

THAKUR

[Spl/MAT/F-5/E]

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/ 145 /2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

Date : 13 JAN 2016

M.A. No. 186/2013 IN O.A. No. 312/2013.

1. Masuood Alam Khan Ismail Khan Pathan,
R/at. House No. 36 Phulenagar, Yerawada, Pune-411 006.

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

VERSUS

- 1 State of Maharashtra, Through
Principal Secretary to Govt. Public
Health Dept., G.T. Hospital
Compound, 8th floor, Mumbai-01.
3 Director (Administration) E.S.I.S,
6th Floor Panchdeep Bhavan,
N.M.Joshi Marg, Lower Parel,
Mumbai-13.

- 2 Commissioner, E.S.I.S.,
Maharashtra Bhawan, 6th Floor,
Panchdeep Bhavan, N.M. Joshi
Marg, Lower Parel, Mumbai-13
4 Administrative Medical Officer,
Mumbai Region, E.S.I.Scheme,
E.S.I.S. Hospital, 3rd Floor, Ganpat
Jadhav Marg, Worli, Mumbai-18.

...**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 07th day of **January, 2016** has made the following order:-*

APPEARANCE : Shri. M.D. Lonkar, Advocate for the Applicant.
Shri K.B. Bhise, P.O. for the Respondents.

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

DATE : **07.01.2016.**

ORDER : Order Copy Enclosed/ Order Copy Over Leaf.

Amal
11/1/2016

**Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.**

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.186 OF 2013
IN
ORIGINAL APPLICATION NO.312 OF 2013

DISTRICT : PUNE

M.A.K.I. Khan Pathan.)...Applicant

Versus

1. The State of Maharashtra & 3 Ors.)...Respondents

Shri M.D. Lonkar, Advocate for Applicant.

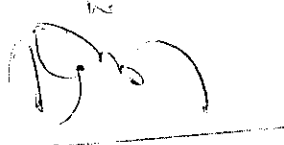
Shri K.B. Bhise, Presenting Officer for Respondents.

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

DATE : 07.01.2016

ORDER

1. This is an application for condonation of delay in bringing this OA by a retired Administrative Officer in ESIS. The Application is stoutly opposed on the ground

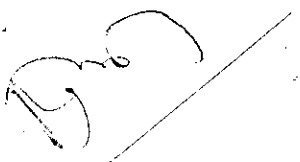


that the Applicant has failed to make good his case on the anvil of sufficiency of cause for condonation of three years delay.

2. I have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer for the Respondents.

3. It is no doubt true that the application is a brief one if not cryptic. That as a matter of fact is the main stay of the assail by an Affidavit-in-reply which is lengthier than the application and the submissions which kept the learned P.O. occupied longer than Mr. Lonkar. However, the crux of the matter will have to be deciphered because after-all, the judicial forum has to do justice.

4. It seems that this matter relates to a dispute with regard to the quantum of pension. A very detailed account of events that befall the merit of the OA is not germane hereto. It would be suffice to mention that the Applicant at an early stage was before the Hon'ble High Court *inter-alia* by way of a Contempt Petition N.313/2010 which came to be dismissed on 11.8.2011. A Civil Application No.85/2011 was moved before the Hon'ble High Court



seeking condonation of delay and restoration of the said Contempt Application. By the order of 25th January, 2012, a Single Bench of the Hon'ble High Court was pleased to observe *inter-alia* that though the present Applicant was not present, but the perusal of the record would show that the Hon'ble High Court while disposing of the Contempt Petition had satisfied itself about the compliance having been made, and therefore, there was nothing left in the petition and thereupon it was dismissed. That being the state of affairs, it was held that the question of restoration did not arise.

5. Thereafter, in Para 2, the Hon'ble High Court was pleased to make the following observations :

“The learned Counsel for the petitioner contends that there has been some mistaken in calculation of the amount to be paid to the petitioner. If it is so, he can approach the concerned department and make appropriate representation.”

6. It is very clear from the above observations of His Lordship that the Applicant could approach the concerned department in the matter of calculation of the amount. Thereafter, from the record of the OA, it will be found that

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the Applicant moved the authorities (Page 43) by a representation of 3.12.2012. The details thereof need not detain me much herein. It would appear that the Applicant is now an octogenarian and still locked in his retirement dispute. So be it.

7. In the light of the above narration, as one turns to the application which as mentioned above is a brief one, I find that it is mentioned that the Applicant did not get any response from the Government in response to the applications filed by the Applicant. It is then mentioned that the Hon'ble High Court permitted the Applicant on 25.1.2012 to submit the representations to the department. The application then concludes by mentioning that, "on account of running correspondence in the matter delay occurred."

8. The application is severely assailed as already mentioned which assail was faithfully pursued by the learned P.O. that it is cryptic and no grounds are set out for explaining the position on the anvil of sufficiency of cause.

9. However, in the context of what I have mentioned above, one has to be aware of the position that when one



considers the applications like the present one, the factor of cause of action and in that sense the accrual thereof has to remain present before the judicial forum. It is not that just because some time has elapsed or just because some application has for some time not responded to, the time begins to run in the sense, one understands that concept in such a context. While it is no doubt true that the indolent should not prevail before the judicial forum, but at the same time, it is equally true that the approach has to be justice oriented and other factors remaining constant, the lis must conclude after a contest rather than at the altar of procedure. Therefore, if the ingredients of an application for condonation of delay could be deciphered then just because the application could have been more amplified would be no ground to deny the occasion and opportunity to the Applicant to be heard on the judicial side.

10. That being the state of affairs, in view of the fact that the facts preceding this application including the order of the Hon'ble High Court are such that even if there is a delay and even if it be of three years, will have to be condoned. I have proceeded on the assumption that the delay is of three years, though on a more substantive aspect of the matter, I am inclined to allow the application



and therefore, I refrain from entering the detailed area of mathematical calculations. Upholding the application, the delay is condoned. The OA be now processed by the Applicant and the office of this Tribunal and the OA already having been registered, it be mentioned before the Bench.

11. This Misc. Application is allowed in the above terms with no order as to costs.

sd/-
(R.B. Malik)
Member-J
07.01.2016

- 16

Mumbai
Date : 07.01.2016
Dictation taken by :
S.K. Wamanse.

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11/1/2016
Asst. Registrar / Research Officers
Maharashtra Administrative Tribunal
Mumbai