

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.476/2016
IN
ORIGINAL APPLICATION ST. NO.2024/2016**

DISTRICT: JALGAON

Devidas Budha Ahire,
Age : 62 years, Occu. : Retire,
R/o. Pushpanjali Park, Plot No.2,
Shivaji Nagar, Jalgaon,
Tq. & Dist. Jalgaon.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
 - 2) The Principal Accountant General,
(Accounts & Entitlements) Maharashtra,
2nd Floor, Pratishta Bhavan,
New Marine Lines, 101,
Maharshi Karve Road,
Mumbai 400 020.
 - (3) The Accountant General,)Deleted as
(Office of the Accountant General)per order
((A & E) II, Maharashtra Civil Lines,)of Tribunal
(Nagpur 440 001.)on 8.2.2019
 - (4) The Deputy Accountant General,)Deleted as
((Pension), Pension Branch,)per order
(P-Box # 114, Office of the Accountant)of Tribunal
(General, (A & E) II, Maharashtra Civil)on 8.2.2019
(Lines, Nagpur 440 001.
 - 5) The Accounts Officer,
Pay Verification Unit,
Nashik at Nashik.
 - 6) The Superintendent of Police,
Jalgaon at Jalgaon.
 - 7) The Deputy Superintendent of Police,
Jalgaon at Jalgaon. ...RESPONDENTS
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APPEARANCE :Shri T.R.Daware, Advocate holding for
Shri P.S.Gaikwad Advocate for the
Applicant.

:Smt. Sanjivani Ghate, Presenting Officer
for the respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 26-02-2020

Pronounced on : 28-02-2020

O R D E R

1. The applicant has filed application for condonation of delay of 698 days caused for filing accompanying O.A. challenging the orders dated 05-03-2013, 10-04-2013 and 01-01-2014 passed by the respondent nos.7 & 6, respectively.

2. The applicant joined the service as Police Constable. On attaining age of superannuation, he retired on 31-12-2013. When he was on the verge of retirement, respondents revised his pay and re-fixed the same by order dated 10-04-2013 and directed recovery of excess amount paid to him by order dated 10-04-2013 and recovered the said amount from his salary and pensionary benefits by communication dated 01-01-2014. It is contention of the applicant that after taking the impugned action and passing the impugned order he approached to the

respondents time and again and requested to refund the amount and re-fix the pay but the respondents have not taken any action. It is his contention that due to the action taken by the respondents, he is getting less pension and therefore it is a continuous cause of action. It is his contention that he could not be able to file O.A. within stipulated time for the abovesaid reasons and therefore the delay is caused for filing the O.A. Therefore, he has prayed to condone the delay by allowing the O.A.

3. Respondent nos.6 & 7 have filed affidavit in reply and resisted the contentions of the applicant. It is their contention that at the time of retirement, it was noticed by the respondents that pay of the applicant has been wrongly fixed and therefore they have re-fixed the pay and directed the applicant to refund the excess amount paid to him due to wrong pay fixation. It is their contention that the applicant has given undertaking to repay the excess amount paid to him due to wrong pay fixation and therefore they have recovered the said amount. It is their contention that the impugned order has been passed in the year 2013. The applicant has retired from service on 31-12-2013 but he has not approached this Tribunal in time. He has filed accompanying O.A. on 30-11-2016. There is inordinate

delay in filing the O.A. but the applicant has not explained the delay by giving just and plausible explanation. It is their contention that the applicant was negligent. Delay caused for filing the O.A. is deliberately and intentional. Therefore, inordinate delay caused for filing the O.A. cannot be condoned. Therefore, they have prayed to reject the M.A.

4. I have heard Shri T.R.Daware Advocate holding for Shri P.S.Gaikwad Advocate for the Applicant and Smt. Sanjivani Ghate Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

5. Learned Advocate for the applicant has submitted that the applicant retired on 31-12-2013 on attaining age of superannuation. When he was on the verge of retirement, respondent nos.6 & 7 passed the orders dated 05-03-2013, 10-04-2013 and 01-01-2014 re-fixing his pay and directing recovery from his salary and pensionary benefits. He has submitted that on the basis of said orders respondents have recovered the said amount. He has argued that because of the wrong pay fixation, pension of the applicant has been reduced and he is getting less pension in every month. Therefore, it is a recurring cause of action and

hence the O.A. filed by the applicant is in time. He has further submitted that the applicant has made several representations with the respondents after the impugned orders are passed but the respondents have not considered the same and therefore the delay has been caused. He has submitted that in view of the said facts it is just to condone the delay.

6. In support of his submissions, he has placed reliance on the judgment of the Hon'ble High Court of Judicature of Bombay reported in [**2003 (3) ALL MR 1022**] in case of **Maharashtra State Road Transport Corporation V/s. Premlal**, in case of **Collector, Land Acquisition, Anantnag V/s. Katiji** reported in [**1987 AIR (SC) 1353**].

7. He has also placed reliance on the judgment of Hon'ble High Court of Judicature of Bombay Bench at Aurangabad passed in a group of **Writ Petition No.2344 of 2019 & Ors.** in case of **Vishwanath s/o. Manikrao Patil & Ors. V/s. State of Maharashtra & Ors.** decided on 19-03-2019. He has submitted that in that case similar issue was involved and the Hon'ble High Court has granted relief to the similarly situated persons and therefore in this

situation it is just and proper to condone the delay caused for filing the O.A. by allowing the M.A.

8. Learned P.O. has submitted that the delay of more than 3 years has been caused for filing the O.A. The applicant has not explained the delay by giving plausible explanation. In the absence of sufficient reasons, delay caused for filing the O.A. cannot be condoned. Applicant was aware about the impugned orders and action taken against him but he has not filed O.A. in time. The delay is deliberate and intentional and hence it cannot be condoned. Therefore, she has prayed to reject the M.A.

9. On perusal of the record, it reveals that the impugned orders have been passed on 05-03-2013, 10-04-2013 and 01-01-2014 and excess amount of Rs.1,07,683/- paid to the applicant has been recovered from the applicant accordingly in the year 2013 before the retirement of the applicant. The applicant has retired on 31-12-2013. The applicant has not challenged the said order within stipulated period of limitation before this Tribunal. No single reason or explanation has been given by the applicant for not filing the O.A. within time. In the absence

of sufficient cause, explanation or reason, inordinate delay caused for filing the O.A. cannot be condoned.

10. I have gone through the decisions cited by the learned Advocate for the applicant. I have no dispute regarding the legal principles laid down therein. But considering the facts in the present case, principles laid down in the said cases are not attracted in the present case as the applicant has not shown sufficient cause to condone the delay caused for filing the O.A. Therefore, those decisions are not much useful to the applicant in the present matter.

11. As discussed above, the applicant has failed to show sufficient cause for condoning the delay caused for filing the O.A. Therefore, delay cannot be condoned. There is no merit in the M.A. Hence, the M.A. deserves to be rejected.

12. In view of the foregoing paragraphs, M.A.No.476/2016 stands rejected. Consequently, registration of O.A. is refused. There shall be no order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 28-02-2020.