

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO. 368 OF 2019
WITH
ORIGINAL APPLICATION NO. 701 OF 2019**

DISTRICT: - AHMEDNAGAR.

Shri Bapusaheb Vishwanath Patare,

Age-57 years, Occu. : Service as
Superintendent of Excise,
R/o. Kalpana Housing Society,
Ward No. 7, Shrirampur,
Tq. Shrirampur,
District Ahmednagar

.. APPLICANT.

V E R S U S

1. The State of Maharashtra,

Through its Additional Chief Secretary,
State Excise Department,
Mantralaya, Mumbai-400032.

2) The Commissioner of State Excise,

Old Jakat House, 2nd Floor,
Shahid Bhagatsing Road, Fort,
Mumbai-400023.

.. RESPONDENTS.

APPEARANCE : Shri. V.B. Wagh, learned Advocate for
the applicant.

: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN**

RESERVED ON : **19TH NOVEMBER, 2019**

PRONOUNCED ON: **21ST NOVEMBER, 2019**

ORDER

By filing the present Miscellaneous Application the applicant has prayed to condone the delay of delay of about 7 months and 12 days caused for filing accompanying Original Application, challenging the order dated 16.05.2017 issued by the respondent No. 2 treating his absentee period of 127 days during the period from 11.07.2016 to 14.11.2016 as extraordinary leave without pay.

2. Initially on 16.02.2005 the applicant came to be appointed in the State Excise Department on the post of Deputy Superintendent of State Excise. Thereafter, he was promoted to the post of Superintendent of State Excise and posted him at Parbhani. During the period from 11.07.2016 to 14.11.2016 he remained absent because of his ailment. Therefore, he submitted leave application for grant of medical leave, but it was rejected by the respondent No. 2 by the impugned order dated 16.05.2017. The applicant challenged the said order by filing representation dated 22.05.2017 before the respondent No. 2. An appeal has also been filed by the applicant before the respondent No. 1 on 22.05.21017, but the respondents had not decided his representation, as well as, the appeal. He approached the respondent No. 1 on

many occasions, but the respondents never responded to the applicant nor the decision was taken on the representation and appeal. The applicant further contended that when he approached the respondent No. 1, he stated that the entire record and proceeding will be called from the office of the respondent No. 2 for deciding the appeal filed by him. The applicant was waiting for decision on appeal. Therefore, he had not approached this Tribunal within prescribed period. But, as the respondents have not taken any decision on his appeal, he approached this Tribunal by filing the accompanying Original Application, but there is delay of 7 months and 12 days for filing the accompanying Original Application. It is contention of the applicant that the said delay is caused because of the aforesaid reason and there is no intentional and deliberate delay caused for filing accompanying Original Application. Therefore, he has prayed to condone the delay of about 7 months and 12 days caused for filing accompanying Original Application, by allowing the present M.A. No. 368/2019.

3. Respondent No. 1 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that the impugned order has been passed by the respondent

No. 2 on 16.05.2017. The applicant has not filed Original Application within the prescribed period of limitation. It is his contention that the applicant has not explained the delay by giving satisfactory reasons. It is his contention that if the applicant sleeps over his own right, then he is not having any right to approach this Tribunal beyond the period of limitation. There is intentional and deliberate delay on the part of the applicant to approach this Tribunal. Therefore, he prayed to reject the present Miscellaneous Application filed for condonation of delay of about 7 months and 12 days caused for filing accompanying Original Application.

4. I have heard Shri V.B. Wagh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondent No. 1. I have also perused the documents placed on record by both the parties.

5. Admittedly, the applicant was serving as Superintendent of State Excise at Parbhani in the year 2016. Admittedly, he remained absent on duty during the period from 11.07.2016 to 14.11.2016 for the period of 127 days. The applicant moved an application for grant of medical leave

for the aforesaid period, but his application has been rejected by the respondent No. 2 on 16.05.2017. The applicant has made representation with the respondent No. 2 by filing application dated 22.5.2017 and also preferred an appeal before the respondent No. 1 on the same day. Admittedly, the representation and appeal preferred by the applicant have not yet been decided by the respondents.

6. Learned Advocate for the applicant has submitted that the representation and appeal preferred by the applicant are pending with the respondents and they assured the applicant to take decision thereon and, therefore, the applicant do not approach this Tribunal within time and, therefore, the delay has been caused for filing accompanying Original Application. It is his further submission that the said delay is not intentional and deliberate and, therefore, he prayed to condone the delay caused for filing the accompanying Original Application by allowing the present Miscellaneous Application.

7. Learned Presenting Officer for the respondents has submitted that the applicant has not explained the delay by giving plausible / satisfactory reasons. The said delay is an inordinate and it is deliberate and intentional. There is no

just ground for condonation of delay caused for accompanying Original Application. Therefore, he prayed to reject the present Miscellaneous Application.

8. On going through the record, it reveals that the impugned order dated 16.05.2017 has been passed by the respondent No. 2. The applicant has filed the representation dated 22.05.2017 with the respondent No. 2 against the said order and also filed appeal before the respondent No. 1 on 22.05.2017. In view of the provisions of Section 20 (1) (b) of the Administrative Tribunals Act, 1985, if the representation made by the employee is decided within a period of 6 months then the applicant has to approach this Tribunal within one year in view of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. It means the applicant has to approach this Tribunal on or before 22.11.2018, but the applicant has not approached this Tribunal within a prescribed time as provided under the provisions of Section 21 (1) (b). The said section reads as under : -

“21. Limitation.- (1) A Tribunal shall not admit an application, -

(a) -- -- -- -- -- -- -- --
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(b) in a case where an appeal or representation such as is mentioned in clause (b)

of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.”

9. The applicant has filed the present Miscellaneous Application along with Original Application on 07.08.2019. There is delay of about 8 months and 16 days for filing accompanying Original Application. The applicant has not calculated the said delay properly. The applicant has not assigned a single reason, cause or reason, which prevented him to file the accompanying Original Application in time. Therefore, in the absence of satisfactory explanation or reason, the delay cannot be condoned. The said delay is inordinate. There is no merit in the present Miscellaneous Application. Hence, it deserves to be dismissed.

10. In view of the aforesaid discussions in foregoing paragraphs, the present Miscellaneous Application stands dismissed. Consequently, the registration of accompanying Original Application stands refused. There shall be no order as to costs.

ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 21ST NOVEMBER, 2019

M.A.NO.368-2019 In O.A.No.701-2019(SB)-HDD-2019