

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.464 OF 2017

DISTRICT : SATARA

Shri Limbaji M. Tapse)
Age : 70 years, Retired as Inspector, State)
Excise from the office of Supt. of State)
Excise, Satara.)
R/of 147, Malhar Peth, behind Alishaan)
Furnitures, Satara.)...**Applicant**

Versus

1. The Commissioner, State Excise,)
(M.S.), Mumbai, Old Custom)
House, 2nd floor, Shahid)
Bhagatsingh Marg, Fort,)
Mumbai – 23.)
2. The Principal Secretary-cum-)
Incharge Commissioner, State)
Excise, (M.S.), Mumbai, O/at)
Old Custom House, 2nd floor,)
Shahid Bhagatsingh Marg, Fort,)
Mumbai – 23.)
3. The State of Maharashtra, through)
Principal Secretary, Home Dept.)
(State Excise Dept.), having office)
At Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.01.2020

JUDGMENT

1. The present O.A. is filed by the Applicant who stands retired on 31.07.2005 for grant of compound interest @18% on pay and allowances on the promotional post of Sub-Inspector, State excise for the period from 21.04.1988 to 30.10.2000 invoking the jurisdiction of this Tribunal u/s 19 of Administrative Tribunal Act, 1985.

2. Present O.A. has chequered history of litigation and uncontroverted facts giving rise to the O.A. are as follows:-

(a) In the year 1998-1999 while the Applicant was serving on the post of clerk, his case was not considered for promotion to the post of Sub-Inspector, State Excise.

(b) The Applicant has therefore filed O.A.No.658/1999 before this Tribunal which was disposed of on 28.07.2000 giving directions to the Respondents to consider the eligibility and suitability of the Applicant for promotion on such a date when his juniors were promoted or deemed to have been promoted prior to 01.01.1993 without taking into account physical requirements prescribed by the Commissioner.

(c) Accordingly, Respondent No.1 –Commissioner, State Excise by order dated 31.0.12003 granted deemed date of promotion to the Applicant w.e.f. 21.04.1988. However, difference of pay and allowances from 21.04.1988 to actual date of promotion i.e. 30.10.2000 was not granted.

(d) Petitioner stands retired from Government service from 31.07.2005 on attaining the age of superannuation.

(e) The Applicant then filed W.P. No.5737/2007 on the basis of information collected under RTI Act which revealed that colleagues

of the Applicant namely Shri S.H. Avhad and Shri S.K. Thorat were paid back wages, and therefore, in W.P. prayed for direction to grant back wages from deemed date of promotion.

(f) W.P. No.5737/2007 was disposed of on 08.08.2007 granting liberty to the Applicant to approach the Respondents for the said relief.

(g) The Applicant accordingly made representation to Respondent No.1-Commissioner, State Excise on 23.08.2007 and claimed back wages as granted in case of Shri S.H. Avhad and Shri S.K. Thorat.

(h) Respondent No.1 –Commissioner, State Excise passed order on 16.12.2010 granting pay and allowances of promotional post w.e.f. 21.04.1988 to 30.10.2000.

(i) Accordingly, sum of Rs.85,460/- towards pay and allowances of the promotional post were paid to the Applicant on 11.02.2011.

(j) The Applicant again filed W.P.No.4971/2011 seeking directions for compound interest @ 18% per annum on the amount of pay and allowances paid to him on 11.02.2011.

(k) The Hon'ble High Court disposed of the W.P. 4971/2011 on 01.12.2011 with liberty to the Applicant to approach the Tribunal.

(l) The Applicant accordingly had filed the O.A.No.150/2012 which was disposed of by the Tribunal on 03.10.2013 with liberty to the Applicant to make representation to the Competent Authority in respect of claim of interest.

(m) The Petitioner accordingly made representation to Respondent No.1–Commissioner, State Excise on 18.09.2014

claiming interest on pay and allowances on the basis of G.R. dated 22.11.1994 and the copy of representation was also forwarded to Government.

(n) Respondent No.1 –Commissioner, State Excise as well as Respondent No.3-State of Maharashtra has rejected the representation by order dated 26.03.2015 and 22.07.2015.

3. Being aggrieved by the rejection of claim of interest by impugned orders dated 26.03.2015 and 22.07.2015, the Applicant has filed present O.A. along with an application of condonation of delay which was condoned by this Tribunal.

4. The Respondents have resisted the Application by filing Affidavit-in-Reply *inter-alia* denying the entitlement of the Applicant for the relief claimed. The Respondents raised mainly following grounds:-

(i) In the year 1988-89 though the Applicant was due for promotion to the post of Sub-Inspector, he was not fulfilling the physical requirement of having minimum height of 165cm prescribed by the Commissioner of State Excise, and therefore, he could not be promoted in terms of Notification issued by the Home Department on 01.01.1993, which *inter-alia* prescribed minimum height not less than 165 cm.

(ii) Later, some of the seniors refused promotion of Sub-Inspector, and therefore, the Applicant was considered for promotion and he was promoted on 30.10.2000.

(iii) As regard, deemed date of promotion, the Applicant was granted deemed date of promotion w.e.f. 21.04.1988 by order dated 31.01.2003 in view of the directions issued by the Tribunal in O.A.No.658/1999 and pay and allowances

for the period from 21.04.1988 to 30.10.2000 was granted by order dated 16.10.2010.

(iv) Pay and allowances for the promotional post from 21.04.1988 to 30.10.2000 was sanctioned by order dated 16.12.2010 and the payment was also made on 11.02.2011 which was within less than six months from the date of sanction order, and therefore, the question of payment of interest in terms of G.R. dated 22.11.1994 did not arise as it is only in case where the payment is delayed by more than six months from the date of sanction order then only interest is payable.

5. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to placed reliance on G.R. dated 22.11.1994 with Corrigendum dated 24.01.1996 and sought to contend that in terms of corrigendum dated 24.01.1996, the Applicant is entitled to compound interest @12%. He submits that every time the Applicant was forced to knock the door of Tribunal or High Court to redress his grievance, and therefore, the Respondents' denial of compound interest on pay and allowances is unjust. He sought to canvass that the Applicant was subjected to injustice in view of denial of promotion in 1988 and the same being granted quite belatedly, the Applicant is entitled to compound interest on the pay and allowances for the period from 21.04.1988 to 30.10.2000. He submits that only because the pay and allowances were paid within six months from the date of sanction (i.e.16.12.2010) that itself would not absolve the Respondents from the liability to pay compound interest, as the sanction order itself has been passed quite belatedly i.e. after 10 years.

6. Per contra, Shri A. J. Chougule, learned Presenting Officer reiterated the contents raised in reply and pointed out that, indeed, the Applicant was not fulfilling the physical requirement of minimum height

of 165 c.m. prescribed by the Commissioner of State Excise in terms of Notification dated 01.01.1993 but he was given deemed date of promotion in pursuance of order passed by the Tribunal in O.A.658/1999. He has further pointed out that, later, deemed date of promotion was granted w.e.f.21.04.1988 because of promotion granted to the juniors to the Applicant and by order dated 26.12.2010, the pay and allowances were also sanctioned for the said period and accordingly paid on 11.02.2011. He, therefore, submits that in terms of G.R. dated 22.11.1994, the payment being made within six months from the date of sanction order, the Respondents are not liable to pay interest.

7. The factual matrix as stated above is not in dispute. It is true that the Applicant was required to approach the Tribunal time and again for redressal of his grievances. He claims to have been eligible and fulfilling all requirements for promotion on the post of Sub-Inspector, State Excise in 1988 itself but the same was not given to him, and therefore, he had filed O.A.No.658/1999, which was decided on 28.07.2000. The operative order of O.A.658/1999 is relevant, which is as under :-

“The Original Application is allowed. The Respondents are directed to consider the eligibility and suitability of the petitioner as on the date his juniors were promoted or deemed to be promoted prior to 1.1.1993, without taking into account the physical requirements prescribed by the Commissioner at that time. If the petitioner is held as eligible and suitable for promotion on this basis, at any time prior to 1.1.1993 he may be promoted forthwith and given appropriate deemed date of promotion. His emoluments on promotion should be fixed on the basis of his deemed date of promotion. However since he has not actually served in the promoted post earlier he need not be given back wages for this period unless others similarly situated have been given backwages. With these directions, this Original Application stands disposed off. No order as to costs.”

8. As such, in view of the decision in O.A.658/1999, the directions were given to consider the suitability of the Applicant for promotion without taking into account the physical requirement prescribed by the Commissioner and it was further specifically directed that the Applicant will not be given backwages for the said period unless others similarly

situated have been given backwages. It is on this background, the Applicant was given deemed date of promotion w.e.f.21.04.1988 by order dated 31.01.2003 but initially pay and allowances for the said period was refused. The Applicant then stands retired on 31.07.2005. However, again the Applicant had filed Writ Petition No.5737/2007 for grant of backwages on the ground that his colleagues viz. Shri S.H. Ahmed, Shri S.H. Awhad and Shri S.K. Thorat were granted backwages. However, Writ Petition was disposed of with direction to the Applicant to approach Respondents for the said relief. Then again, he approached Respondent No.1 and in pursuance of it, by order dated 16.12.2010, the pay and allowances were sanctioned for the period from 21.04.1988 to 30.10.2000 and sum of Rs.84,460/- was actually paid on 11.02.2011. Suffice to say, there was no such specific direction either in Writ Petition or in earlier O.A. for grant of interest on pay and allowances. Indeed, the Applicant did not work on promotional post for the period from 21.04.1988 to 30.10.2000 but pay and allowances were granted on the ground of parity. Thus, the situation emerges that the Applicant is fully compensated in terms of pay and allowances of the promotional post though he did not work on promotional post in the said period. This being the position, the question would naturally arise as to whether the Applicant has legal vested right to claim interest on the amount of pay and allowances or are there some equitable consideration in favour of the Applicant to grant interest.

9. As per G.R. dated 22.11.1994, it is only in case where the payment of any such allowances is paid beyond six months from the date of sanction order, then only the Government servant would be entitled for payment of interest. In the present case, the pay and allowances were granted to the Applicant by order dated 16.12.2010 and actual payment was actually made on 11.02.2011. As such, the payment was made within six months, and therefore, the demand of Applicant for interest does not fall within the parameters of G.R. dated 22.11.1994.

10. The submission advanced by the learned Advocate for the Applicant that the order of sanction of pay and allowances itself was belated by 10 years, and therefore, the Applicant is entitled to interest is unacceptable, as the Applicant is already compensated by payment of pay and allowances of the promotional post on which he did not work. Indeed, the pay and allowances were granted to the Applicant on the ground of parity. It is nowhere the case of the Applicant that the interest was granted to Shri S.H. Ahmed, Shri S.H. Awhad and Shri S.K. Thorat. As a matter of fact, while deciding O.A.No.658/2019, the Tribunal had specifically directed not to pay backwages to the Applicant unless other similarly situated persons have been given backwages. As such, the Applicant was to be compensated by payment of backwages only and there are no such direction for payment of interest.

11. Needless to mention that the interest is granted where a person is deprived of his legitimate right to receive some pay and allowances due to administrative lapses or negligence to pay the pay and allowances to the Government servant on the date on which it was payable. In the present case, the Applicant is claiming interest on the allowances which was already paid to him though he did not work on the promotional post. In such situation, it cannot be said that the Applicant has any legal vested right either by statute or on the ground of equitable consideration to claim interest. In fact, he is already compensated by making payment of their promotional post though he did not work on the said post. In my considered opinion, in such situation, it would not be just and proper to saddle the Government with interest in absence of special equitable consideration in favour of the Applicant.

12. The submission advanced by the learned Advocate for the Applicant that for later period, the Respondents have already paid interest at the rate of 8.5% p.a., and therefore, the Applicant is entitled to interest on the earlier period i.e. from 21.04.1988 to 31.10.2000 is misconceived. In so far as this aspect is concerned, the payment of

Rs.68,167/- which was the amount of difference of salary was delayed by one year and eleven months, and therefore, interest Rs.12,015/- was granted. As such, so far as that payment is concerned, it was the amount to which the Applicant was entitled to receive due to difference in the wages of promotional post, which was got delayed by one year and eleven months. Therefore, this aspect cannot be interpreted *ipso-facto* in favour of the Applicant to claim interest on the pay and allowances of the post on which he did not work. Indeed, the Applicant was not eligible for promotion in view of not fulfilling physical requirement of having 165 c.m. height in terms of Rules, which came into effect in 1993. However, the Tribunal in Judgment passed in O.A.658/1999 directed the Respondents to consider the Applicant for promotion without taking into account the physical requirement considering the suitability of Applicant sans Rules of 1993. As such, on the ground of equity, the deemed date of promotion was granted and later pay and allowances were also granted for the said period. This being the position, in my opinion, no special consideration is made out for grant of interest and the demand of the Applicant is not acceptable.

13. The totality of aforesaid discussion leads me to conclude that the claim of interest is devoid of merit and O.A. deserves to be dismissed. Hence, the following order.

O R D E R

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 03.01.2020
Dictation taken by :
S.K. Wamanse.