**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD**

**M.A.NO.174/2017 IN O.A.ST.NO.588/2017**

**DISTRICT:- JALNA**

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Shri Aasaram s/o. Sakharam Chormare,
Age : 61 years, Occ. Nil (Removed from Service),
R/o. Paradgaon, Tq. Ghansawangi,
District Jalna. **...APPLICANT**

**V E R S U S**

1. The State of Maharashtra,
   Through the Secretary,
   Revenue & Forest Department,
   Mantralya, Mumbai-32.

2. The Settlement Commissioner &
   Director of Land Records, Pune.

3. The Dy. Director of Land Records,
   Aurangabad.

4. The District Superintendent of Land
   Records, Osmanabad. **... RESPONDENTS**

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APPEARANCE : Shri Kakasaheb B. Jadhav, Advocate for the Applicant.

: Shri V.R.Bhumkar, Presenting Officer for the respondents.

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**CORAM : JUSTICE SHRI P.R.BORA, MEMBER (J)**
**AND**
**SHRI BIJAY KUMAR, MEMBER (A)**

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**Decided on : 14-12-2021**

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**O R A L O R D E R**

1. Heard Shri Kakasaheb B. Jadhav learned Counsel appearing for the Applicant and Shri V.R.Bhumkar learned Presenting Officer representing the respondents.

2. The applicant has filed the O.A. challenging order of punishment dated 13-07-2009 issued by respondent no.3 whereby the applicant has been removed from the services of the Government. Since the delay has occasioned in filing the O.A. the applicant alongwith O.A. filed the M.A. for condonation of delay. As stated in the M.A. delay of 7 years has occurred in filing the O.A. Previously, the then Bench of the Tribunal after hearing the arguments of the learned Counsel for the parties, had rejected the M.A. vide order dated 05-05-2017. The applicant challenged the said order before the Aurangabad Bench of the Hon'ble Bombay High Court and the Division Bench vide its order dated 11-06-2019 by setting aside the order dated 5th May, 2017 remanded the matter to the Tribunal for considering it afresh.

3. Shri Kakasaheb B. Jadhav learned Counsel appearing for the applicant submitted that the applicant had preferred departmental appeal against the order dated 13-07-2009 passed by the disciplinary/appointing authority. Learned Counsel further submitted that the applicant was under *bona fide* belief that unless his departmental appeal is decided it may not be permissible to

avail any further remedy, was waiting for the decision of the appellate authority, and therefore, could not file appeal within the period of limitation as stipulated under the provisions of the Administrative Tribunals Act, 1985.

4. Learned Counsel further submitted that the respondents have also not released the amounts of GPF, GIS and the arrears of the wages of the suspension period. The learned Counsel submitted that since the aforesaid monetary benefits were also not released to the applicant, he was facing financial crunch and that is also one of the reasons that he could not prefer the application before this Tribunal within stipulated period of limitation. Learned Counsel submitted that the applicant has very good case on merits and if he is not given an opportunity to prosecute his case on merit, irreparable loss would be caused to him.

5. Learned Counsel submitted that the applicant cannot be blamed if the appellate authority did not decide the appeal though it was filed well within time by the applicant. The learned Counsel further submitted that the Hon'ble Apex Court and Hon'ble High Courts have always taken a lenient view in so far as the condonation of delay is concerned. The learned Counsel submitted that even in the

order passed by the Hon'ble Division Bench in Writ Petition No.10161/2017 it had referred to the order passed by Hon'ble Apex Court in the case of Collector, Land Acquisition, Anantnag & Another V/s. Mst. Katiji and Others reported in [(1987) 2 SCC 107). The learned Counsel therefore prayed for condoning the delay.

6. The request so made is opposed by the learned P.O. Learned P.O. invited our attention to the provisions under Section 20 and 21 of the Administrative Tribunals Act, 1985. Learned P.O. submitted that as provided under the sub clause 3(1) of Section 21, the aggrieved employee is under obligation to prefer application before the Tribunal if his departmental appeal is not decided within the period of 6 months, within 1 year thereof. Learned P.O. further submitted that in fact the applicant did not file any such appeal. As such according to the learned P.O., no case is made out for allowing the application.

7. As has been revealed from the contents of the application and the submissions made by the learned Counsel appearing for the applicant, the foremost reason for not filing application within the period of limitation is that the departmental appeal filed by him was pending. In

support of his said contention the applicant has placed on record copy of the departmental appeal allegedly filed by him on 09-11-2009. The fact as aforesaid has been candidly denied by the respondents in the affidavit in reply submitted by them. The applicant has not filed any rejoinder to the said affidavit. In the oral arguments learned Counsel for the applicant submitted that he does not have any other evidence showing that the appeal was filed by him.

8. We have perused the copy of the appeal allegedly filed by the applicant. It nowhere carries any acknowledgement evidencing that the same was received to the authority to which it is made. It is further not explained by the applicant as to whether he had presented the said appeal in person or was sent by him by post to the appellate authority. Any communication received in the Government office is invariably acknowledged and its entry is taken in the inward register. The applicant has not produced any such evidence. He has also not made any attempt to call for the record from the concerned office or had obtained information under the Right to Information Act showing that the said appeal was received to the said authority. The burden was increased on the applicant to prove the said

fact when it was specifically denied by the respondents in the affidavit in reply. The applicant has thus miserably failed in establishing the foremost reason for his not filing O.A. within limitation. There is reason to believe that the applicant has come out with a false ground that the appeal was filed and pending before the appellate authority.

9. Reasons for setting aside the order dated 05-05-2017 passed by this Tribunal are recorded by the Hon'ble High Court in paragraph 10 of the judgment in Writ Petition No.10161/2017, we deem it necessary to reproduce the entire said paragraph which reads thus:

> "*10. Scenario shows that the petitioner indeed had taken up contention before the tribunal that he had preferred an appeal and no notice had been given for quite a long time keeping him under the impression that one day or the other same would be responded to. The dejected petitioner had mustered courage to file application claiming legitimate dues, to which as well there had been no response for quite a while. It had then been realized that no response is likely to be given to the appeal and the application. Petitioner refers to date of filing of appeal and he also refers to in the miscellaneous application before the tribunal that an application for withdrawal of amount of GPF, GIS etc. had been filed by him in the year 2017. It is not the case of the respondents that said application*

*had not been received at their end, yet the application as well had not been responded to until decision by the tribunal and movement against order of tribunal before this court in writ petition. These aspects are not disputed. In the circumstances while the miscellaneous application been decided on very first day without issuing notice, without claims being referred to other side, would not be a sound procedure to form opinion while, as it emerges that upon the application filed in 2017, there had been no response from the respondents.*"

10. As has been observed by the Hon'ble High Court, Tribunal should not have decided the application on the very first day and without issuing notice and without claims being referred to other side. As said by the Hon'ble High Court, the procedure adopted by the Tribunal was not a sound procedure to form opinion. It can be further gathered from the observations made by the Hon'ble High Court that the fact of pendency of the appeal as was pleaded by the applicant in the said Writ Petition and non-payment of the amounts of GPF, GIS, etc. till the year 2017 weighed in the mind of their Lordships.

11. In view of the said observations, the respondents were required to file their affidavit in reply and accordingly the same has been filed. As is revealing from the contents of

the M.A., the pendency of the departmental appeal allegedly filed by the applicant is the foremost reason assigned by the applicant. While passing the earlier order dated 05-05-2017, Tribunal had taken into account the provision under Section 20 and 21 of the Administrative Tribunals Act, 1985. From the tenor of the discussion made in the order dated 05-05-2017, it is evident that the Tribunal at that time had presumed that the departmental appeal was filed by the applicant. However, now it has come on record through the affidavit in reply filed by the respondents that the applicant had not preferred any departmental appeal as mentioned in the M.A. The applicant has not filed any rejoinder to the said affidavit in reply. During the course of arguments, learned Counsel for the applicant only referred to the copy of the appeal allegedly filed by the applicant on 09-11-2009 but could not bring to our notice any other evidence.

12. We have carefully perused the copy of the appeal allegedly filed by the applicant. It does not bear acknowledgment from the appellate authority to which the said appeal was submitted evidencing the receipt of the same to the said authority. The applicant has not explained whether alleged appeal was presented by him

personally to the appellate authority or was sent by post. It need not be stated that every correspondence or communication received in any of the Government office is acknowledged by the said office on the original copy and its entry is invariably taken in the inward register. If any communication is received by post, the same is also taken note of in the inward register. When it comes to filing of appeal, it matters that the applicant has not brought on record any evidence showing that the appeal was in fact filed by him. It cannot be believed that no acknowledgement would have been obtained by the applicant in case if he had presented the appeal personally by personally visiting the office of the appellate authority. Further, nothing is brought on record by the applicant showing that he has made any further correspondence in relation to the appeal filed by him with the appellate authority when the appeal was not decided within reasonable time. Even in the application dated 18-04-2017, which was submitted by the applicant for release of the monetary benefits, there is no whisper about the pendency of the appeal. When the fact of filing of appeal is specifically denied by the respondents, the applicant was under an obligation to reasonably prove the fact of filing

appeal by him. Apart from the fact that there is no acknowledgment from the office of the appellate authority on the personal office copy (o.c.) of the appeal filed by the applicant, no attempt has been made by the applicant to call for the copy of the inward register on the date on which he claims to have filed appeal. As mentioned hereinabove, had the applicant really filed appeal as claimed by him, entry of the same must have been taken by the office of the appellate authority in its inward register or in the register of appeals.

13. In view of the fact that the respondents have on affidavit denied the contentions of the applicant of having filed the appeal and further having regard to the fact that there is no denial of the said fact by the applicant by filing rejoinder affidavit and further having considered the fact that the applicant has failed in brining on record any evidence so as to believe his contention that the appeal was filed by him and was not decided for quite a long period, there is reason to believe that the applicant has taken a false plea that he had preferred an appeal on 09-11-2009 with the appellate authority.

14. We reiterate that the pendency of the appeal is the foremost reason cited by the applicant to justify the delay occasioned in filing the O.A. When the applicant has failed in proving the same, no case can be said to be made out for condoning the delay of long 7 years.

15. Another reason cited by the applicant that monetary dues were not paid to him and because of that he could not prefer O.A. in time has also not appealed us. Admittedly, very first application is made claiming such benefits on 18-04-2017. Had the applicant been in dire need of any monetary assistance, he would not have waited for a period of more than 8 years in making such application. We clarify that, we are not justifying the delay committed by the Government in releasing the monetary benefits for which the applicant was entitled to. The question is non-release of the said amounts whether could be accepted as a ground for occurrence of delay for filing the O.A. by the applicant. As mentioned above, it cannot be believed that the applicant was in dire need of the said monetary benefits and for that reason he was prevented from filing the O.A. within stipulate period of limitation.

16. There cannot be a dispute as about the guidelines laid down by the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag & Another V/s. Mst. Katiji and Others reported in [(1987) 2 SCC 107), however, if it is noticed that not only there is no sufficient cause for occurrence of delay but the cause attempted to be shown for occurrence of such delay is false one. Therefore, in our opinion, no equitable relief can be given to such a litigant.

17. In the case of Kamlabai w/o. Narasaiyya Shrimal & Anr. V/s. Ganpat s/o. Vithalrao Gavare reported in [2007 (1) Mh.L.J. 807], Hon'ble Bombay High Court has observed thus:

> *"10. There cannot be any duality of opinion that normally a litigant would not intentionally commit delay in filing of proceedings like an appeal. The delay cannot be condoned only because it is unintentional. It will be rather too wide interpretation if the condonation of delay is to be allowed only because there is no intention of a party to cause delay. The reason is not far to seek. For, the expression "intention" connotes state of mind of a person. The state of mind cannot be fathomed without there being attending circumstances. In the present case, there is only an allegation that the petitioners had no intention to cause delay. There are no sufficient attending*

*circumstances placed on record to bolster up such allegation. There is nothing on record to fathom the mind of the petitioners and, particularly, when they were sleeping over their rights while they were made aware of the execution proceedings and had not decided to participate in the same. Secondly, the ground of poverty and helplessness is also too vague and a slippery phraseology used in the application. The petitioners never explained as to when the so called disability was removed and how they surmounted the difficulty at the time of the filing of the appeal at a belated stage after six months. The learned District Judge has observed that mere poverty cannot be a ground for condonation of the delay. One cannot be oblivious of the fact that the grounds for condonation of delay are required to be spelt out clearly and distinctly in the application filed under Section 5 of the Limitation Act.*

*11. ....*

*12. ....*

*13. ....*

*14. ....*

*15. The expression "sufficient cause" cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5 of the Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such*

> *"sufficient cause" stated in the application and as such no interference in the impugned order is called for*"

The above observations very much apply to the facts in the present case also.

18. In another judgment in the case of Govind Gangadhar Jagalpure V/s. Laxmibai Baburao Pawar @ Upase & Others reported in [2021 (4) Bom. C.R.687], the Hon'ble High Court has observed thus:

> *"34. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on the part of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect "sufficient cause" as understood in law. (Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997)."*

19. In view of the law laid down as above and more particularly having regard to the facts involved in the present case, we reiterate that the applicant has miserably failed in making out any sufficient cause for justifying the

delay occasioned in filing the application. In the result, following order is passed.

**O R D E R**

M.A.No.174/2017 in O.A.St.No.588/2017 is rejected with no order as to costs.

**(BIJAY KUMAR)**
**MEMBER (A)**

**(P.R.BORA)**
**MEMBER (J)**

**Place : Aurangabad**
**Date : 14-12-2021.**