

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**M.A.NO.427/2017 IN O.A.ST.NO.1525/2017
M.A.NO.435/2017 IN O.A.ST.NO.1550/2017
M.A.NO.476/2017 IN O.A.ST.NO.1738/2017
M.A.NO.477/2017 IN O.A.ST.NO.1736/2017
M.A.NO.478/2017 IN O.A.ST.NO.1740/2017
M.A.NO.479/2017 IN O.A.ST.NO.1742/2017
M.A.NO.508/2017 IN O.A.ST.NO.1873/2017
M.A.NO.43/2018 IN O.A.ST.NO.54/2018 AND
M.A.NO.116/2018 IN O.A.ST.NO.443/2018**

**DISTRICT: LATUR, OSMANABAD,
NANDED & PARBHANI**

M.A.NO.427/2017 IN O.A.ST.NO.1525/2017

Rama s/o. Nivrutti Bhutkar,
Age : 63 years, Occu. : Retired Govt. Servant,
R/o. Risala Bazar, Near Govt. Hospital,
Hingoli, Dist. Hingoli.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Aurangabad Division, Aurangabad.
- 3) The Education Officer [Continuing Education],
Zilla Parishad Parbhani, Parbhani.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

...RESPONDENTS

M.A.NO.435/2017 IN O.A.ST.NO.1550/2017

Bapurao s/o Sadashiv Dumnar,
Age : 64 years, Occ : Pensioner,
R/o. Dumnarwadi, Post. Rani-Sawargaon,
Tq. Gangakhed, Dist. Parbhani. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Aurangabad Division, Aurangabad.
- 3) The Education Officer [Continuing Education],
Zilla Parishad, Parbhani,
Dist. Parbhani.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS

M.A.NO.476/2017 IN O.A.ST.NO.1738/2017

Maruti s/o Sugriv Tambe,
Age : 67 years, Occ : Pensioner,
R/o. At post Yeote, Tq. Tuljapur,
Dist. Osmanabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Education Officer [Continuing Education],
Zilla Parishad, Osmanabad,
Dist. Osmanabad.

- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS

M.A.NO.477/2017 IN O.A.ST.NO.1736/2017

Dagdu s/o Baliram Raut,
Age : 67 years, Occ : Pensioner,
R/o. Shahunagar, Kukde Plot,
Osmanabad, Dist. Osmanabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Education Officer [Continuing Education],
Zilla Parishad, Osmanabad,
Dist. Osmanabad.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS

M.A.NO.478/2017 IN O.A.ST.NO.1740/2017

Bhimrao s/o. Sambhaji Ingle,
Age : 64 years, Occ : Pensioner,
R/o. Sant Goroba Kaka Nagar,
Sanja Road, Osmanabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.

- 3) The Education Officer [Continuing Education],
Zilla Parishad, Osmanabad,
Dist. Osmanabad.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS

M.A.NO.479/2017 IN O.A.ST.NO.1742/2017

Smt. Gunabai w/o. Mahadeo Pethe,
Age : 59 years, Occ : Pensioner,
R/o. Naldurga Road, Behind Lohiya
Mangal Karyalaya, Datta Nagar,
Tuljapur, Dist. Osmanabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Education Officer [Continuing Education],
Zilla Parishad, Osmanabad,
Dist. Osmanabad.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS

M.A.NO.508/2017 IN O.A.ST.NO.1873/2017

Vasant s/o. Jagannath Joshi,
Age : 63 years, Occ : Pensioner,
R/o. Meera Nagar, Old AUSA Road,
Latur, Dist. Latur. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Principal,
Government Junior College of Education,
Dharmabad, Dist. Nanded.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS

M.A.NO.43/2018 IN O.A.ST.NO.54/2018 AND

Gangadhar s/o Kerbaji Salve,
Age : 66 years, Occ : Pensioner,
R/o. Arunodaynagar, Taroda (Bk),
Dist. Nanded. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
 - 2) The Deputy Director of Education,
Latur Division, Latur.
 - 3) The Principal,
Government Junior College of Education,
Dharmabad, Dist. Nanded.
 - 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad. ...RESPONDENTS
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M.A.NO.116/2018 IN O.A.ST.NO.443/2018

Hallalikal Narsingrao Ramchandra,

Age : 60 years, Occ : Pensioner,

R/o. A-1-84, Kabranagar,

Nanded, Dist. Nanded.

...APPLICANTS

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Latur Division, Latur.
- 3) The Principal,
Government Junior College of Education,
Dharmabad, Dist. Nanded.
- 4) The Accounts Officer,
Pay Verification Unit,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri A.D.Gadekar, Advocate for the
Applicants in all the O.As.

:Shri N.U.Yadav, Shri I.S.Thorat, Shri
M.P.Gude, Smt. M.S.Patni, Smt. Deepali
Deshpande and Smt. Sanjivani Ghate
Presenting Officers for the respondents in
respective O.As.

CORAM : B. P. Patil, Vice Chairman

Reserved on : 17-07-2019

Pronounced on : 24-07-2019

COMMON ORDER

1. Facts and issues involved in the cases are similar and identical hence I am going to decide the same by the common order.

2. The applicants have filed applications for condonation of delay caused for filing the O.As.

3. Applicant Rama Nivrutti Bhutkar in M.A.No.427/2017 in O.A.St.No.1525/2017 has retired on superannuation on 29-02-2012 from Group-C post. After his retirement in the month of October, 2012 his pay has been revised and amount of Rs.102070/- has been recovered from his pensionary benefits.

4. Applicant Bapurao Sadashiv Dumnar in M.A.No.435/2017 in O.A.St.No.1550/2017 has retired on 31-05-2011 while holding Group-C post. After his retirement his pay has been fixed in the month of December, 2012 and after re-fixation of pay an amount of Rs.1,50,969/- has been recovered from his pensionary benefits.

5. Applicant Maruti Sugriv Tambe in M.A.No.476/2017 in O.A.St.No.1738/2017 has retired from Group-C post on attaining age of superannuation w.e.f. 30-08-2008. After his retirement, his pay has been fixed and an amount of Rs.89958/- has been recovered from his pensionary benefits in the year 2010.

6. Applicant Dagdu Baliram Raut in M.A.No.477/2017 in O.A.St.No.1736/2017 has retired on attaining age of superannuation w.e.f. 30-06-2008 while holding Group-C post. After his retirement his pay has been refixed in the year 2009 and an amount of Rs.121301/- has been recovered from his pensionary benefits.

7. Applicant Bhimrao Sambhaji Ingle in M.A.No.478/2017 in O.A.St.No.1740/2017 has retired from service w.e.f. 30-08-2010 while holding Group-C post on attaining age of superannuation. In the month of March, 2010 his pay has been refixed and an amount of Rs.100536/- has been recovered from his pensionary benefits.

8. Applicant Gunabai Mahadeo Pethe in M.A.No.479/2017 in O.A.St.No.1742/2017 has retired on

31-12-2015 on attaining age of superannuation and at that time she was serving on Group-C post. When she was on the verge of retirement her pay was refixed and thereafter an amount of Rs.58496/- has been recovered from her on 27-03-2015.

9. Applicant Vasant Jagannath Joshi in M.A.No.508/2017 in M.A.St.No.1873/2017 was serving on Group-C post at the time of his retirement on attaining age of superannuation on 31-03-2013. When he was on the verge of retirement his pay was refixed in July, 2013 and an amount of Rs.108245/- has been recovered from his pensionary benefits.

10. Applicant Gangadhar Kerbaji Salve in M.A.No.43/2018 IN O.A.St.No.54/2018 retired on attaining age of superannuation on 29-02-2008 while serving on Group-C post. After retirement, his pay was refixed in the month of December, 2009 and an amount of Rs.106500/- has been recovered from his pensionary benefits after his retirement.

11. Applicant Hallalikal Narsingrao Ramchandra in M.A.No.116/2018 in O.A.St.No.443/2018 has retired w.e.f.

31-08-2014 on attaining age of superannuation. At that time, he was serving on Group-C post. After retirement, his pay was refixed in the month of June, 2015 and an amount of Rs.52,766/- has been recovered from his pensionary benefits.

12. It is contention of the applicants that due to their family problems and ailments, they were not able to approach this Tribunal claiming refund of the amount which has been recovered from their pensionary benefits illegally. It is their contention that some of their colleagues approached this Tribunal for refund of the amount recovered from them on account of excess amount paid to them on account of wrong pay fixation. This Tribunal allowed their matters. After receiving the said information, the applicant approached the Tribunal as early as possible by filing the O.As. but there is delay in filing the O.As. It is their contention that delay caused for filing the O.As. is not intentional and deliberate. Therefore, they have prayed to condone the delay caused for filing the O.As.

13. Respondent nos.1 and 2 have filed their affidavit in reply and resisted the contentions of the applicants. It is their contention that the excess payment has been made to

the applicants due to wrong pay fixation and the applicants had given undertaking that they will pay the excess payment, if any, made to them due to wrong pay fixation as per the Circular dated 29-04-2009. It is their contention that the excess amount paid to the applicants has been recovered on the basis of undertaking submitted by them. The applicants have not challenged the order regarding recovery and have also not claimed refund within the prescribed period of limitation. The applicants have not given reasonable explanation for condonation of delay caused for filing the O.As. It is their contention that there is deliberate and intentional delay on the part of the applicants in approaching the Tribunal and the delay has not been explained by the applicants by showing just and proper cause. Therefore, they have prayed to reject the M.As.

14. It is their further contention that the Hon'ble the Apex Court in the case of **Brijesh Kumar & Ors. V/s. State of Haryana & Ors. in SLP (C) Nos.6609-6613 of 2014** decided on 24-03-2014 has held that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot

take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person. It is their further contention that the applicants are trying to take benefit of the decision rendered by this Tribunal in the cases of their colleagues, who were diligent in approaching the Tribunal, which is not permissible. It is their contention that the applicants slept over their rights and thereafter approached this Tribunal at a belated stage. They have contended that there is no just ground to condone the delay. Therefore, they have prayed to reject the M.As.

15. I have heard Shri Shri A.D.Gadekar, Advocate for the Applicants in all the cases., Shri N.U.Yadav, Shri I.S.Thorat, Shri M.P.Gude, Smt. M.S.Patni, Smt. Deepali Deshpande and Smt. Sanjivani Ghate Presenting Officers for the respondents in respective cases. I have perused the documents placed on record by the parties.

16. Learned Advocate for the applicants has submitted that applicants are retired employees. They were retired while serving on Group-C post. Their pay has been revised at the time of/after their retirement by the respondents and

accordingly the recovery has been ordered from their pensionary benefits towards excess amount paid to them. He has submitted that the applicant could not able to approach this Tribunal within stipulated time because of their personal problems. He has further argued that in the month of September, 2017 they learnt about decision rendered by this Tribunal in cases of similarly situated persons and thereafter they approached the Tribunal immediately. Meanwhile, delay has been caused for filing the O.As., which is not intentional and deliberate. He has submitted that valuable rights of the applicants are involved in the O.A., and therefore, in the interest of justice he has prayed to allow the M.As. and condone the delay caused for filing the O.As. He has also submitted that if the Tribunal comes to the conclusion that there is deliberate delay on the part of the applicants, the M.As. may be allowed by imposing costs.

17. Learned Advocate for the applicants has submitted that similarly situated persons have received refund of the excess amount paid to them. Therefore, the applicants are also entitled to get refund of the said amounts and there is no reason to decline the same to the applicants. He has

argued that merely on the ground of delay such relief cannot be denied to the applicants. In support of his submissions, he has placed reliance on the judgment of the Hon'ble Supreme Court in case of **K. Subbarayudu and Others Vs. The Special Deputy Collector (Land Acquisition)** reported in **[(2017) 12 Supreme Court Cases 840]** wherein it is observed as follows:

“14. When the concerned court has exercised its discretion either condoning or declining to condone the delay, normally the superior court will not interfere in exercise of such discretion. The true guide is whether the litigant has acted with due diligence. Since the appellants/claimants are the agriculturists whose lands were acquired and when similar situated agriculturists were given a higher rate of compensation, there is no reason to decline the same to the appellants. Merely on the ground of delay such benefit cannot be denied to the appellants. The interest of justice would be served by declining the interest on the enhanced compensation and also on the solatium and other statutory benefits for the period of delay.”

18. Learned P.Os. for the respondents have submitted that none of the applicants have produced documents to show that they were prevented to approach this Tribunal within prescribed period of limitation for redressal of their

grievance on account of their personal difficulty, ailment etc. They have argued that in the absence of evidence, contentions of the applicants in that regard cannot be accepted. They have argued that the applicants have contended that that in the month of September, 2017 they learned about the decisions rendered by this Tribunal regarding similarly situated persons and thereafter they have approached this Tribunal. They have argued that the said contentions cannot be accepted in view of the settled principle laid down by the Hon'ble Apex Court in the case of **Brijesh Kumar & Ors. V/s. State of Haryana & Ors. in SLP (C) Nos.6609-6613 of 2014** decided on 24-03-2014. They have submitted that the applicants have slept over their legal rights and they have not approached the Tribunal within the stipulated period of limitation. Therefore, it amounts intentional and deliberate delay on the part of the applicants. Therefore, delay caused for filing the O.As. cannot be condoned. Therefore, the learned P.Os. have prayed to reject the M.As.

19. On going through the documents on record, it reveals that none of the applicants filed documents to show that they were prevented to approach the Tribunal because of

the circumstances mentioned in their applications. They failed to produce evidence regarding their ailments also. In the absence of the documents, contentions of the applicants in that regard cannot be accepted. The applicants have contended that they have filed O.As. in time after knowledge of decisions of the Tribunal in case of similarly situated persons. Cause of action to file O.As. arose when the amounts were recovered from them. The applicants have not approached this Tribunal within the prescribed period of limitation from the date of recovery. They kept mum. They slept over their rights for a long period. They have approached the Tribunal only when they came to know that this Tribunal has granted relief to the similarly situated persons, who approached the Tribunal diligently, which shows lack of diligence on their part in approaching the Tribunal. There was intentional inaction or negligence on the part of the applicants in approaching this Tribunal. Therefore, considering the conduct and behavior of the applicants, in my view, these are not fit cases to condone the delay caused for filing the O.As.

20. I have gone through the decision in the case of **Brijesh Kumar & Ors. V/s. State of Haryana & Ors. in**

SLP (C) Nos.6609-6613 of 2014 decided on 24-03-2014.

In the said case, the Hon'ble Apex Court has considered various judgments of the Hon'ble Apex Court in different cases. It has been observed by the Hon'ble Apex Court in the case of **Brijesh Kumar & Ors.** follows:

9. In P.K. Ramachandran v. State of Kerala & Anr., AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

10. While considering a similar issue, this court in Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors. (2013) 12 SCC 649 laid down various principles inter alia:

“ x x x

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact

vi) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play

x x x

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are

required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x x x

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

(See also: [Basawaraj v. Land Acquisition Officer](#) (2013) 14 SCC 81)

11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of [Section 5](#) of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. [In State of Karnataka & Ors. v. S.M. Kotrayya & Ors.](#), (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of

the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in Jagdish Lal & Ors. v. State of Haryana & Ors., AIR 1997 SC 2366, observing as under:-

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

21. Principles laid down in the abovesaid decisions are most appropriately applicable in the instant case considering the facts and circumstances of the cases. In view of the said settled principles also there is no just cause/reason for condonation of delay caused for filing the O.As. Therefore, M.As. deserve to be dismissed.

22. I have gone through the decision of the Hon’ble Apex Court in the case of **K. Subbarayudu and Others Vs. The Special Deputy Collector (Land Acquisition)** reported in **[(2017) 12 Supreme Court Cases 840]** relied by the learned Advocate for the applicants. I have no dispute regarding the settled principles laid down therein. In the

instant case there is nothing on record to show that the applicants have acted in due diligence and inspite of the diligence they could not approach the Tribunal in time. On the contrary, the applicants kept mum waiting for the decision in the cases filed by their colleagues. This shows deliberate and intentional delay on the part of the applicants. Therefore, said decision is not much useful to the applicants. Facts on record show that there is intentional inaction on the part of the applicants. Therefore, the delay caused for filing the O.A. cannot be condoned.

23. In view of the discussion in the foregoing paragraphs, M.A.NO.427/2017, M.A.NO.435/2017, M.A.NO.476/2017, M.A.NO.477/2017, M.A.NO.478/2017, M.A.NO.479/2017, M.A.NO.508/2017, M.A.NO.43/2018, and M.A.NO.116/2018 are dismissed without any order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 24-07-2019.