

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/2351/2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

Date : -4 JUL 2016

M.A. No. 122/2016 IN O.A. No. 270/2016.
(Sub :- Reversion)

1. Shri Ashwin J. More,
Add. Plot No. 29/C/5, Bainganwadi, Gowandi

....**APPLICANT/S.**

VERSUS

- 1 The State of Maharashtra, Through Secretary, Planning Department, Mantralaya, Mumbai-32. 2 Secretary, G.A.D., Mantralaya, Mumbai-32.
3 Secretary, Home Department, Mantralaya, Mumbai-32.

...**RESPONDENT/S**

Copy to : The C.P.O. M.A.T., Mumbai.

*The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the 30th day of **June, 2016** has made the following order:-*

APPEARANCE : Shri C.T. Chandratre, Advocate for the Applicant.
Ms. N.G. Gohad, P.O. for the Respondents.

CORAM : **HON'BLE SHRI R.B. MALIK, MEMBER (J).**

DATE : **30.06.2016.**

ORDER : Order Copy Enclosed / Order Copy Over Leaf.

Amal
4/7/2016
Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.122 OF 2016
IN
ORIGINAL APPLICATION NO.270 OF 2016

DISTRICT : MUMBAI

Shri Ashwini Jaywant More.

)...Applicant

Versus

1. The State of Maharashtra & 2 Ors.)...Respondents

Shri C.T. Chandratre, Advocate for Applicant.

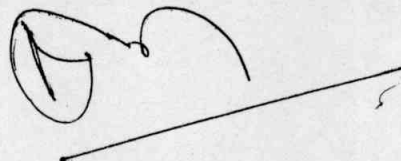
Ms. N.G. Gohad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 30.06.2016

ORDER

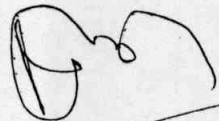
1. This is an application for condonation of delay in bringing the Original Application (OA) to question two orders dated 3.12.2007 and 11.7.2013 respectively. On the face of it, the delay worked out eight years and three



months and two years and eight months respectively. However, as the discussion progresses, it would become clear that the only course of action that needs to be adopted in the interest of justice is to either hold that there is no delay or even if the delay was there, then regardless of the duration thereof, the same will have to be condoned.

2. I have perused the record and proceedings and heard Mr. C.T. Chandratre, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

3. The Applicant came to be appointed as Clerk-Typist on compassionate ground on 17.8.2005. That was apparently as per the G.R. of 23rd August, 1996. It was imperative for him to clear Typing Examination within two years of his appointment. It appears that the Applicant could not clear the said Examination within the period of two years. On 29th November, 2007, he sought extension of time vide a communication at Exh. 'A-1' (Page 8 of the paper book). The said request was apparently turned down and by an order of 3rd December, 2007 (Exh. 'A-2', Page 10 of the paper book), the Applicant came to be terminated. By an order of 5th December, 2007, the Applicant came to be appointed in the same Department in Group 'D' post (Peon). The said order is at Exh. 'A-3' (Page



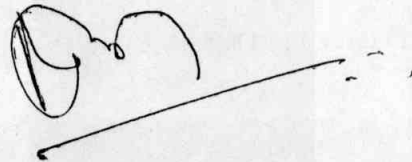
11 of the paper book). The next Exhibit is Exh. 'A-4', dated 12.9.2008 (Page 12 of the paper book) whereby the Applicant addressed a communication to Additional Chief Secretary, Planning wherein he made a request as well as grievance that even as request for extension to clear the examination made by Ms. Vaishali Kalelkar was granted, his similar request was turned down. By another communication of 28th July, 2009 (Exh. 'A-5', Page 17 of the paper book), the Applicant relies upon some kind of an order-cum-communication made by the Joint Secretary, Home by which order, one Mrs. Shilpa S. Bhingadeve was given extension of six months to submit her Typing Examination Certificate.

4. At Exh. 'A-6' (Page 18 onwards of the paper book), there is a document of 6.4.2010 which is the extract of minutes of the meeting of High Powered Committee of Secretaries under the Chief Secretary and perusal of Serial Nos. 4 to 5 would show that a Peon Shri A.J. More of Planning Department was given appointment retrospectively to the post of Clerk-Typist. At Serial No.5, one Shri S.M. Patade, Clerk-Typist was given one more chance to clear the Typing Examination after he was already appointed to that post. Exhibit 'A-7' (Page 21 of the paper book) is the formal Office Order of Shri More's promotion. Vide Exh. 'A-8' dated 18.11.2011, the



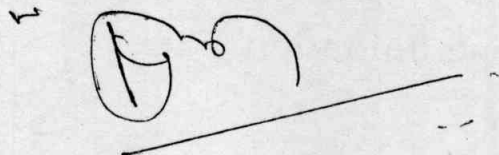
Applicant addressed a communication (Page 23 of the paper book) to the Chief Secretary and the Chairman of the Committee of Senior Secretaries wherein he tried to ventilate his grievance by informing that he had since cleared the Typing Examination though after the time limit fixed, his request for one year's extension was rejected. But his application for the purpose was not even properly submitted to the G.A.D. That was because although GAD had accepted his request, but it was rejected by Planning Department. He then concluded his communication by pointing out as to how he stood to lose in long run including the pensionary benefits, if his request was not granted.

5. At Exh. 'A-9' (Page 24 of the paper book), there are Office Notings from GAD in respect of one Shri R.P. Naik, Clerk-Typist, Registry of Finance Department. There, it was inter-alia mentioned that the said Shri Naik did not clear the Typing Examination through inadvertence (अनावधानाने करण्यात आलेली नाही). The said document concluded by mentioning that a'la the present Applicant Shri Naik also was appointed on compassionate ground, and therefore, taking into consideration the G.R. of 8.9.1997, his case deserved to be revised favourably.



6. I shall proceed further presently with other documents, but even at this stage, it must be emphasized that the case of Shri Naik and the present Applicant is exactly the same and one is left completely perplexed as to how and why the Applicant should have been the recipient of a rough age of the official stick. If this is not hostile discrimination, one does not know what hostile discrimination in actual terms would be.

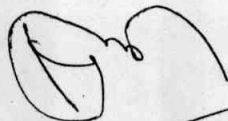
7. Returning to the other documents at Exh. 'A-11', there is a copy of the Minutes of the Meeting of High Powered Secretaries under the Chief Secretary dated 26th June, 2014. The significant aspect of the matter is that one Ms. Havina Vigas was granted extension of time to submit the Typing Examination Certificate and one Shri O.Y. Deshpande got condonation by the belated presentation of his similar Certificate. A formal copy of the Order of Shri Deshpande is there on record. At Exh. 'A-12' (Page 34 of the paper book), there is an extract of a similar meeting like the last one wherein one Smt. Kshirsath was the recipient of the official grace when the delay in presentation of the said Certificate was condoned and one Shri Ranpise was given one more extension to do so. Office Orders in their case are to be found at Pages 37 & 38. At Exh. 'A-13' (Page 39 of the paper book), there is an extract of a similar meeting of High Powered Secretaries under the



Chief Secretary dated 27th August, 2015 whereby one Shri Vijay R. Yadav received the benediction of condonation of delay of one month and 25 days in submitting his Typing Certificate. The official Order in that behalf is at Page 43.

8. The Respondents in their Affidavit-in-reply have annexed a copy of the Order dated 29th January, 2011 (Exh. 'R-7') which shows that by an Order dated 29th January, 2011, the Applicant came to be promoted to Group 'C' from the quota reserved for the promotees from Group 'D'. It is, therefore, clear that at least w.e.f. January, 2011, the Applicant is a Group 'C' employee but then, if the things are such as they are, then he obviously loses in terms of the duration of time which has elapsed and in case, he was treated alike as several other similarly placed, he would have gained in several respects including but not only in seniority.

9. The Applicant vide the communication of 25.10.2011 which has apparently been submitted by the Respondents, addressed a communication to the Minister of State for Social Justice setting out the gist of all the facts stated hereinabove including as to how the other similarly placed like him were given benefit while he was deprived thereof. A grievance was made of hostile discrimination.



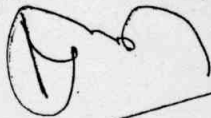
10. In the meanwhile, the Applicant had moved another OA being OA St. No.746/2014 wherein he took out MA 438/2014. The said proceeding came up before me on 3rd December, 2015 wherein I made the following order.

“Heard the Applicant with Shri C.T. Chandratre, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

Though the mater came to be debated for some time, it came about that best course of action would be for the applicant to withdraw this M.A. and consequently the OA which is yet to be registered as well with leave to file fresh one on the same cause of action.

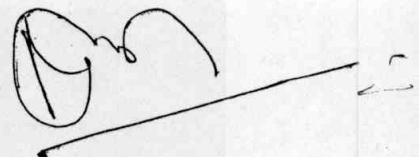
The applicant is accordingly allowed to withdraw the M.A. and O.A.St.No.746/2014 with leave to file afresh one on the same cause of action is granted. No order as to costs.”

11. The purpose of a detailed discussion based on documents even in this application for condonation of delay must have become quite clear by now. Examining the facts of this matter even on the elementary traditional tenet of law of limitation, it is very clear that the Applicant



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in the first place had been making representations but they were not so many as to be assailed as pointless representations of flogging a dead horse. Further, no concrete decision was ever taken on his representations, and therefore, none was conveyed to him. It is most pertinent to note that one clear segment of his representation has been that while others so similarly placed as he was were treated with kid gloves, he was hit hard, and therefore, he complained and in my view, quite justifiably of hostile discrimination. The above discussion must have made this conclusion axiomatic without there being any need to elaborate on this aspect of the matter. Needless to say that if a case of the official Respondents fails on the anvil of discrimination, then no other consideration except to act in accordance with the constitutional mandate should weigh with judicial fora. Had it been, so that a concrete, categorical and clear stand was taken by the Respondents for good reasons to justify their action against the Applicant in the context of several other similarly placed employees that would have been a different matter, but here the Respondents obviously in this respect adopted the policy of deafening silence which is an anathema to a process informed by the constitutional mandate as well as the justice aspect of the matter. That being the state of affairs, to me, it is very clear that in the

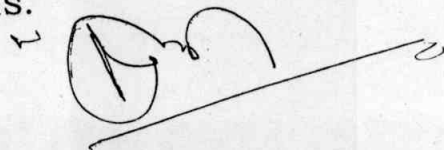
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sense the word, "cause of action" is understood in the realm of law of limitation, the time did not even begin to run against the Applicant, and therefore, with a fair degree of justification, it can be said that this may be a case of no delay and to buttress this conclusion, my own order in the earlier OA and the facts and circumstances discussed hereinabove would make it quite clear that the case of the Applicant cannot be said to be suffering from the kind of the vice that the learned CPO envisaged. Therefore, I have no hesitation in entering a finding that in the first place, there is no delay but assuming there was delay regardless of its duration, the above discussion must have made the whole thing clear that this is an instance of complete helplessness of the Applicant, and therefore, this matter qualifies on the anvil of sufficiency of cause and the delay will have to be condoned.

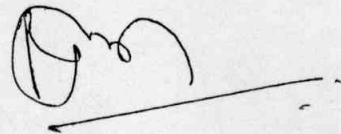
12. I may only note one authority from amongst several cited by Mr. Chandratre, the learned Advocate for the Applicant to guide me in so far as the principles governing this branch of law is concerned and that authority is **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji & others, AIR 1987 SC 1353**. I have also carefully perused the other judgments cited by Mr. Chandratre and sought guidance therefrom and applied its principles hereto.



13. The learned CPO Shri Rajpurohit referred me to **Naresh Kumar Vs. Department of Atomic Energy & Ors., (2010) 7 SCC 525.** Although the learned CPO laid particular emphasis on the observations of the Apex Court in the penultimate Paragraph of that judgment which lays down *inter-alia* that just because the case of the party was forwarded by the Department for favourable consideration that would not give any vested right in favour of the said party. It was then observed in effect by Their Lordships that if an employee kept making representation after representation despite their rejection, then no right could be claimed on that ground. Now, in the first place, I find that the present Applicant cannot be assailed for what the Petitioner before the Hon'ble Supreme Court could be assailed of. I must repeat times out of number that here in this matter, no clear rejection of the case of the Applicant was made and I do not think that the mandate of the Hon'ble Supreme Court is that an employee should infer rejection when none is actually there. Further, while the case of the Applicant remained pending, the officials of the higher echelons recommended and ultimately promoted to the Applicant. Therefore, it is not possible to successfully argue that the present Applicant was guilty of making fruitless frequent representations.



14. Further, the facts in **Naresh Kumar** (supra) were such that the Petitioner was transferred thrice from one to the other Office. He once exercised his option vis-à-vis his pensionary benefits and then probably resuming as to which was more beneficial to him, he requested for change of the option. He was repeatedly informed even in his third spell of service that his request could not be considered. His request was several times considered and re-considered and rejected. He then made a Writ Petition before the Hon'ble High Court. Their Lordships were pleased to find that there was unexplained delay of eight years which in the context was inordinate. It was found by the Hon'ble High Court that if the representations made by the Petitioner were held in juxtaposition to the Writ Petition, it would be found that the relief sought in both were inconsistent and in fact, different. Most pertinently, Their Lordships were pleased to find that the concerned employer Corporation was consistent in following the Rules and that was done uniformly in case of all the employees. Now it is here that the case of the present Respondents in this OA is found to be completely wanting and I need not repeat all over again whatever I have already discussed in extenso based on the circumstances emanating from the record about the hostile discrimination that the Applicant was treated with.



15. Therefore, examine it from any angle and the conclusion is inevitable that either there is no delay or even if delay was there, not only it can be but it must be condoned. The Misc. Application, is therefore, allowed. It is held that there is no delay and even if the delay was there, regardless of its duration, it is hereby condoned. The Original Application has already been registered somehow. The Office and the Applicant are directed to process the same now in usual manner. This Misc. Application is allowed in these terms with no order as to costs.

sd/
~~*sd/*~~ *30.6.16*
(R.B. Malik)
Member-J
30.06.2016

Mumbai

Date : 30.06.2016

Dictation taken by :

S.K. Wamanse.

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Malik
~~*Malik*~~ *4/7/2016*
 Asstt. Registrar/Research Officer.
 Maharashtra Administrative Tribunal
 Mumbai.