

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

WRIT PETITION NO. 4871 OF 2024

1. Brijesh Kumar Srivastava)
Age 46 years, Working as Foreman (G) in)
Battery Commissioning Facility (Sewri),)
Naval Dockyard, Mumbai-400 023)
And Residing at Flat No. 506, Building No. 4,)
Orchid-B, Nisarg Greens, B-Cabin Road,)
Ambernath (East), Thane-421 501.)
Contact No.: 8000029263.)
2. Pramod Kumar)
Age 45 years, Working as Senior Design)
Officer (Gr. I), In Engineering Department,)
Directorate of Naval Designs (SSG),)
New Delhi-110 022 and Residing at 109B,)
Type-4, Sector 12, R.K. Puram,)
New Delhi-110 022.)
Contact No.: 7977766294.)
3. Avaneesh Kumar Singh)
Age 46 years, Working as Highly Skilled Gr. II)
In Workshop Services Group, 508 Army Base)
Workshop, Chheoki Prayagraj-212 105 and)
Residing at 18/1/2, near U.P. State, Agro Ltd.,)
Co-operative Chauraha, A. N. Jha Marg,)
George Town, Prayagaraj-211002)
Contact No.: 9005491491.)
4. Sanjay Kumar Pandey)
Age 45 years, Working as Divisional Accountant)
Officer Gr.I In Accounts Department,)
C/o Executive Engineer, Vishnupuri Project)
Division No. 2, Jangamwadi, Nanded-431 605)
and Residing at Vishweshrayya Abhiyanta Society,)
Near Shiv Mandir, Airport Road, Chaitanya)
Nagar, Nanded-431 605.)
Contact No.: 8087698131.)

5. Subhash Brahmdev Yadav)
Age 47 years, Working as Highly Skilled Gr. II)
In Material Control Organisation, 508 Army Base)
Workshop, Chheoki Prayagraj - 212 105 and)
Residing at 138 Lig Awas Vikas Colony,)
Yojana 2, Jhushi Prayagraj.)
Contact No.: 7355255386.)
6. Julius Fernandes)
Age 46 years Working as Deputy Director)
In Directorate of Lighthouse and Lightships)
Deep Bhavan, M.G. Road, Ghatkopar (East),)
Mumbai - 480 077 and Residing at)
House No. D4/24, C.G.S. Colony,)
Ghatkopar (West), Mumbai-400 086.)
Contact No.: 9375602938.)
7. Santosh Kumar Gupta)
Age 44 years, Working as Highly Skilled Gr. I)
In Electronic and Mechanical Engineering,)
508 Army Base Workshop, Cheeoki)
Prayagraj - 212 105 and Residing)
at 1597/07K/05, OPS Nagar, Near Amarnath)
School, Rajroop Pur, Prayagaraj, U.P.-211 011.)
Contact No.: 8318631655.)
8. Ganpat Singh Chouhan)
Age 47 years, Working as Highly Skilled Gr. I)
In Manager Electrical Power System,)
Naval Dockyard, Mumbai-400 023 and)
Residing at A-502, Tirupati Icon, Sector 20,)
Plot 45, Kamothe, New Mumbai - 410 209.)
Contact No.: 8369651682.)
9. Raj Kumar)
Age 46 years, Working as Electrical Instructor)
In Women Industrial Training Institute,)
Mahavir Nagar, Karma Road,)
Aurangabad-824 101 and)
Residing at Kanti Bhavan, Kshatriye Nagar,)
Ward No. 2, Near Aradhya Suzuki Showroom,)

Aurangabad - 824 101.)
Contact No.: 6299049520.) ..Petitioners

VERSUS

1. The Union of India, through)
Secretary, Ministry of Defence,)
South Block, New Delhi-110 001.)
2. Principal Controller of Defence Accounts (Navy),)
1, Cooperage Road, Cusrow Baug Colony,)
Colaba, Mumbai - 400 005.)
3. Admiral Superintendent)
Naval Dockyard, Mumbai,)
Lion Gate, Mumbai - 400 023.)
4. Personnel Manager,)
Naval Dockyard, Mumbai, Lion Gate,)
Mumbai - 400 023.) ..Respondents

Mr. Anilkumar a/w Mr. Anurag R. Saxena, Advocates for the Petitioners.
Mrs. Neeta Masurkar, Advocate for the Respondents.

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 31st JANUARY 2025

JUDGMENT (Per M. M. SATHAYE, J)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.
2. The Petitioners are challenging the order dated 14/03/2023 passed by the Member, Central Administrative Tribunal, Mumbai Bench, Mumbai, in Miscellaneous Application No. 647 of 2021 for condonation of delay, which

is dismissed, resulting in dismissal of Original Application No. 655 of 2021.

3. The Petitioners belong to 58 to 62 Apprentice batch, who were appointed as Skilled Workers in the Naval Dockyard, Mumbai on 21/07/1997. Under a common Judgment and Order passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai, dated 16/06/2003, the Respondents were directed to re-consider the grading given to Petitioners having regard to marks secured in final examination of apprenticeship and accordingly re-allocate them from the date of appointment with consequential benefits. On 10/04/2008, this Court dismissed the batch of writ petitions filed by the Respondents against the said common Judgment dated 16/06/2003. The Petitioners thereafter approached the Tribunal by filing the Contempt Petitions against the in-action of the Respondents and the said Contempt Petitions were disposed of on 30/04/2010 by directing the Respondents to immediately obtain required sanction from the Ministry of Defence and disburse the amount as per calculations within a period of two months. In January/February, 2012, the Respondents complied with the order dated 16/06/2003 passed by the Tribunal, however belatedly. The 118 persons, who were original Applicants before the Tribunal and who were similarly situated with the Petitioners, approached the Tribunal by filing Original Application No. 76 of 2014 for recovery of interest at the rate 18% per annum on the delayed payment. On 26/06/2019, the Tribunal allowed said O.A. No. 76 of 2014 of similarly situated persons, directing the Respondents to pay interest at the rate applicable on GPF with effect from January, 2004 till January, 2011. In January-February 2021, the Petitioners made representations to the Respondents for payment of interest on the same lines, being from the same batch and governed by the same principle. The Respondents rejected the representations by passing orders dated

02/02/2021, 05/02/2021 and 15/05/2021. The Petitioners filed present O.A.No. 655 of 2021 along with delay condonation Application, which was opposed by the Respondents. Ultimately the Tribunal has passed the impugned order.

4. The learned Counsel for the Petitioners submitted that the Petitioners were party to the original batch of applications (O.A.s), which were decided on 16/06/2003. It is submitted that since the Petitioners were not posted in Mumbai at the time of filing O.A. No. 76 of 2014 filed by their batchmates and similarly placed Applicants, they were not made party. It is submitted that the Petitioners being similarly situated persons, the benefits given to most of the other Applicants, who had originally filed Application alongwith the Petitioners, must also be given to the Petitioners. A circular issued by Ministry of Defence, Government of India on 07/09/2018 is relied upon in support of Petitioners' case.

5. On the other hand, learned Counsel for the Respondents has submitted that there is delay of 9 years. It is submitted that the Petitioners have received payments in 2012 and the present Application is filed in 2021. She submitted that the only explanation offered for delay is that Petitioners were not posted in Mumbai, which is not sufficient, as the Petitioners could have joined the cause, if they were diligent enough. Attention of the Court was invited to a communication issued by Lt. Commander, MEPS/C. No. 48, which indicates that necessary orders from the Tribunal were required.

6. We have considered the rival submissions and perused the record with the assistance of the learned counsel for the parties.

7. Our attention is invited to a communication dated 17/02/2021 issued by the Dy. Director (Legal), DCPS to the Flag Officer Commanding-In-Chief

regarding implementation in R/O 58 to 62 Apprentice Batch pending for arrears settlement, which indicates a recommended for extension of benefits to persons like Petitioners, who were non-applicants but of batch 58 to 62 and an advice to take conscious administrative decision in the matter. Also our attention is invited to the communication dated 07/08/2021 issued by Commander, Senior Manager (Personnel) for Admiral Superintendent to the Chief of Naval Staff (for Dy. Director Legal), New Delhi indicating specific reference to the O.A. No. 76 of 2014 requesting necessary action for government sanction for financial implication in paying arrears to non-applicant (61 employees) in O.A. No. 76 of 2014.

8. The Tribunal has rejected the justification offered by the Petitioners about being posted outside Mumbai, on the ground that in the present Original Application also only 3 of the Petitioners were posted in Mumbai in 2021 and rest of them are posted in other places. In our opinion the view taken by the Tribunal is technical and harsh.

9. From the record, we find that till 26/06/2019, there was no decision by the Tribunal whether similarly situated Applicants are entitled to interest on delayed payment or not. Apparently, after the said decision of the Tribunal, the Petitioners were under hope and impression that they being Co-applicants in the Original Application of the year 1999, in which the original order dated 16/06/2003 was passed which was confirmed by this Court, the order granting interest on delayed payment will be applicable to them also. This shows that the Petitioners were in hope of being treated equally after the order granting interest dated 26/06/2019. It seems that the said hope wore thin and ultimately in February 2021, the Petitioners made representations, which were ultimately rejected on 02/02/2021, 15/05/2021 and 05/02/2021, requesting them to seek necessary orders

from the Tribunal. It is thereafter that the Petitioners have immediately filed the present O.A. No. 655 of 2021 and Misc. Application 647 of 2021 for delay condonation, in March 2021. Therefore in our considered view, there is acceptable explanation and sufficient cause is made out by the Petitioners.

10. It is settled law that it is not ‘the extent of delay’, but ‘the reason and explanation for such delay’ is the material consideration. In a recent Judgment of ***Sheo Raj Singh (deceased) through legal representatives and Ors vs. Union of India and Anr.***¹ relied upon by the Petitioners, the Hon’ble Supreme Court has reiterated this principle, while explaining other relevant principles such as adopting liberal and justice oriented approach and for seeing such applications in a positive light based on true and plausible explanations. The argument of the Respondents is that the Petitioners were fence-sitters. Perusal of the Judgment in the case of ***V. K. Pandey and Others v/s Union of India & Ors.***² relied upon by the Respondents shows that the issue of delay condonation was not in question there. In that case, merits of that case was being tested and the Petitioners therein were found to be fence-sitters. Therefore the said judgment is not helpful to the Respondents as the Petitioners herein cannot be said to be fence-sitters. Their entitlement was already decided and the only question was about grant of interest to them.

11. Since we find that sufficient cause is made out, the impugned order requires interference. Hence we allow the petition by passing following order :

(A) The impugned order dated 14/03/2023 is quashed and set aside and Misc. Application No. 647 of 2021 is allowed,

1 (2023) 10 SCC 351

2 Bombay High Court WP/7103/2014 and connected petitions, Order dated 28/06/2024

thereby condoning the delay.

- (B) Consequently, Original Application No. 655 of 2021 filed by the Petitioners, is restored to file, which shall be decided on its own merits, in accordance with law. Rival contentions of the parties on merits are kept open.
- (C) Rule is made absolute in above terms with no order as to costs.
- (D) All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)