

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC APPLICATION NO.49 OF 2018
IN
ORIGINAL APPLICATION NO.83 OF 2018**

DISTRICT: PUNE

Shri Uttamrao N. Khobragade)
Age 85 years, Occ: Nil)
Retired as Joint Director of Social Welfare)
Department,)
R/O. 21/253, Khase Park, Lohagaon Road,)
Pune 32.) **...Applicant**

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Women & Child Development,)
Department, Having office at Mantralaya,)
Mumbai – 400 032.)
2. The Commissioner,)
Women and Child Development)
Department, Having office at 28,)
Queens Garden, Pune – 411 001.) **...Respondents**

Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : SHRI A.P. KURHEKAR, HON'BLE MEMBER (J)

DATE : 23.03.2021.

JUDGMENT

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.
2. O.A. No.83/2018 is filed for challenging order dated 05.01.2016, whereby the Applicant was informed that deemed date of promotion dated 16.01.1986 was granted only for the pension purpose, and therefore, he is not entitled for pay and allowances for the period from 16.01.1986 to 01.01.1990. Since, O.A. is not within limitation, M.A. is filed for condonation of delay of one year.
3. Learned Advocate for the Applicant submits that the Applicant is suffering from Hemiparesis for last seventeen years, and therefore, delay of one year cause in filing O.A. and challenging communication dated 05.01.2016. It is totally misconceived and fallacious, in view of background of the matter.
4. Perusal of record reveals that the Applicant retired in 1990. He had filed Writ Petition No.1046/1987 challenging seniority and consequential benefits of promotion. The said Writ Petition was transferred to Maharashtra Administrative Tribunal in view of establishment of the Tribunal and it was registered as Transfer Application No. 6/1999. O.A. was decided on 10.11.2000 by giving certain directions to prepare fresh seniority list and for directions to consider the Applicant retrospectively for promotion in the cadre of Deputy Director from the date of which he will be legible. Since these directions were not complied, the Applicant had filed Contempt Application No.127/2001 which was disposed of by order

dated 07.12.2001 with the finding that there is no *prima-facie* case of Contempt.

5. The perusal of impugned order reveals that by order dated 09.10.2001, deemed date of promotion was granted from 16.01.1986 only for promotion purpose and monetary benefits were refused. The Applicant did not challenge the said order. He remained silent for fifteen years and only made application on 28.12.2015 to the Department for grant of pay and allowances for the period of deemed date of promotion. Since, the decision was already taken by order dated 09.10.2001, the Applicant was simply informed by communication dated 05.01.2016 that his request cannot be considered. Now, the Applicant has taken shelter to this communication dated 05.01.2016 for claiming pay and allowances from deemed date of promotion.

6. Indeed, he ought to have been challenged the order dated 09.10.2001, whereby deemed date was granted only for the purpose of retirement benefits. This being the position, the order dated 05.01.2016 is nothing but communication of the decision already taken on 09.10.2001. As such, the communication dated 05.01.2016 will not give any cause of action to the Applicant to approach the Tribunal. He failed to challenge the main order dated 09.10.2001, whereby his claim for monetary benefits from deemed date of promotion was rejected. Suffice to say, the order dated 09.10.2001 had already attained finality, therefore, even if the Applicant after fifteen years made representation for the same relief, the decision thereon by communication dated 05.01.2016 will not give fresh

cause of action to the Applicant, neither it would infuse life in the claim which is stale and dead.

7. Needles to mention that such belated representation made after fifteen years will not review cause of action on the basis of communication by the Department on such representation. Suffice to say, communication dated 05.01.2016 is of no assistance to the Applicant to claim any cause of action for filing O.A.

8. From the aforesaid discussion, I have no hesitation to sum up that the Applicant is trying to rake-up dead and stale claim without challenging the order dated 09.10.2001, therefore, O.A. itself is not maintainable.

9. Thus, M.A. as well as O.A. itself is not maintainable and it is nothing but abuse of process of law.

10. In view of above, M.A. as well as O.A. is dismissed with no order as to cost.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 23.03.2021
Dictation taken by: N.M. Naik.