

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****MISC. APPLICATION NO. 191 OF 2017
IN
ORIGINAL APPLICATION ST. NO. 519 OF 2017
(Subject – M.A. For Condonation of Delay)****DISTRICT : BEED**

Shri Shaikh Mohammad Aminuddin)
S/o Shaikh Mohammad Bashiruddin,)
Age : 70 years, Occu. : Retired,)
R/o : “Nice”, Asif Nagar, Behind Civil Hospital,))
At post District Beed.)
.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through Secretary,)
Department of Food and Civil Supplies,))
Mantralaya, Mumbai - 32.)
- 2) **The Divisional Commissioner,**)
Commissioner Office,)
Near Delhi Gate,)
At post District Aurangabad.)
- 3) **The Collector,**)
Collector Officer, Nagar Road,)
At post District Beed.)
- 4) **The Tahasildar,**)
Tahsil Office, At post Taluka Georai,)
World Bank Project, Ahmednagar.)
District Beed.)
.. RESPONDENTS

APPEARANCE : Shri U.A. Khekale, Advocate for the Applicant.

: Shri B.S. Deokar, Presenting Officer for the Respondents.

CORAM : B.P. PATIL, ACTING CHAIRMAN.

RESERVED ON : 25.07.2019.

PRONOUNCED ON : 31.07.2019.

ORDER

1. The applicant has filed the present Misc. Application for condonation of delay of 19 years and 102 days caused for filing the accompanying O.A.

2. The applicant has filed the O.A. and has challenged the orders dated 26.07.2016 and 27.01.2016 issued by the respondents rejecting his claim for deemed date of promotion on the post of Technical Officer Supply.

3. It is contention of the applicant that he retired as Naib Tahsildar on superannuation on 31.05.2004 from Tahasil Office, Georai, Dist. Beed. He joined the service on 21.05.1971 as a Clerk. He passed H.S.C. at time of joining the service. He has completed education of B.Sc. (Chemistry) during the service. As he was Graduate in Chemistry, he moved an application for recommending his name for long term training arranged by the Central Government of India at Grain Storage Institute Hapur (Uttar Pradesh). Considering his eligibility and the application, he

was sent for said training, which was commencing from 10.10.1983 to 09.12.1983. He had completed the said training successfully. Thereafter, he was appointed as Supply Inspector at District Supply Officer Beed. In the year 2001, he was promoted as Naib Tahsildar.

4. It is contention of the applicant that on 26.07.1982, the respondent No. 1 issued the notification and framed rules for filling up the post of Technical Officer (Supply) in the Government Godown on promotion. As per the rules, the seniority list of the candidates who have completed training and/or eligible has to be prepared and published. In the year 1986, he had submitted details to the respondent No. 2 with certificate of training in pursuance of his letter. In the year 1988, the details have been called for filling up the post of Godown Inspector at Divisional Office, Aurangabad. He furnished the details accordingly.

5. It is his contention that in the year 1997, the post of Technical Officer (Civil Supplies) in Aurangabad Division was to be filled by promotion from the employees working in the cadre of Supply Inspector. The applicant was working as Supply Inspector in Beed District at that time. One Shri B.J. More, was

working in the cadre of Supply Inspector and posted as Divisional Godown Inspector. Shri B.J. More has also completed long term training course arranged by the Central Government at Indian Grain Storage Institute Hapur (Uttar Pradesh) in the year 1983. He was working under Nanded Division. He was promoted on the post of Technical Officer without considering the claim of the applicant, who was eligible for promotion. Shri B.J. More, thereafter promoted from the Class-II cadre to the Class-I cadre to the post of District Supply Officer on 20.05.2004/25.05.2004 and thereafter, he retired from the said post i.e. District Supply Officer Class-I cadre on 31.07.2004. It is contention of the applicant that without preparing seniority list and without giving any opportunity to the applicant to raise objection, Shri B.J. More came to be promoted. He had no knowledge regarding the promotion given to Shri B.J. More on the post of Technical Officer (Class-II) on 18.11.1997 till the date of his retirement. It is his contention that his name was not included in any seniority list of the candidate who have completed training or eligible candidate for promotion. He has been deprived of his right and therefore, he has tried to collect all the necessary record and information. He has filed representation on 04.09.2012 to the respondent No. 1 to grant deemed date of promotion to him.

Thereafter, again he has made representations on 23.6.2014 and 08.06.2015 with the same request. On 14.05.2015, the respondent No. 1 called report from the respondent No. 2. The respondent No. 2 submitted his report on 07.07.2015, without verifying the record. The applicant again made representation on 03.12.2015 and 19.01.2016. On 27.01.2016, the respondent No. 1 rejected his representation on the ground that the claim has been raised after laps of 10 years. The applicant was informed about the said decision by the communication dated 26.07.2016. Therefore, the applicant has approached this Tribunal and prayed to quash and set aside the impugned order and to grant deemed date of promotion from 20.05.2004/25.05.2004 by filing the Original Application.

6. It is his contention that the delay of more than 19 years has been caused for filing the accompanying O.A. He was not aware about the promotion given to Shri B.J. More and therefore, the delay has been caused. It is his further contention that no opportunity to raise his objection has been given to him, as no seniority list had been prepared for the candidates who have completed training at Hapur (Uttar Pradesh) and therefore, the delay has been caused. It is his contention that the said delay is not intentional and deliberate and therefore, he has

prayed to allow the present M.A. and to condone the delay caused for filing the accompanying O.A.

7. The respondent No. 2 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that the applicant has to challenge the seniority list published on 05.08.2002, but he kept mum. The limitation for filing the O.A. commence from that date. But the delay has not been explained by the applicant from that date. It is his contention that thereafter again seniority list of the eligible candidates has been published in the year 2005 and 2007, but the applicant had not challenged the same. There is no just ground for condonation of delay. It is his contention that Shri B.J. More, was promoted on 15.09.2017, as he was senior to the applicant and there is no illegality in it. But the applicant has not challenged the promotion of Shri B.J. More. Therefore, he has prayed to reject the present Misc. Application.

8. The respondent No. 3 and 4 have filed their affidavit in reply and resisted the O.A. by raising similar contentions to that of the contentions raised by the respondent No. 2 in his affidavit in reply. It is their contentions that since the publication of senior list on 05.08.2002, the applicant has not

raised objection within stipulated time. The delay of more than 17 years has been caused for filing the accompanying O.A. The said delay is inordinate and intentional and it has not been explained by the applicant by giving sufficient cause or explanation and therefore, they have prayed to reject the present Misc. Application.

9. I have heard Shri U.A. Khekale, learned Advocate for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

10. Learned Advocate for the applicant has submitted that the applicant has completed the long term training at Indian Grain Storage Institute Hapur (Uttar Pradesh) conducted by the Central Government during the period from 10.10.1983 to 09.12.1983. He was Graduate in Science and therefore, he was eligible for the promotion on the post of Technical Officer (Civil Supplies). He has submitted that one Shri B.J. More had also completed the said Hapur training in the same year i.e. in the year 1983. He was junior to him, but he has been promoted in the year 1997 on the post of Technical Officer (Class-II) without considering the claim of the applicant. He has submitted that no

seniority list had been prepared by the respondents regarding eligible officers for promotion on the post of Technical Officer in view of the provisions of Technical Officers Recruitment Rules, 1982. He has submitted that no seniority list has been published by the respondents and no opportunity to raise the objection had been given to the applicant. He had no knowledge regarding the promotion given to Shri B.J. More and therefore, the delay has been caused for filing the accompanying O.A. He has submitted that the applicant came to know about the promotion given to Shri B.J. More in the year 2004, when he retired from the service. He has submitted that thereafter he made representation in the year 2012 with the respondents and persuaded the matter, but the respondents have rejected his claim by the impugned order and therefore, he has filed the present O.A. He has submitted that the delay caused for filing the accompanying O.A. is not intentional and deliberate and therefore, he has prayed to condone the same.

11. Learned Advocate for the applicant has further submitted that there is no mala-fide or deliberate delay on the part of the applicant and therefore, the said delay requires to be condoned. He has submitted that the valuable rights of the applicant are involved in the O.A. and therefore, on that ground

also, he prayed to condone the delay. In support of his submissions, he has placed reliance on the judgment delivered by the Supreme Court of India in case of **N. Balakrishnan Vs. M. Krishnamurthy** reported in **(1998) 7 Supreme Court Cases 123**, wherein it has been observed as follows :-

“ 10. *The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.*

11. *Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae up sit finis litium* (it is for the general welfare that a*

period be putt to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

It has further observed by the Hon’ble Apex Court in the said decision as follows:-

“ 12. A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and State of West Bengal Vs. The Administrator, Howrah Municipality*.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning

delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

He has submitted that in view of the principles laid down in the above cited decision, the delay requires to be condoned by allowing the present M.A.

12. Learned Presenting Officer has submitted that the applicant has never supplied requisite information to the concerned authorities for entering his name in the list of the eligible candidates to be promoted on the post of Technical Officer (Supply). He has submitted that the applicant has completed the Hapur training during the period from 10.10.1983 to 09.12.1983; while Shri B.J. More had completed the said Hapur training during the period from 25.05.1983 to 22.07.1983. Shri B.J. More joined the service on 25.06.1966; while the applicant joined the service on 21.05.1971. He has submitted that the applicant was serving as Supply Inspector in the year 1997, while Shri B.J. More was serving as Divisional Godown Inspector. As per the rules Shri B.J. More was eligible for

promotion and therefore, he has been promoted on the post of Technical Officer (Supply) in the year 1997. The applicant has never challenged his appointment/promotion, though he was aware about it. He has submitted that list of eligible candidates for the promotion on the post of Technical Officer (Supply) has been prepared in the year 2002, but the applicant had not raised any objection to it, though he was aware about the fact that his name was not included in the said list. He has submitted that the applicant was kept mum for long period and raised his grievance /objection for the first time in the year 2012 after his retirement. He has submitted that the applicant, intentionally and deliberately, has not challenged the seniority list within stipulated time and therefore, the delay of more than 19 years caused for filing the O.A. cannot be condoned.

13. Learned Presenting Officer has placed reliance on the judgment delivered by the Hon'ble Supreme Court of India in case of **Brijesh Kumar and Ors. Vs. State of Haryana and Ors.** decided on **24.03.2014** in **Special Leave Petition (Civil) Nos. 6609-6613 of 2014**, when it is observed as 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 mater 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.”*

The Hon’ble Apex Court has further observed in the said decision as follows:-

“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.”

15. **In M/s. Rup Diamonds & Ors. v. Union of India & Ors.**, AIR 1989 SC 674, this Court considered a case where petitioner wanted to get the relief on the basis of the judgment of this Court wherein a particular law had been declared ultra vires. The Court rejected the petition on the ground of delay and laches observing as under:-

“There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued

for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided."

14. Learned Presenting Officer has submitted that the applicant has not given sufficient explanation for condonation of delay. In the absence of sufficient cause, the inordinate delay cannot be condoned and therefore, he has prayed to reject the present M.A.

15. On perusal of the documents on record, it reveals that the applicant has completed Hapur training during the period from 10.10.1983 to 09.12.1983. According to the applicant, he was eligible for promotion on the post of Technical Officer (Supply) in view of the provisions of Technical Officers Recruitment Rules, 1982. Learned Advocate for the applicant has argued that no seniority list has been prepared by the respondents in that regard and therefore, he had no occasion to raise his objection. It is his submission that Shri B.J. More had completed the Hapur training in the same year i.e. in the year 1983, but he was junior to him and he has been promoted by the respondents in the year 1997. But the record shows that the applicant had not approached the respondents for inserting his name in the list of the eligible candidates for appointment on the

post of Technical Officer (Supply). The record shows that Shri B.J. More has completed Hapur training during the period from 25.05.1983 to 22.07.1983. He was senior to the applicant. Moreover, considering his eligibility, he has been promoted in the year 1997 on the post of Technical Officer (Supply). The applicant has not challenged the promotion of Shri B.J. More since then i.e. from the year 1997. He slept over his right for more than 19 years. No plausible or satisfactory explanation has been given by the applicant for not approaching this Tribunal within a prescribed period of limitation. The seniority list of the eligible candidates for the promotion on the post of Technical Officer (Supply) has been published in the year 2002, but the applicant has not raised any objection to the seniority list. Not only this, but according to the applicant, he learnt about the promotion given to Shri B.J. More on the post of Technical Officer (Supply) at the time of his retirement i.e. in the year 2004. The applicant has been retired from the service on 31.05.2004. But he has not challenged the promotion of Shri B.J. More and claiming relief as sought by him in the O.A. within prescribed period of limitation. The applicant had not raised any grievance till the year 2012. For the first time he raised grievance in that regard in the year 2012 by filing the representation in that regard. There is

inaction on the part of the applicant and therefore, the delay has been caused. The delay caused for filing the O.A. is deliberate and intentional. For the first time i.e. in the year 2012 he has raised objection and claimed deemed date of promotion, but his request has been rejected by the respondents by the impugned order. Thereafter also the applicant has not filed the O.A. claiming deemed date of promotion within prescribed period of limitation. All these facts show that there was intentional and deliberate delay on the part of the applicant. The applicant had not acted diligently in pursuing the matter. Not only this, but no sufficient cause or explanation has been explained by the applicant for condonation of 19 years delay caused for filing the accompanying O.A. The applicant was not serious regarding his claim and he kept mum till the year 2012. There was no *bona fideness* on the part of the applicant. In the absence of proper, satisfactory and convincing explanation, the inordinate delay cannot be condoned. The grounds raised by the applicant are not justifiable. Therefore, the same cannot be accepted. Therefore, the delay of more than 19 years caused for filing the accompanying O.A. cannot be condoned.

16. I have gone through the decisions cited by the learned Advocate for the applicant, as well as, by the learned Presenting

Officer. I have no dispute regarding the settled legal principles laid down therein. As discussed above, the applicant has not explained the delay properly and satisfactorily and therefore, the same cannot be condoned. Considering the facts in the matter, the principles laid down in case of **Brijesh Kumar and Ors. Vs. State of Haryana and Ors.** decided on **24.03.2014** in **Special Leave Petition (Civil) Nos. 6609-6613 of 2014** are squarely applicable to the instant case. Therefore, the inordinate delay caused for filing the accompanying O.A. cannot be condoned. There is no merit in the M.A. Consequently, the M.A. deserves to be dismissed.

17. In view of the discussions in the foregoing paragraphs, the M.A. stands dismissed. Consequently, the O.A. stands rejected. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 31.07.2019.

(B.P. PATIL)
ACTING CHAIRMAN