

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO.191 OF 2020  
IN  
ORIGINAL APPLICATION NO.347 OF 2020**

**DISTRICT : PUNE**

Shri Shrikant A. Shinde. )  
Age : 60 Yrs., Retired as Technical Officer, )  
[Class-I] from the office of Deputy )  
Commissioner [Supply], Pune – 1 and )  
Residing at Shriniwas Mahasul Society, )  
Nagar Road, Daund, District : Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Food, Civil Supplies and Consumer )  
Protection Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Divisional Commissioner )  
[Supply Branch], Pune Division, )  
Pune and having office at Vidhan )  
Bhavan, Pune – 1. )
3. The District Collector. )  
Having Office at Pune. )...**Respondents**

**Mr. Arvind V. Bandiwadkar, Advocate for Applicant.**

**Mrs. K. S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 04.03.2021**

## **JUDGMENT**

1. This is an application for condonation of delay caused in filing O.A.No.347/2020 filed for deemed date of promotion.

2. In O.A, the Applicant has challenged the order dated 04.01.2016 whereby his request for grant of deemed date of promotion is rejected. The Applicant initially had filed Writ Petition before the Hon'ble High Court on 28.09.2017 against the said order. The Writ Petition was registered as Writ Petition No.4006/2018. However, the Hon'ble High Court by order dated 31.01.2019 disposed of the said Writ Petition with liberty to the Applicant to withdraw the Petition and to take recourse of alternative remedy before the Tribunal. Thereafter, he has filed O.A.No.347/2020 on 28.07.2020 in the Tribunal along with application for condonation of delay.

3. In application for condonation of delay, Applicant prayed for declaration that there is no delay in filing O.A. and in alternative prayed for condonation of delay of 3 years and 6 months.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that initially, the Applicant had approached Hon'ble High Court by filing Writ Petition, and therefore, in view of order passed by Hon'ble High Court, this O.A. is filed. He submits that the period spent in Writ Petition No.4006/2018 be excluded, since the Applicant *bonafide* persuaded the remedy of filing Writ Petition. He, therefore, submits that Court should adopt justice oriented approach instead of giving importance to technicalities and delay be condoned, so as to decide the O.A. on merit.

5. The learned Advocate for the Applicant further submits that after disposal of Writ Petition, the Applicant had made representation in the form of appeal to the Hon'ble Governor on 19.07.2019, which was

forwarded by the Office of Governor to Government on 20.07.2019. He submits that the Applicant waited for a decision of his representation, but the same was not responded, and therefore, he approached the Tribunal by filing O.A. on 28.07.2020. Adverting to these aspects, he sought to contend that the Applicant was pursuing the remedies and he cannot be termed dormant or negligent, so as to refuse to condone the delay.

6. Per contra, the learned Presenting Officer submits that there is absolutely no satisfactory explanation of condonation of delay and Applicant has slept over his right and M.A. be dismissed.

7. Thus, in O.A, the challenge is to the order dated 04.01.2016 whereby the claim of the Applicant for deemed date of promotion w.e.f. 1992 was rejected. The Applicant stands retired on 31.12.2018. True, while deciding application for condonation of delay, the Tribunal/Court should adopt justice oriented approach and if delay is explainable, it should be condoned to decide the matter on merit. But at the same huge and unexplained delay cannot be condoned, particularly when it relates to dead cause of action in service matter. The Applicant was claiming deemed date of promotion w.e.f. 1992.

8. Since the Applicant is challenging the order dated 04.01.2016, the cause of action accrued to him on 04.01.2016 itself and O.A. ought to have been filed within one year in terms of Section 21 of Administrative Tribunals Act, 1985. However, instead of filing O.A. in Tribunal, he had filed Writ Petition before Hon'ble High Court on 28.09.2017. As such, the Writ Petition was filed after more than 18 months from the date of impugned order. In other words, the Writ Petition itself was filed after expiration of period of limitation provided under the Administrative Tribunals Act, 1985 for filing O.A. This is one of the aspects of the matter to be taken note of.

9. True, the Hon'ble High Court disposed of Writ Petition on 31.01.2019 with the following order.

“1] The learned Counsel for the Petitioner seeks liberty to withdraw the Petition with further liberty to take recourse to the alternative remedy available to him before the learned Maharashtra Administrative Tribunal.

2] Petition is disposed of as withdrawn with liberty as prayed.”

10. Thus, it appears that the learned Advocate for the Applicant realized that Writ Petition was not maintainable, and therefore, sought permission to withdraw the same with liberty to avail alternative remedy before the Tribunal. But in fact, the limitation for filing O.A. was already expired even before filing of Writ Petition.

11. Apart even after disposal of Writ Petition on 31.01.2019, the Applicant did not take any steps to file O.A. within reasonable time and O.A. came to be filed only on 28.07.2020. Thus, the O.A. was also filed after about 18 months from the disposal of Writ Petition. In such situation, it is difficult to contend that the Applicant was vigilant or pursuing the remedy under the *bonafide* belief.

12. True, as per Section 14 of Limitation Act, the delay spent in litigation *bonafide* in Court without jurisdiction may be excluded for counting the period of limitation. Even assuming for a moment that the Applicant was proceeding *bonafide* in Writ Petition, in that event also, there is no explanation much less justifiable to condone the subsequent delay of 18 months in filing O.A. from the date of disposal of Writ Petition. Indeed, the Writ Petition itself was filed after expiration of period of limitation under the provisions of Administrative Tribunals Act, 1985. Even after decision of Writ Petition, the Applicant did not file O.A. within reasonable time and it is only after 18 months, he has approached the Tribunal.

13. The representation allegedly made before Hon'ble Governor and non-decision thereon is hardly of any assistance to the Applicant in the present situation. If representation itself is made after expiration of period of limitation provided in law, such subsequent representation could not revive the cause of action nor would it extend the period of limitation.

14. Shri A.V. Bandiwadekar, learned Advocate for the Applicant referred to the decision of Hon'ble Supreme Court in **Civil Appeal No.2395/2008 (Improvement Trust, Ludhiana Vs. Ujagar Singh & Ors.) decided on 9<sup>th</sup> June, 2010** wherein Hon'ble Supreme Court observed that unless *malafides* are writ large on the conduct of party, generally as a normal rule, the delay should be condoned, so as to decide the matter on merit. However, material to note that in that case, the delay was of 2 months and 2 days, and therefore, it was condoned on cost of Rs.50,000/-. Whereas, in the present case, there is huge and inordinate delay of 3 years and 6 months, therefore, this authority is of little help to the Applicant.

15. Shri Bandiwadekar, learned Advocate for the Applicant further referred to the decision of Hon'ble High Court in **Writ Petition No.9424/2010 (Shri Akaram K. Patil Vs. State of Maharashtra & Ors.) decided on 14<sup>th</sup> December, 2010**. In that case, there was a delay of one and half year and in fact situation, it was condoned. Whereas, in the present case, there is inordinate delay of 3 years and 6 months.

16. Thus, apparently, the Applicant chose not to challenge the impugned order dated 04.01.2016 within the period of limitation before the Tribunal and it is only after expiration of period of limitation provided in law, he had filed Writ Petition. Even after grant of liberty by Hon'ble High Court to avail alternate remedy, he remained silent for 18 months and belatedly filed O.A. on 28.07.2020.

17. As such, there is delay of more than 3 years for which no other reason much less satisfactory is forthcoming, so as to condone the delay. I am, therefore, not inclined to condone the delay and M.A. deserves to be dismissed. Hence, the following order.

**ORDER**

- (A) The Misc. Application No.191/2020 is dismissed.
- (B) Accordingly, O.A.No.347/2020 is also dismissed being barred by limitation.
- (C) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 04.03.2021

Dictation taken by :

S.K. Wamanse.

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