

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 509 OF 2015
IN
ORIGINAL APPLICATION ST. NO. 550 OF 2015

DIST. : AHMEDNAGAR

Shri Pradeep Bhanudas Kokate,
Age : 52 years, Occu. : Govt. Service,
R/o. Wadala Mahadev, Tq. Srirampur,
Dist. Ahmednagar. --

APPLICANT

V E R S U S

- 1) The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
 - 2) The State of Maharashtra,
Through its Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
 - 3) The Collector Ahmednagar,
Dist. Ahmednagar.
 - 4) The Collector Aurangabad,
Dist. Aurangabad.
 - 5) The Sub-Divisional Officer,
Shrirampur, Dist. Ahmednagar. --
- RESPONDENTS

APPEARANCE :- Ms. Ashlesha Raut, learned Advocate
holding for Shri S.B.Talekar, learned
Advocate for the applicant.

: Smt. Resha S. Deshmukh, learned
Presenting Officer for the respondents.

CORAM : **Hon'ble Shri Justice M.T. Joshi,**
Vice Chairman
DATE : **19th July, 2017**

ORDER

1. The O.A. St. No. 550/2015 is filed by the present applicant for seeking time bound promotion with effect from the completion of 12 years of service from the date of his initial date of appointment as 18.4.1984. The original application was filed on 24.4.2015. It was registered without any objection regarding limitation. It appears that, during the hearing of the original application, Hon'ble Single Judge of this Tribunal raised a query regarding issue of limitation. On 24.9.2015, the learned Advocate for the applicant has made a statement that the applicant has instructed him not to prefer any application for condonation of delay caused in filing the original application. However, on the next date i.e. on 21.10.2015 the said statement was withdrawn by the learned Advocate for the applicant and thereafter the present misc. application for condonation of 17 years & 65 days delay in filing the original application is filed.

2. In the meantime, the applicant amended the original application itself and added a prayer for quashing the

communication / letter dated 7.1.2016 issued by the res. no. 4 – The Collector, Aurangabad – rejected his last of representation in this regard.

3. So far as the delay of 17 years & 65 days in filing original application is concerned, the applicant submits in the misc. application that, he filed several representations to the authorities for said time bound promotion. The dates of the said representations are detailed in the O.A. vide para 11 as under :-

1. 29.11.1997
2. 7.4.2000,
3. 27.4.2000
4. 18.8.2000
5. 19.8.2000
6. 25.5.2001
7. 22.9.2005
- AND
8. 15.8.2006

The last representation was answered by the res. no. 4 vide communication dated 28.8.2006.

4. The learned Advocate for the applicant submits that, reasons for this delay of 17 years and 65 days is that the applicant was hoping against hope that his claim for time bound promotion would be considered by the authorities. He further pleaded that, it is the assurance by the authorities despite their inaction that kept the

applicant hopeful and delay has been caused to approach the Tribunal belatedly.

5. The learned Advocate for the applicant further submits that his last representation dated 19.12.2014 was the only representation replied by the authorities vide communication dated 7.1.2015 and, therefore, the original application filed by the present applicant in this Tribunal on 24.4.2015 is within the period of limitation.

6. It was further submitted that the deemed date of promotion and consequential relief following therefrom is the continuous cause of action and, therefore, delay, if any, in approaching the Tribunal is to be ignored. In the circumstances, it was submitted that the delay of 17 years and 65 days caused in filing the original application before the Tribunal be condoned.

7. The respondents opposed the misc. application. It was submitted that the case of the applicant for grant of time bound promotion was considered by the respondent authorities on merit and thereafter the case of the applicant was rejected. There is inordinate delay in filing the original application, which is not at all explained by the applicant properly.

8. Heard Ms. Ashlesha Raut, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for the respondents.

9. The learned Advocate for the applicant submits that, in fact, there is no delay in filing the original application as it is within the period of limitation from the date of decision of res. no. 4 on the last representation of the applicant. The learned Advocate for the applicant has placed reliance on the following authorities :-

- (1) **M.F. PASHA VS. UNION OF INDIA AND OTHERS [2004 (2) L.L.N. 68].**
- (2) **UNION OF INDIA AND OTHERS VS. TARSEM SINGH [(2008) 8 SUPREME COURT CASES 648]**
- (3) **N. BALAKRISHNAN VS. M. KRISHNAMURTHY [(1998) 7 SUPREME COURT CASES 123]**
- (4) **UNION OF INDIA AND OTHERS VS. SHANTIRANJAN SARKAR [(2009) 3 SUPREME COURT CASES 90]**
- (5) **IMPROVEMENT TRUST, LUDHIANA VS. UJAGAR SINGH AND OTHERS [(2010) 6 SUPREME COURT CASES 786]**
- (6) **VILAS B. PARAB VS. UNION OF INDIA (UOI) through MINISTRY OF LAW AND JUSTICE, THE GENERAL MANAGER, CANTEEN STORES DEPARTMENT AND AREA MANAGER, CANTEEN STORES DEPARTMENT [WRIT PETITION NO. 2848/2001 ALONG WITH NOTICE OF MOTION NO. 392/2003 IN WRIT**

**PETITION NO. 2848/2001 DATED 13.10.2003] [BY
HON'BLE BOMBAY HIGH COURT]**

10. On the other hand, the learned P.O. submitted that, there is no service rule which provides for filing any appeal / representation and, therefore, in view of the provisions of sec. 21 of the Administrative Tribunals Act, 1985 the cause of action would run from the date of alleged non grant of time bound promotion to the applicant in 1997. The delay of 17 years and 65 days caused in filing original application is not only unexplained, but in the misc. application for condonation of delay, the applicant has blamed the authorities in para 11. It was, therefore, submitted that the misc. application be dismissed.

11. Upon hearing both the sides, in my view, there is no sufficient cause for filing the original application belatedly by 17 years and 65 days. The misc. application, therefore, deserves to be dismissed for the following reasons :-

REASONS

(I) Sections 20 and 21 of the Administrative Tribunals Act, 1985 run as under :-

“20. Application not to be admitted unless other remedies exhausted :- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the

remedies available to him under the relevant service rules as to redressal of grievances,-

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

- (a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or
- (b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired. -- -- --

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

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(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. -- -- -- -- --

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.” (Emphasis supplied)

Reading of both the provisions would show that if the service rules provide for filing of any appeal / representation then if no order is passed by the authorities on the said representation / appeal within a period of 6 months, the original application has to be filed with the Maharashtra Administrative Tribunal within one year from the date of expiry of the said period of 6 months. It is pertinent to note that the service rules should provide for filing such appeal / representation otherwise the cause of action would start from the date of action of the respondents in the present case of suppression of the applicant, in the year 1997.

(II) In the case of **M.F. PASHA VS. UNION OF INDIA AND OTHERS** (supra) relied by the learned Advocate for the applicant himself in para 9.1 Hon'ble Karnataka High Court has observed as under :-

“9.1 Where the rules do not provide for filing of an appeal or making of a representation to a higher authority, the cause of action would be the date of adverse order (or occurrence of the cause for grievance) itself. The Supreme Court has pointed out that where the rules do not

provide for filing an appeal or making a representation to a higher authority, submission of a representation or repeated unsuccessful representations will not furnish or extend the cause of action (vide S.S. Rathore v. State of Madhya Pradesh [1989 (2) L.L.N. 500]. Representations not contemplated or provided for in law cannot obviously furnish a cause of action.” (Emphasis supplied)

The applicant in the present case has not at anywhere pleaded that, there is any service rule which provides appeal / representation against the suppression and, therefore, cause of action would start from the date of initial suppression i.e. 2.2.1997 when an employee junior to the present applicant was granted time bound promotion.

Naturally, therefore, making of any representation / representations or decision thereon much less the decision on the last representation of the applicant could not give him any fresh cause of action particularly in view of the declaration made by Hon'ble Supreme Court as highlighted in para 9.1 in the case of **M.F. PASHA VS. UNION OF INDIA AND OTHERS** (supra)

- (III) The next of the authority cited by the learned Advocate for the present applicant i. e. **UNION OF INDIA AND OTHERS VS. TARSEM SINGH** (supra) is regarding the continuing wrong. It is no doubt true that, continuing wrong is a running cause of action. In the present

case however non-grant of time bound promotion cannot be treated as continuing wrong.

- (IV) In the case of **N. BALAKRISHNAN VS. M. KRISHNAMURTHY** (supra) it has been observed that the term sufficient cause should be construed liberally and the acceptability of explanation for the delay is the sole criterion and length of delay is not relevant.

In the present case, however, the reasons given by the applicant for delay is in the nature of blaming the authorities. More particularly in para 11 of the M.A. it is alleged that, it is the assurance by the authorities despite their inaction that kept the applicant hopeful and caused him to approach the Tribunal belatedly.

In the application the applicant never pleaded that any assurance was given by the authorities nor he has filed on record any communication in this regard from the respondents to this effect and, therefore, if the criteria of acceptability of explanation is to be applied, the cause is without any foundation or basis.

- (V) In the case of **UNION OF INDIA AND OTHERS VS. SHANTIRANJAN SARKAR** (supra) it was observed that the delay can be condoned to facilitate the equitable relief.

In the present matter, no equitable relief is involved. On the other hand, issue in the present

matter would be as to whether the respondents have exercised their discretion in refusal of time bound promotion on sound reasons or not. It is trite to say that right of employee is only of consideration for promotion but he cannot claim promotion as of right.

(VI) In the case of **IMPROVEMENT TRUST, LUDHIANA VS. UJAGAR SINGH AND OTHERS** (supra), it has been observed that hyper-technical approach in the condonation of delay is required to be avoided. In that case the learned Advocate for the applicant failed to appear on the dates and the proceedings came to be dismissed. The delay of 2 months in filing restoration was to be condoned in that matter, however, the application was dismissed and in those circumstances the said observations were made by the Hon'ble Supreme Court.

In the present case on facts the said ratio is not applicable.

(VII) In the case of **VILAS B. PARAB VS. UNION OF INDIA (UOI)** (supra), though the Division Bench of Bombay High Court had referred the last of the representation, it was observed that, sec. 21 empowers the Tribunal to condone the delay.

In the present case, what I have found is that there is no provision in the service rules of filing any representation / appeal and, therefore, in view of declaration by the Hon'ble Supreme Court in the case

of **S.S. RATHORE VS. STATE OF MADHYA PRADESH [1989 (2) L.L.N. 500]**, which has been pointed out by the Hon'ble Karnataka High Court in para 9.1 of the judgment in the case of **M.F. PASHA VS. UNION OF INDIA AND OTHERS** (supra), the decision rendered by the Hon'ble Bombay High Court in the case of **VILAS B. PARAB VS. UNION OF INDIA (UOI)** (supra) will have to be read in the said background.

12. In view of all above facts and more particularly failure of the present applicant to give any cause much less sufficient cause for condonation of 17 years & 65 days delay in filing the original application and on the other hand his conduct of blaming the authorities that, they assured him regarding grant of time bound promotion, without placing any material to that effect on record, would show that the delay of 17 years and 65 days caused in filing the original application cannot be condoned.

13. Consequently, the misc. application for condonation of delay in filing the O.A. stands dismissed without any order as to costs.

VICE CHAIRMAN