

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC APPLICATION NO.581 OF 2021
IN
ORIGINAL APPLICATION NO.1018 OF 2021**

DISTRICT: SATARA

Shri Shashikant Shankar Sutar,)
Age- 48 years, Occ: Service.)
R/at Karvadi, Tal. Karad, Dist. Satara,)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through its Chief Secretary,)
Mantralaya, Mumbai-32.)
- 2) The Principal Secretary,)
Water Resources Department,)
General Administrative Building,)
Mantralaya, Mumbai-32.)
- 3) Superintending Engineer,)
Pune Irrigation Project Circle, Pune.)
- 4) Superintending Engineer,)
Satara Irrigation Circle and Zonal officer,)
Kolhapur Zone, Krishna Nagar, Satara.)
- 5) Superintending Engineer,)
Sangli Irrigation Circle, Sangli.)
- 6) Executive Engineer,)
Tembu left irrigation project,)
Management Dept. Ogalewadi.)
Tal-Miraj, Dist.- Sangli)...**Respondents**

Shri Makrand M. Kele, learned Advocate holding for Shri Sukumar R. Ghanavat, learned Advocate for the Applicant.

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

CORAM : **M.A. Lovekar, Member (J)**

RESERVED ON : **22.04.2022.**

PRONOUNCED ON: **25.04.2022.**

JUDGMENT

1. Heard Shri Makrand M. Kele, learned Advocate holding for Shri Sukumar Ghanavat and Smt Archana B. Kologi, learned Presenting Officer for the Respondents.

2. Perused record.

3. According to the Applicant there is delay of three years, eleven months and twenty days in filing the Original Application. It is the contention of the Applicant that this delay was caused because the Applicant, under bonafide belief that his remedy lay before the Hon'ble High Court, filed Writ Petition No.9523/2018 in the Hon'ble High Court and when he came to know that he had pursued a wrong remedy by filing the Writ Petition, he withdrew it and filed the Original Application before this Tribunal. Thus, according to the Applicant the period consumed in prosecuting the remedy which was not the proper remedy needs to be excluded while computing limitation for the Original Application and hence the delay deserves to be condoned.

4. It may be mentioned at the outset that in the instant Application delay is stated to be of three years, eleven months and twenty days and cause of action is stated to have arisen when the Applicant received communication dated 26.12.2017 from the Respondent Department.

5. According to the Respondents the delay is much more than what the Applicant is trying to portray, major portion of delay has gone unexplained, only a small portion of delay of about four years is tried to be explained by the Applicant and for these reasons delay caused in filing the Original Application does not deserve to be condoned.

6. Few facts which have a bearing on the question of delay need to be stated. The Applicant was appointed on compassionate ground on the post of Jr. Clerk on a temporary basis by order dated 08.09.1992. On 02.09.1993 he received a letter from the Respondent Department calling upon him to submit certificate/s of having passed requisite typing tests. The Applicant sought time to furnish the same. By order dated 29.09.1994 the Applicant was demoted to the post of Peon on the ground that he had not passed typing tests within the stipulated period. After serving for a period of three years as "Peon" the Applicant was promoted to the post of Jr. Clerk on 17.03.1998. Principal grievance of the Applicant is about legality of order of his demotion dated 29.09.1994.

7. The Applicant's principal prayer in the O.A. is as follows:-

"b) This Hon'ble Tribunal by suitable order or directing the Respondent Nos. 2 to 4 to count the service of the Petitioner as Class 'III' instead of Class 'IV', for the duration of 03-10-1994 to 31-3-1998, being that of a "Junior Clerk" and also issue appropriate directions against the Respondent Nos. 5 and 6 to comply with the direction of the Respondent Nos. 2 to 4 regarding considering the service of the Petitioner as Class 'III' instead of Class 'IV' for the duration of 03-10-1994 to 31-3-1998, being that of a "Junior Clerk".

8. The Application is opposed by the Respondents mainly on the ground that there is delay of several years in approaching this Tribunal. The Applicant has tried to make out a case that cause of action to apply for redressal of his grievance arose only when he received the communication dated 26.12.2017, this contention is patently misleading, the cause of action initially arose when the Applicant was demoted to the post of Peon on 29.09.1994 and only by making representations limitation which had started to run could not have been arrested.

9. In their Reply the Respondents have, *inter-alia*, stated as follows:-

"2. At the outset it is respectfully submitted that, the applicant is challenging the order of his appointment and also asking to count his service in Class-4 to Class-3 from

the date of 03/10/1994 to 31/03/1998 as a Junior Clerk and also asked directions to count the service in Class-4 to Class-3. This prayer definitely goes to show that, the order which is passed in the year 1994 is challenged by the Applicant in the year 2021. Hence there is delay of 27 years in filing the present complaint. However Applicant is asking to condone the delay of 3 years 11 months and 20 days and for which he is considering the communication order dated 26/12/2017. However Applicant intentionally avoided to mention all these certain relevant facts in the delay condonation application.

3. It is submitted that, Applicant has challenged his demotion order i.e. from clerk cum typist to the post of peon to the Hon'ble Lokayukt Mumbai on 21/05/1999. Hon'ble Lokayukt has called report on the application cum complaint of the Applicant from the State Government. The respondent has submitted detail facts to the Hon'ble Lokayukt. Hereto annexed and marked as **Exhibit R-1m colly** are the copies of Applicant's representations before Hon'ble Lokayukt and Respondent No.2 and Reply of Government to Lokayukt dtd. 8.10.1999.

3.2. However Applicant failed to submit the typing certificate in stipulated time. In fact failure on part of Applicant to submit typing certificate in time then department was required to take action of removal of Applicant from service. Prior to communication dated 26/12/2017, the request of Applicant was already turned down by the department vide letters dtd. 3.10.2005 and 8.5.2015, copies whereof are annexed hereto and marked as **Exhibit R-3m colly**.

4. On 19/08/2002, Applicant submitted application for the continuity of service from 1992. Even the said application was also rejected by Government of Maharashtra, Jalsampada Division, Mantralaya, Mumbai by their letter dated 03/10/2005, copy whereof is annexed hereto and marked as **Exhibit R-4m**.

4.1. However Government has considered the continuation for pay fixation as per MCS (Pay) Rules, 1980 and accordingly Superintendent Engineer, Satara Irrigation Project Circle by their letter dated 09/11/2009 informed the Applicant, a copy whereof is annexed hereto and marked as **Exhibit R-5m**.

4.2. These facts goes to show that even Government has rejected his prayer of changing the class-4 to class-3 period and also informed that the period cannot be considered for promotion etc. in the year 2005 & 2009 itself.

On the basis of afore-quoted pleading, it is the contention of the Respondents that there is delay of Twenty-Seven years in approaching this Tribunal.

Exhibit R-1, R-2, R-3, R-4 & R-5 attached to their Reply by the Respondents fully support their submission that infact delay in approaching this Tribunal is considerably more than what the Applicant has attempted to portray.

10. The Applicant has not given any explanation for the delay which was caused before he filed Writ Petition No.9253/2018. Had the delay been only for the period which was spent in pursuing the remedy before the Hon'ble High Court, there would have been no difficulty in condoning the same. However, as observed earlier, cause of action to approach the proper forum for redressal of grievances by the Applicant arose on 29.09.1994 when he was demoted to the post of Peon.

11. By communication dated 26.12.2017 the Applicant was informed as under:-

“दिनांक २१/०५/१९९९ रोजी श्री. सुतार, कनिष्ठ लिपिक यांनी मा. लोक आयुक्त मुंबई यांना सेवा कालावधीत झालेल्या पदावनीबाबत अर्ज सादर केला होता. तसेच मा. सचिव पाटबंधारे विभाग, मंत्रालय मुंबई यांना दिनांक १९/०८/२००२ च्या अर्जान्वये सन १९९२ पासून कनिष्ठ लिपिक या पदाची सेवा सलग जोडून मिळणेबाबत विनंती केली आहे. पाटबंधारे विभाग, मंत्रालय मुंबई यांनी संदर्भ-६ अन्वये श्री. सुतार कनिष्ठ लिपिक दिनांक ०५/०८/२१९९४ रोजी टंकलेखन प्रमाणपत्र सादर केल्यानंतर त्यांचे प्रकरण सामान्य प्रशासन विभागास सादर केले असता, श्री. सुतार हे चतुर्थ श्रेणीतील गट-ड पदावर १ वर्ष ३ महिने कार्यरत आहेत, अशा परिस्थितीत प्रचलित नियमानुसार ३ वर्ष झाल्याशिवाय त्यांना गट-ड पदावरून गट क पदावर पदोन्नती देणे योग्य होणार नाही असे सामान्य प्रशासन विभागाने मत दिले आहे. त्यानुसार ३ वर्ष पुर्ण झाल्यावर श्री. सुतार यांना लिपिक नि टंकलेखक पदी पदोन्नती दिली आहे. अशाप्रकार श्री. सुतार, यांच्या बाबतीत कोणत्याही प्रकारे अन्याय झालेला दिसून येत नाही. असे नमूद केले आहे. दिनांक ११/०५/२०१० रोजी श्री. सुतार, कनिष्ठ लिपिक यांनी सचिव जलसंपदार विभाग मंत्रालय मुंबई यांना सन १९९२ पासून सेवा सलग होणेबाबतचा अर्ज सादर केलेला होता. त्यास अनुसार संदर्भ ७ अन्वये अधीक्षक अभियंता, सातारा पाटबंधारे प्रकल्प मंडळ, सातारा यांनी श्री. सुतार यांना शासनाने सेवा सलग करता येत नसलेबाबत लेखी कळविले आहे. श्री. सुतार, कनिष्ठ लिपिक यांच्या दिनांक २४/१२/२०१२ च्या

अर्जावर शासनाने जलसंपदा विभागाने सविस्तर वस्तुस्थितीदर्शक अहवाल परिमंडळास सादर करणेस सांगितले होते. त्यास अनुसरून संदर्भ ८ व संदर्भ ९ अन्वये परिमंडळ कार्यालयाने दिनांक २९/०९/१९९४ ते २५/०३/१९९८ या कालावधीची सेवा ही गट ड मधील सेवा झाली असलेने ती सलग गट क मधील सेवेला धरता येणार नाही. प्रचलित शासन निर्णयानुसार श्री. सुतार, कनिष्ठ लिपिक यांचेबाबत वेळोवेळी निर्णय घेणेत आलेला आहे त्यामुळे त्यांच्यावर कोणताही अन्याय झालेला नाही. सबब श्री. सुतार, कनिष्ठ लिपिक यांचा दिनांक २४/१२/२०१२ रोजीचा परिमंडळ कार्यालयाने त्याचेकडील पत्रानुसार (संदर्भ-८) अर्ज दप्टरी दाखल करण्यात यावा अशी शिफारस केलेली आहे. असे नमूद केलेले आहे. सदरच्या पत्रास अनुसरून शासनास सदरचा अर्ज दप्टरी दाखल करणेसाठी शिफारस केलेली असल्यामुळे पुनश्च: अर्ज शासनास सादर करणे संयुक्तीक वाटत नाही. तसे संबंधिताना आपले स्तरावरून कळविणेत यावे.”

12. Discussion made so far will show that the delay of almost twenty years is not explained by the Applicant. Consequently, the Application deserves to be rejected. Hence the order.

ORDER

Misc. Application No.581 of 2021 in Original Application No.1018 of 2021 is rejected.

**Sd/-
(M.A. Lovekar)
Member (J)**

Place: Mumbai
Date: 25.04.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____