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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8489 OF 2021

Shri Limbaji M. Tapase

.. Petitioner

Vs.

The Commissioner, State Excise
(M.S.), Mumbai & Ors.

.. Respondents

Mr. Sanjiv Sawant a/w Mr. Abhishek Matkar a/w Mr. Malhar
Bageshwar i/by Mr. Abhishek Deshmukh for petitioner.

Mr. M. M. Pabale, AGP for respondents.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE : OCTOBER 21, 2022

P.C.:

1. There is a typographical error in the earlier order dated 19th October 2022. The date "30th October 2020" in paragraph 2 of the said order shall read "30th October 2000".

2. Dismissal of Original Application No. 464 of 2017, on the file of the Maharashtra Administrative Tribunal, Mumbai (hereinafter "the Tribunal", for short), is questioned in this writ petition dated 18th February, 2020 by the unsuccessful original applicant as the petitioner.

3. The Tribunal was approached by the petitioner seeking an order for grant of compound interest at the rate of 18%

per annum in respect of delayed release of pay and allowances for the promotional post of Sub-Inspector, State Excise, during the period 21st April, 1988 to 31st October, 2000. The Tribunal noted the chequered history of litigation and the uncontroverted facts giving rise to the original application in paragraph 2 of its judgment.

4. What appears therefrom is that while serving the State Excise department as a Clerk, the petitioner was denied promotion to the post of Sub-Inspector. Upon an original application being instituted by the petitioner, the Tribunal disposed of the same on 28th July, 2000 directing the respondents to consider the petitioner for promotion on and from such date when his juniors were promoted or deemed to have been promoted prior to 1st January, 1993, without taking into account physical requirements prescribed by the Commissioner, State Excise. The Commissioner responded partly in favour of the petitioner. By an order dated 31st January, 2003, he granted deemed promotion to the petitioner with effect from 21st April, 1988. However, difference of pay and allowances from 21st April, 1988 to the actual date of promotion, i.e., 30th October, 2000 was refused. The reasons for such refusal are not relevant since, at the relevant time, there was no challenge by the petitioner to that part of the order of the Commissioner refusing him difference of pay and allowances. On 31st July, 2005, the petitioner retired on attaining the age of superannuation. After retirement, the petitioner invoked the machinery under the Right to Information Act, 2005 (hereafter "RTI Act", for short) and obtained information

that two of his similarly placed colleagues were paid back-wages. Without approaching the Tribunal, the petitioner instituted a writ petition before this Court directly. A coordinate Bench of this Court disposed of the writ petition on 8th August, 2007 granting liberty to the petitioner to approach the respondents. A representation dated 23rd August, 2007 having been made before the Commissioner claiming back-wages as granted to the said two colleagues of the petitioner, the Commissioner passed an order on 16th December, 2010 granting difference of pay and allowances in respect of the promotional post for the period from 21st April, 1988 to 30th October, 2000. Accordingly, a sum of Rs. 85,460/- towards pay and allowances were paid to the petitioner on 11th February, 2011. The petitioner once again invoked the writ jurisdiction of this Court seeking direction for grant of compound interest at the rate of 18% per annum on delayed payment of Rs.85,460/-. This time, another coordinate Bench disposed of the writ petition on 1st December, 2011 with liberty to the petitioner to approach the Tribunal. The Tribunal having been approached with an original application, the same was disposed of by it on 3rd October, 2013 granting liberty to the petitioner to make a representation to the competent authority claiming interest. Representation dated 18th September, 2014 was submitted by the petitioner before the Commissioner which stood rejected by an order dated 26th March, 2015 and 22nd July, 2015. Aggrieved by the rejection of such representation, the Tribunal was finally approached by the petitioner which dismissed the original application

giving rise to this writ petition.

5. We have heard Mr. Sawant, learned counsel appearing for the petitioner. He has placed reliance on the Government Resolution dated 22nd November, 1994. It stipulates that if payment of any sum or allowance is released beyond six months from the date the sanction order is issued, the Government servant would be entitled to payment of interest at the rate declared by the Reserve Bank for term deposits for certain periods in the Banks. According to him, the entitlement of the petitioner to the amount of Rs.85,460/- should relate back to 31st January, 2003 when the Commissioner granted deemed promotion to him with effect from 21st April, 1988 but erroneously refused the differential pay and allowances; and, as a sequitur, for delayed release of payment of such sum on 11th February, 2011, the petitioner is entitled to interest for the period between 31st January, 2003 and 11th February, 2011.

6. In support of his contention that the petitioner is entitled to interest, reliance has been placed by Mr. Sawant on the decision of the Supreme Court in **S. K. Dua vs. State of Haryana & Anr.**, reported in (2008) 3 SCC 44, and a coordinate Bench decision of this Court in **Yuvraj Nathuji Rodye vs. Chairman, Maharashtra State Electricity Board, Bombay & Ors.**, reported in 2008 (6) Mh. L.J. 384.

7. Having heard Mr. Sawant, we have not considered it necessary to call upon Mr. Pabale, learned AGP for the

respondents to answer.

8. The Government Resolution dated 22nd November, 1994 is in Marathi. The English version thereof is available at pages 68A to 68E of the paper book. To the extent relevant, the English version reads as follows: -

"2. Fixation of pay on Promotion, Deemed Date or Revision of pay after restructure of pay.

If the arrears are paid within six months of issuance of order in respect of restructure of pay on promotion or after six months of giving approval to the deemed date by the Government, in such case the interest shall be paid for the period after six months from the issuance of the relevant order, till the preceding month of payment.

2. In case of delay in making the payment of arrears on fixation of pay on restructure, promotion, deemed date and also advance increment and arrears of additional allowances, not because of the fault of the Government servant but for administration reason/ mistake, the aforesaid procedure shall be applicable for payment of interest and the Administrative Department shall verify each individual matter and necessary directions be issued with approval of the Secretary of the Administrative Department.

3. The Government further directs that, the rate of interest on the delayed payment shall be as per the rate declared by the Reserve Bank for the term deposits for certain period in the Banks.

6. This order shall come into force from the date of issuance of this order. The matters which are finally closed shall not be reopened after issuance of this order."

(emphasis ours)

9. The decisions in **S. K. Dua** (supra) and **Yuvraj Nathuji Rodye** (supra) lay down principles of law which, though undisputed, are not applicable in the facts and circumstances of the present case. On the contrary, we are inclined to the view that suitable guidance could be drawn from the decision of the Supreme Court in **Alok Shanker Pandey vs. Union of India & Ors.**, reported in (2007) 3 SCC 454, as well as the Government Resolution dated 22nd November, 1994 itself for deciding this writ petition. Paragraph 9 of **Alok Shanker Pandey** (supra) reads as follows: -

“9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if *A* had to pay *B* a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had *A* paid that amount to *B* 10 years ago, *B* would have invested that amount somewhere and earned interest thereon, but instead of that *A* has kept that amount with himself and earned interest on it for this period. Hence, equity demands that *A* should not only pay back the principal amount but also the interest thereon to *B*.

10. It is clear on a reading of the aforesaid excerpt that right to interest accrues on and from the date the right to receive money (on whatever count) stands crystalized but such money is not paid to whom it is legally payable. In the present case, the order dated 31st January, 2003 on the one hand appears to have granted the petitioner the benefit of deemed promotion but on the other hand, refused him difference of pay and allowances from 21st April, 1988 till 30th October, 2000. Prior to his retirement and even for a

period of two years thereafter, the petitioner did not question the order of the Commissioner denying him difference of pay and allowances by approaching the appropriate forum. Any approach to the Tribunal years after retirement would have been barred by time. Instead of approaching the Tribunal, the petitioner approached the writ court as late as in 2007. It was claimed that he obtained information through the machinery provided by the RTI Act that two other colleagues of his had been paid back-wages; therefore, he prayed that similar benefit ought to be extended to him. The order dated 31st January, 2003 passed by the Commissioner not having been challenged, the same attained finality in its entirety. However, fortune smiled on the petitioner. Even though he had not questioned the order dated 31st January, 2003 insofar as it refused him difference of pay and allowances, far less having such order reversed by the Tribunal/this Court, the Commissioner then took a charitable view of the matter and passed the order dated 16th December, 2010 granting him difference of pay and allowances in respect of the promotional post with effect from 21st April, 1988 to 30th October, 2000.

11. Without expressing any view on whether the Commissioner had the authority in law and/or followed the appropriate procedure to revisit the issue and grant difference of pay and allowances to the petitioner, which was earlier refused by the Commissioner by his order dated 31st January, 2003, it is the undisputed position on facts that the petitioner's entitlement to the differential pay and allowances in a sum of Rs.85,460/- can be said to have

accrued not prior to 16th December, 2010 when the relevant order was made. In terms of the Government Resolution dated 22nd November, 1994, the sum had to be released in favour of the petitioner within a period of six months from 16th October, 2010. The same was paid on 11th February, 2011, i.e., within six months. The Tribunal was, therefore, entirely justified in holding that the petitioner was not entitled to claim interest since payment of Rs.85,460/- was released within six months of 16th October, 2010. The Government Resolution dated 22nd November, 1994 having made it clear that interest has to be paid if the amount in question is not released within six months from the date of the relevant order made in that behalf, the same would clinch the issue for the respondents and against the petitioner. We need not rely upon the law laid down in **S. K. Dua** (supra) and **Yuvraj Nathuji Rodye** (supra) for the purpose of a decision on this writ petition, in view of the special facts and circumstances noted above. The entitlement to receive Rs.85,460/- accrued only by reason of the order dated 16th December, 2010 and not before, and payment having been released within six months, i.e., on 11th February, 2011, we find the claim of the by now septuagenarian petitioner to be one lacking merit. It is understandable that there could apparently be no worthy reason for refusing the difference of pay and allowances while deemed promotion was granted by the order dated 31st January, 2003, but the petitioner has himself to blame for not voicing his grievance at the appropriate time. The subject Government Resolution instead of assisting the

petitioner contains terms which seals his fate insofar as the claim for interest is concerned.

12. The judgment and order of dismissal of the original application of the petitioner by the Tribunal is unexceptionable and is, therefore, upheld.

13. In the result, the writ petition stands dismissed. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)

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