

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 147 OF 2016
IN
ORIGINAL APPLICATION ST. NO. 532 OF 2016

DIST. : JALGAON

Ajabrao Rambhau Patil,
Age. 56 years, Occ. Junior Engineer,
R/o Plot no. 15A, Sharda Colony,
Near Mahabal Stop, Jalgaon.

-- APPLICANT.

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Water Resources Department,
Mantralaya, Mumbai – 400 032.
2. The Superintending Engineer,
Central Designs Organization (Gates),
Zonal Office, Dindori Road, Nashik.
3. The Superintending Engineer,
Jalgaon Irrigation Project Circle,
Girna Bhavan, Opp. Akashwani Kendra,
Akashwani Chowk, Jalgaon.
4. The Executive Engineer,
Waghur Dam Division, Jalgaon. --

RESPONDENTS

APPEARANCE :- Shri A.D. Sugdare, learned Advocate for the
applicant,
: Shri I.S. Thorat, learned Presenting Officer
for the respondent nos. 1 to 3.
: Smt. Chaitali Choudhary / Kutti, learned
Advocate for respondent no. 4 **(absent)**.

CORAM :- Hon'ble Shri B.P. Patil, Member (J)
DATE :- 8th March, 2017

O R D E R

1. The applicant has filed the present misc. application for condonation of delay caused in filing the original application seeking direction to res. no. 1 to consider his claim for grant of deemed date of promotion. The applicant has passed professional examination for the post of Junior Engineer in the year 1990.

2. It is averred by the applicant that he belongs to O.B.C. category and he was appointed as a Technical Assistant in the office of the res. no. 3. The post of Technical Assistant was abolished and he was absorbed on the post of Civil Engineering Assistant w.e.f. 1.1.1989. He passed the professional examination for appointment on the post of Jr. Engineer in the month of December, 1990 and, therefore, he became eligible and qualified for being appointed on the post of Jr. Engineer, in the month of February 1991, as per the Govt. Resolution dated 7.6.1965, but he was actually promoted as Jr. Engineer vide order dated 2.7.2007. He made representation to the res. no. 1 on 3.3.2008 through proper channel for being considered for grant of deemed

date of promotion. The said representation is not decided by the res. no. 1 and he was informed that the cases of the similarly situated persons are pending for consideration and the case of the applicant would be considered in due course. The applicant states that as the res. no. 1 has given him positive assurance, he has not filed the original application in time. There was delay of 4 years and 9 months in filing the original application and the delay is occurred because of the reasons mentioned above. It is his contention that there was no deliberate and intentional delay on his part and, therefore, he prayed to condone the delay caused in filing the original application seeking the relief as mentioned above.

3. The respondents have filed affidavit in reply and contended that the applicant has not given satisfactory explanation for condonation of delay occurred in filing the original application. It is contended by the respondents that the applicant was claiming the relief of deemed date of his promotion since December, 1990 and thus there is delay of more than 25 years in filing the original application for the relief of deemed date of promotion, but the applicant has not explained the said delay properly. There is no merit in the original application. As the applicant passed the professional examination of Civil Engineering

Assistant in the year 1990, he is not entitled to the benefits admissible to the post of Technical Assistant prior to abolition of the said post. It is further contended by the respondents that there was delay and laches on the part of the applicant in approaching the Tribunal and, therefore, the misc. application is liable to be rejected.

4. I have heard the arguments advanced by Shri A.D. Sugdare, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent nos. 1 to 3. Smt. Chaitali Choudhary / Kutti, learned Advocate for respondent no. 4 is absent.

5. The learned Advocate for the applicant has submitted that the respondents have not given the promotion to the applicant from the month of February 1991 though he had passed the professional examination as required for appointment to the post of Jr. Engineer in the month of December, 1990 and he was promoted to the said post of Jr. Engineer by order dated 2.7.2007. He made representation in that regard with the res. no. 1 on 3.3.2008, but the res. no. 1 informed him that his representation will be considered in due course and by relying on the said assurance he has not filed the original application seeking relief of deemed date of promotion, in time and, therefore,

the delay is occurred in filing the original application. He further submitted that similarly placed employees received the said benefit in view of the order dated 11.12.2014 passed by this Bench of the Tribunal in **O.A. no. 181/2011 & Ors.** He has further argued that in the like cases the delay has also been condoned by the Tribunal. He has produced the copy of order dated 15.1.2016 passed by this Tribunal at Mumbai in **M.A. no. 383/2015 in O.A. St. no. 636/2015 [Shri Sakharam K. Ambekar & 1 Ors. Vs. the State of Maharashtra & Ors.]**. He has submitted that there is merit in the issue involved in the original application and, therefore, the delay occurred in filing the original application required to be condoned in the interest of justice.

6. The learned Advocate for the applicant has also placed reliance on the judgment of Central Administrative Tribunal, Calcutta in the case of **SHRI RAM PRASAD BHATTACHARYYA VS. UNION OF INDIA AND OTHERS [2000 (1) (CAT) 499]** and judgment of the Hon'ble Supreme Court in the case of **K.C. SHARMA VS. UNION OF INDIA [1997 AIR (SC) 3588]**.

7. The learned Presenting Officer has submitted that the applicant is seeking declaration regarding deemed date of

promotion from the year 1991 and it seems that there was delay of more than 25 years and the said delay is inordinate delay and the delay and laches are not properly explained by the applicant and, therefore, the misc. application cannot be allowed. In this regard the learned Presenting Officer has placed reliance on the judgment of Hon'ble Supreme Court in the case of **STATE OF UTTAR PRADESH AND OTHERS VS. ARVIND KUMAR SRIVASTAVA AND OTHERS [(2015) 1 SCC 347]**, wherein the petitioner approached the Tribunal after 9 years and as there was inordinate delay, the Hon'ble Supreme Court has refused to give relief to the petitioner therein and rejected the said petition.

8. The learned Presenting Officer has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **STATE OF TAMIL NADU VS. SESHACHALAM in Appeal (Civil) No. 1938 of 2007** dated 18.09.2007, wherein it is observed that the delay or laches is a relevant factor for a Court of Law to determine the question as to whether the claim made by an applicant deserves consideration and the delay and laches on the part of a Government servant may deprive him of the benefit which had been given to others.

9. I have gone through the aforesaid decisions relied by both the sides. There is no any dispute as regards the settled legal principles laid down therein. In the instant case, the applicant was promoted by order dated 2.7.2007 and his claim is for grant of deemed date of promotion from the month of December, 1990. He made representation to the res. no. 1 on 3.3.2008 for grant of deemed date of promotion and the said representation has not been decided by the res. no. 1. The applicant states that on the assurance given by the concerned authority he kept mum and has not approached the Tribunal in time and the delay of 4 years and 9 months has been occurred in filing the original application before this Tribunal and, therefore, the said explanation given by the applicant seems to be satisfactory. As regards the objection of the respondents, whether there was inordinate delay of 25 years in claiming the relief can be considered at the time of final decision of the original application. At this juncture, in my opinion, the explanation given by the applicant for approaching the Tribunal belatedly is satisfactory. The valuable rights of the applicant are involved in the matter and, therefore, the original application deserves to be considered on merits. Therefore, in my view this is a fit case for condonation of delay and hence, I pass the following order :-

ORDER

- (i) The misc. application is allowed and the delay 4 years and 9 months occurred in filing the original application before this Tribunal is hereby condoned.

- (ii) The office is hereby directed to register and number the original application after its due scrutiny.

There shall be no order as to costs.

MEMBER (J)