12% interest on delayed payment in OA No.836 of 2013 is found to be correct. It is also true that the claim of the

Applicant that he was a strike candidate and thus eligible for relaxation in age was not established without any doubt before the judgment of this Tribunal in earlier OA. In para 10 of the aforesaid judgment, it is mentioned that:

“10. It is a fact that vide letter dated 21.5.2013, the Tahsildar (G) of the office of the Collector, Solapur has informed the applicant that a perusal of the records pertaining to strike recruits of the Collectorate showed that his name does not appear in the same. The applicant has however tendered a strike duty certificate dated 9.6.1978 issued by the Dean of Dr. V.M. Medical College which states as follows:”

7. The Applicant's name did not appear in the records of the 'strike candidates' maintained by the Collector, Solapur. This Tribunal has relied on the records of the Dr. V.M. Medical College, Solapur. It is absolutely clear that the claim of the Applicant that he was eligible for age relaxation was not established and required appraisal of evidence by this Tribunal. As such, it cannot be said that the delay in settling retiral dues of the Applicant was due to any administrative lapse on the part of the Respondents. In fact, the office of the Accountant General, Maharashtra has raised legitimate queries, when the Applicant's papers were submitted to him for granting

pensionary benefits to the Applicant, which were required to be answered by the Respondents. It is not a case of delayed payment due to any administrative lapse on the part of the Respondents. As such, there is no question of payment of any interest to the Applicant. This Tribunal, in earlier OA No.836 of 2013 has also not considered it fit to grant similar relief to the Applicant, which he has specifically sought. There is no reason as to take any different view now.

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

Sd/-
(Rajiv Agarwal)
Vice-Chairman
22.1.2016

Date : 22nd January, 2016

Dictation taken by: S.G. Jawalkar.