

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.3 OF 2022  
IN  
ORIGINAL APPLICATION NO.63 OF 2015  
(Subject:- Review)**

**DISTRICT: - Aurangabad.**

**The Superintending Engineer and  
Administrator Command Area  
Development Authority,  
CADA Bhavan Garkheda Parisar,  
Aurangabad.** )  
)  
)  
)  
)  
)...**APPLICANT**  
(Ori. Resp.No.4)

**V E R S U S**

1. **Saylu S/o Prabhajirao Nawod,** )  
Age:60 years, Occ. Pensioner, )  
R/o Sai Nivas Ashtavinayak Nagar )  
Behind Shetakari Nivas, Bhokar, )  
Dist. Nanded. )  
)..**RESPONDENT**  
(Ori. Applicant)
  2. **The State of Maharashtra** )
  3. **The Secretary (CADA),** )  
Water Resources Department, )  
Mantralaya, Mumbai-32. )
  4. **The Accountant General (A & E) II** )  
(Pension Branch Office) )  
Maharashtra State, Nagpur 440001. )
  5. **The Joint Director,** )  
Accounts & Treasuries )  
Lekha Kosh Bhavan, 2<sup>nd</sup> floor, )  
Fazilpura, Aurangabad. )
  6. **The Accounts Officer,** )  
Pay Verification Unit, )  
Lekhakosh Bhavan, 2<sup>nd</sup> floor, )  
Fazilpura, Aurangabad. )  
)...**Original**  
**RESPONDENTS**
-

-----  
**APPEARANCE** : Shri S.B. Mene, learned Advocate  
for the applicant in R.A./Respondent  
No.4 in O.A.  
:  
Shri N.U. Yadav, learned Presenting  
Officer for the respondent Nos.2 to 6 in  
R.A./respondent Nos.1 to 3, 5 & 6 in  
O.A.  
:  
Shri S.D. Joshi, learned Advocate for  
the respondent No.1 in R.A./Applicant  
in O.A.  
-----

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

**DATE** : **06.07.2022**  
-----

**ORDER**

1. The Applicant in present Review Application/Respondent No.4 in O.A.No.63/2015 i.e. the Superintending Engineer and Administrator Command Area Development Authority, Aurangabad has filed this application for seeking clarification of order dated 11.04.2016 passed by this Tribunal deciding the Original Application No.63/2015 filed by the Respondent No.1 herein i.e. Shri Saylu Prabhajirao Nawod. This clarification is sought as per the direction of the Hon'ble High Court of Judicature at Bombay,

Bench at Aurangabad in W.P.No.10262/2018 as per order dated 11.10.2018.

2. The respondent No.1 herein named Saylu Prabhajirao Nawod filed the Original Application No.63 of 2015 seeking following reliefs:-

*“A) This Original Application may kindly be allowed;*

*A-1) By issue of an appropriate order or direction, the impugned communications bearing Office Order Nos.330 and 331 both dated 12.06.2015 (which are at Annexure-‘A-11’ collectively), issued by respondent No.4, may kindly be quashed and set-aside.*

*B) By issue of an appropriate order or direction, the communication bearing outward No.JDA&T/EST-38/ABAD/2014/2014, dated 29<sup>th</sup> March, 2014, issued by respondent No.5 thereby directing the office of respondent No.4 to revise the pay of the applicant by canceling the promotion granted to the applicant on the post of Daftar Karkun may kindly be quashed and set-aside.*

*B-1) By issue of an appropriate or direction, the respondents No.1 to 6 may kindly be directed to release the amount of D.C.R.G., Commutation, difference of provisional pension as well as regular pension within a period of two months forthwith.*

*C) By issue of an appropriate order or direction, the respondent No.6 may kindly be directed to forward the pension papers of the applicant to the office of respondent No.3 forthwith.”*

*(quoted from page no. 13 of O.A.)*

3. This Tribunal disposed of the said Original Application by order dated 11.04.2016. The operative part thereof is as follows:-

**ORDER**

- “(i) Office order No.330 and 331, dated 12.06.2015 passed by respondent no.4 are quashed and set aside, so far as pertaining to recovery of excess amount.*
- (ii) Consequently, respondents are directed to release the amounts withheld as regards DCRG and difference of provisional pension.*
- (iii) There shall be no order as to costs.”*

In view of above, according to the Original applicant/ Respondent No.1 herein, this Tribunal set aside both the impugned orders dated 12.06.2015 to the extent of recovery of excess amount paid.

4. The respondent No.1 herein/Original Applicant in O.A.No.63/2015 pleaded that vide office order Nos. 330 and 331 both dated 12.06.2015, the respondent No.4 in O.A. was pleased to cancel the order of promotion of the applicant dated 21.02.1981. While cancelling the order of promotion, it was further directed to revise the pay from 11.03.1981 to 30.06.2013 and also to recover the excess amount paid to the applicant. Said amount is directed to be recovered from the

gratuity and pension payable to the applicant. The applicant claimed that both the said orders were illegal.

5. The respondents in the O.A. therein placed on record their reply and submitted that the promotion order was cancelled and in view of the direction of the Pay Verification committee, the amount was being recovered. Admittedly, the applicant in O.A. stood retired on superannuation on 30.06.2013 and the recovery order is passed two years thereafter i.e. on 12.06.2015.

6. This Tribunal in its order dated 11.04.2016 (page Nos.7 to 12 of R.A.) was pleased to observe that it is satisfied that the applicant's case is squarely covered under the judgment of the Hon'ble the Apex Court in Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & Ors. in the matter of **State of Punjab and Others etc. V/s. Rafiq Masih (White Washer) etc.** wherein the Hon'ble Apex Court was pleased to observe in para No.12 as under:-

*"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein*

*recoveries by the employers, would be impermissible in law:*

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

7. It is further observed that even if for arguments' sake it is accepted that the observations of Pay Verification Unit with regard to recovery are correct, still excess amount already paid to the applicant for no fault on his part, cannot be recovered in view of the aforesaid directions of the Hon'ble the Apex Court. Hence, the said Original Application No.63 of 2015 was disposed of by order dated 11.04.2016 in terms of operative part which is already reproduced.

8. It is a matter of record that the applicant was appointed as Canal Inspector. There was no promotion avenue for that post. The applicant retired on the post of Head Daftar karkun. In view of above, the Original Respondent No.5 i.e. the Joint Director, Accounts & Treasuries, Lekhakosh Bhavan, Aurangabad by impugned communication/order dated 29.03.2014 (Annex. 'A-1' in O.A.) addressed to the Original Respondent No.4 i.e. the Superintending Engineer and Administrator, Command Area Development Authority, Aurangabad directed the said Original Respondent No.4 to revise the pay of the applicant by cancelling the promotions granted to the applicant on the post of Daftar Karkun, Senior Daftar Karkun and Head Daftar Karkun.

9. During pendency of the said Original Application, the Original Respondent No.4 said to have passed further impugned orders/communications bearing office order Nos.330 and 331 both dated 12.06.2015 (Annex. 'A-11' collectively in O.A.). Thereby firstly by order No.330 dated 12.06.2015, the respondent No.4 cancelled the promotion orders of the applicant to the post of Daftar Karkun, Senior Daftar Karkun and Head Daftar Karkun as well as secondly

by order No.331 dated 12.06.2015, revised the pay fixation ordering recovery of excess amount from the applicant.

10. The respondent No.4 in O.A. challenged the said order of this Tribunal dated 11.04.2016 passed in O.A.No.63 of 2015 by filing Writ Petition No.10262/2018. The Hon'ble High Court was pleased to dispose of the said Writ Petition by order dated 11.10.2018 by making following observations:-

*“3. Considering the order passed by the Tribunal, it would be appropriate for the petitioner to seek clarification from the Tribunal with regard to the order impugned in the present writ petition. The petitioner may file appropriate application in that behalf with the Tribunal, which the Tribunal would consider.”*

11. Initially pursuant to the abovesaid order of the Hon'ble High Court, the respondent No.4 in O.A. filed M.A.No.432 of 2018 on or about 29.10.2018. The said M.A.No.432 of 2018 was disposed of by order dated 01.11.2018 as withdrawn. Thereafter, the Original Respondent No.4 in O.A. i.e. the Superintending Engineer and Administrator Command Area Development Authority, Aurangabad filed M.A.No.80/2019 on 16.01.2019 seeking clarification in order dated 11.04.2016 passed in the Original Application No.63 of 2015 again as per order of the



Hon'ble High Court dated 11.10.2018 passed in Writ Petition No.10262/2018. The said Misc. Application came to be disposed of by order dated 02.04.2019 passing following order:-

*“1. Heard Shri S.B. Mene learned Advocate for the applicant in M.A., Smt. M.S. Patil learned Presenting Officer for the respondents nos.2 to 5 and Shri S.D. Joshi learned Advocate for respondent no.1 (Applicant in O.A.No.63/2015).*

*2. Learned Advocate for respondent no.1 has filed affidavit in reply. It is taken on record. Copy thereof has been served on the other side.*

*3. Applicant has filed present M.A. seeking clarification regarding order dated 11-04-2016 passed in O.A.No.63/2015. Since the Member (J) who has passed the order has retired, plea for clarification does not survive.*

*4. If the applicant in M.A. thinks fit it can move review application.*

*5. With these observations present M.A. stands disposed of without any order as to costs.”*

In view of above, the present Review Application No.3 of 2022 is filed on or about 26.06.2019.

12. Affidavit-in-reply is filed on behalf of the respondent No.1/Original Applicant. At the outset preliminary objection of limitation is raised contending that the Review Application is filed in the nature of seeking review of order dated 11.04.2016 by way of clarification.

Thereby the Applicant/Original Respondent No.4 is seeking substantial change in the operative part of the order in O.A. which is dated 11.04.2016 passed in O.A.No.63/2015. The limitation period for filing the Review Application as per Administrative Tribunals Act, 1985 is of 30 days only. The present application is hopelessly time barred and therefore it is liable to be dismissed on that ground alone.

13. It is the specific contention of the Original Applicant that previously the Original Respondent No.4 filed M.A.No.432/2018 as well as M.A.No.80/2019 seeking similar prayers of clarification. Those are disposed of. Therefore, the present applicant which is third one is not maintainable and is liable to be dismissed.

14. It is further contended that the applicant has retired on 30.06.2013. It is sought to be contended on behalf of the respondents that they have withdrawn the promotions granted to the applicant by impugned office order Nos.330 and 331 both dated 12.06.2015 (Annex. 'A-11' in O.A.), which is post retirement of the applicant and is not permissible.

15. It is further contended that initially recovery of excess amount was ordered by another impugned order dated 29.03.2014 (Annex. 'A-1' in O.A.) which was challenged in the O.A.No.63/2015. The period of about 8 years is passed since the date of retirement of the applicant. The order of reversion and also recovery were issued after lapse of two years of the retirement of the applicant. This Tribunal by order dated 11.04.2016 rightly granted relief to the applicant by setting aside office order Nos.330 and 331 both dated 12.06.2015. There is nothing on record to show that the said Original Application was disposed of by granting partial relief as sought to be contended by the original respondent No.4. In view of same, there is no merit in the Review Application made by the applicant in present R.A./original respondent No.4 in O.A. and it is liable to be dismissed.

16. I have heard at length the arguments advanced by learned Shri S.B. Mene, learned Advocate for the applicant in R.A./Respondent No.4 in O.A., Shri N.U. Yadav, learned Presenting Officer for the respondent Nos.2 to 6 in R.A./respondent Nos.1 to 3, 5 & 6 in O.A. and Shri S.D. Joshi,

learned Advocate for the respondent No.1 in R.A./Applicant in O.A.).

17. Perusal of the rival pleadings would show that by this Review Application, the applicant/respondent No.4 in O.A. is seeking clarification of the order dated 11.04.2016 passed by this Tribunal in O.A.No.63 of 2015. It appears that by the said order in O.A., the applicant herein/respondent No.4 in O.A. was aggrieved and therefore, he filed Writ Petition No.10262 of 2018 before the Hon'ble High Court of Judicature at Bombay bench at Aurangabad. The said Writ Petition was disposed of by order dated 11.10.2018 thereby directing the applicant/respondent No.4 to seek clarification from the Tribunal with regard to the order dated 11.04.2016 passed by this Tribunal in O.A.No.63 of 2015, impugned in the said Writ Petition.

18. At the outset the respondent No.1/original applicant has raised serious objection of limitation contending that the Review Application is barred by limitation and even the condonation of delay is not sought for.

19. It is a fact that after passing of the order by the Hon'ble High Court dated 11.10.2018 in Writ Petition

No.10262/2018, the applicant /respondent No.4 in O.A. filed M.A.No.432 of 2018. However, the said M.A. was disposed of by order dated 01.11.2018 as withdrawn. Thereafter, the applicant/ respondent No.4 in O.A. filed M.A.No.80 of 2019 on 16.01.2019 for the same relief. The said M.A. came to be disposed of by order dated 02.04.2019 on the ground that the learned Member (J), who passed the order dated 11.04.2016 in O.A.No.63/2015 has retired and the applicant/respondent No.4 was granted liberty to move Review Application. Thereafter, the applicant/respondent No.4 in O.A. filed present Review Application No.03/2022, which was on R.A.St.No.1217/2019, on or about 26.06.2019.

20. The abovestated situation would show that after disposal of earlier two Misc. Applications for similar relief, present proceeding of Review Application is filed. It is filed after disposal of second M.A. which was disposed of on 02.04.2019. As per this chronology, this Review Application is barred by limitation. However, as per settled law, the time consumed in seeking legal remedy bona-fide, is to be deducted. Considering that, the delay can be computed altogether in the vicinity of about 58 days.

21. In my opinion, all these three proceedings are taken out by the applicant/respondent No.4 as per the observation made by the Hon'ble High Court in its order dated 11.10.2018 in Writ Petition No.10262/2018. The first M.A. preferred by the applicant/respondent No.4 in O.A. was well within the limitation. In such circumstances, in my opinion, the liberal approach should be adopted for consideration of this Review Application. Thereby no prejudice is likely to be caused to either of the parties. In the facts and circumstances, the order dated 11.04.2016 passed by this Tribunal in O.A.No.63/2015 is required to be clarified. It is not that the applicant/respondent No.4 in O.A. did not act as per observation made by the Hon'ble High Court directing to seek clarification. The applicant/respondent No.4 cannot be made to suffer on account of lack of the some technical advice as regards the limitation.

22. So far as the contention raised by the applicant/respondent No.4 is concerned, in fact clarification of order dated 11.04.2016 passed by this Tribunal in O.A.No.63/2015 would be required by both the parties to the proceedings. From the pleadings of the parties, it appears that the order in question is perceived

in two different ways by them. According to the respondent No.1/applicant in O.A., the reliefs sought by him in O.A.No.63/2015 was granted fully by the said order by quashing and setting aside the office order Nos.330 and 331, both dated 12.06.2015, whereas it is the perception of the applicant/respondent No.4 in O.A. that only part relief was granted in O.A.No.63/2015 to the extent of the recovery of excess amount.

23. In this background, very limited direction from this Tribunal in Review Application is sought. This is a case where the respondent No.1/applicant in O.A.No.63/2015 said to have been satisfied with the said order and he is not aggrieved by the said order in any manner; whereas the applicant/respondent No.4 in O.A.No.63/2015 said to have been aggrieved by the said order in question and therefore, he preferred Writ Petition No.10262 of 2018 before the Hon'ble High Court and while disposing of the said Writ Petition vide order dated 11.10.2018, directions were given to the applicant/respondent No.4 in O.A. to seek clarification.

24. It is a further fact that by office order No.330, dated 12.06.2015, the applicant/respondent No.4 in O.A. cancelled

the benefits of promotions given to the respondent No.1/applicant in O.A. to the post of Daftar Karkun, Senior Daftar Karkun and Head Daftar Karkun; whereas by office order No.331 dated 12.06.2015, the pay of the applicant was re-fixed and recovery of excess payment was ordered more particularly in view of cancellation of promotion orders.

25. In the abovesaid background if the order in question dated 11.04.2016 passed in O.A.No.63/2015 is seen, plainly it is found that there is reasoning in the said order only as regards the recovery of excess amount as to how the said recovery is impermissible. The contentions raised in the said Original Application by the respondent No.1/original applicant are not analyzed in any manner as regards cancellation of promotions given to him from time to time.

26. I do not find any alternate contention being raised by the respondent No.1/original applicant in O.A. in justification of his contention that it is ultimately held that the said office order No.330 dated 12.06.2015 is more particularly quashed and set aside. In such circumstances I have no occasion to deal with this Review Application in its true sense. Review Application is only for seeking clarification.



27. In such circumstances as above, upon plain reading of the order of this Tribunal in question in its entirety, what irresistible inference can be drawn is that the O.A.No.63/2015 is decided by quashing and setting aside the impugned office order Nos.330 and 331 both dated, 12.06.2015 to the extent of recovery of excess amount and it cannot be said that order Nos.330 and 331, dated 12.06.2015 are quashed and set aside in their entirety. Therefore, what further irresistible inference can be drawn is that out of the office order Nos.330 and 331, both dated 12.06.2015 only the part relating thereof to the recovery is only quashed and set aside. In such circumstances, in my considered opinion, the contentions raised on behalf of the respondent No.1/applicant in O.A.No.63/2015 cannot be accepted. In the result, I proceed to pass the following order:-

### **ORDER**

The Review Application is allowed in following term:-

- (A) It is clarified that as per order of this Tribunal in O.A.No.63/2015 passed on 11.04.2016, out of impugned office order Nos.330 and 331, both dated 12.06.2015 are quashed and set aside only

to the part relating to recovery of excess amount paid to the applicant thereof meaning thereby that rest of the claims made thereof by the applicant thereof deemed to have been rejected

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place :- Aurangabad**  
**Date :- 08.07.2022**  
SAS O.A.R.A.3/2022 In O.A.63/2015