

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO.279 OF 2021  
IN  
ORIGINAL APPLICATION NO.545 OF 2021**

Shri Ashok Narayan Tele )  
Age : 67 Yrs., Occ. Nil, Retired as )  
Talathi, with last posting at Modlimb, )  
Saza, Tal.Madha, Dist. Solapur )  
R/o. Bhuije, Post Akumbe, Tal. Madha, )  
Dist. Solapur. ) **...Applicant**

**Versus**

1. The Government of Maharashtra, )  
Through Additional Chief Secretary, )  
Revenue & Forest Dept., Mantralaya, )  
Mumbai 400 032. )
2. The Divisional Commissioner, Pune )  
Revenue Division, M.S. Pune. )
3. District Collector, having its office at )  
Solapur, Dist. Solapur. )
4. Sub-Divisional Officer, Madha )  
Division, Kurduwadi, Dist. Solapur. ).....**Respondents**

**Shri M. D. Lonkar, learned Advocate for Applicant.**

**Smt. Archana B. K., Presenting Officer for Respondents.**

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

**DATE : 21.10.2021**

**J U D G M E N T**

This is an application for condonation of delay of six years five months and ten days caused in filing Original Application.

2. Shortly stated facts giving rise to M.A. are as follows :-

The Applicant while serving as Talathi at Village Kandar, Tal. Karmala, Dist. Solapur, he was under suspension from 01.04.1987 to 27.08.2001 as well as 01.09.2001 to 21.09.2002. The Respondent No.3 – S.D.O. Kurduwadi, Dist. Solapur by order dated 07.10.2003 treated the period of suspension as suspension period quoting Rule 71(2) (a) of the Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal) Rules, 1981 (Hereinafter referred as 'Rules 1981' for brevity). Being aggrieved by it, he filed an Appeal before the Collector which came to be dismissed by order dated 17.01.2014. Thereafter, he made various representations but those were not responded. Ultimately, the Applicant has initially filed O.A. No.220/2021 only for direction to Respondents to decide his representation without filing substantive O.A. O.A.No.220/2021 was allowed to withdraw with liberty to file substantive O.A. along with application for condonation of delay with clarification that it will be reconsidered on its own merit by order dated 30.03.2021.

3. It is on the above background, the Applicant has filed this O.A. challenging the orders dated 07.10.2003 and 17.01.2014 and to treat the period of suspension as duty period with all consequential monetary benefits. Since the O.A. has been filed after expiry of limitation, M.A. is filed for condonation of delay of six years five months and ten days.

4. Shri M.D. Lonkar, learned Counsel for the Applicant sought to contend that since the Applicant has made various representations but the same were not responded, the Applicant was under bonafide impression that he can challenge the orders only after the decision on his representations. He further contends that it is continuous cause of

action since it results in denial of monetary benefits. In this behalf, learned Counsel referred to various judgments which are as follows:-

- (a) (1995) 5 SCC 628 (M. R. Gupta V/s. Union of India & Ors)**
- (b) AIR 1996 SC 2520 (J. N. Ganatra V/s Morvi Municipality, Morvi)**
- (c) (2008) 8 SCC 648 (Union of India & Ors. V/s Tarsem Singh)**
- (d) (2010) 12 SCC 538 (State of Madhya Pradesh & Ors. V/s. Yogendra Shrivastava).**
- (e) The decision rendered by this Tribunal in M.A.No.301/2016 in O.A.1055/2014 with O.A.1055/2014 (Shri Anil D. Jadhav V/s. Government of Maharashtra & Ors), decided on 30.09.2016.**

5. Per contra, Smt. Archana B.K., learned P.O. submits that once the Appeal was dismissed by order dated 17.01.2014, O.A. ought to have been filed within one year from the date of order and mere filing of successive representation will not extend the period of limitation. In this behalf, she referred to the decision of the Hon'ble Supreme Court in **(2010) 7 SCC 525 (Naresh Kumar V/s Department of Atomic Energy & Ors.)**.

6. In view of the submission advanced at a bar, the issue posed for consideration is whether the delay of six years five months and ten days is condonable on the ground urged by the learned Counsel for the Applicant.

7. The submission advanced by the learned Counsel for the Applicant that because of wrong quoting of Rule 71 instead of Rule 72 of 'Rules 1981', the order dated 07.10.2003 is *void ab initio* and is misconceived. True, the relevant provisions could be Rule 72 and not Rule 71 of 'Rules 1981'. However, it is well settled that mere quoting

of wrong provision in the impugned order by the authority will not render it illegal *ipso facto*. If the authority is competent in law to pass such order then the mistake of quoting of wrong provisions would not render the order illegal.

8. Thus, admittedly the Appeal came to be decided on 17.01.2014 and the cause of action, therefore, accrued to the Applicant on 17.01.2014 for challenging the same by filing O.A. within one year in terms of Section 21 of Administrative Tribunal Act, 1985 which *inter-alia* provides limitation of one year from the date on which final order has been made.

9. It would be apposite to reproduce Section 21 of Administrative Tribunal Act, 1985 which is as under:-

*“21. Limitation.— (1) A Tribunal shall not admit an application,—*  
*(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;*  
*(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.”*

10. As such, the O.A. challenging the order dated 17.01.2014 confirming the order dated 07.10.2003 ought to have been challenged within one year from the date of cause of action which was accrued to the Applicant on 17.01.2014. True, the Applicant seems to have made representations but those were not responded. It appears that the Applicant has made representation on 04.02.2014 to the Divisional Commissioner, Pune and in turn, he referred it to the Government since his appeal was already decided by order dated 17.01.2014. Later, the Collector, Solapur by his communication dated 16.04.2019 informed to the Applicant that his representation dated 04.02.2014 has been forwarded to the Government, and therefore, no action could be taken in that behalf from his side.

11. Learned Counsel for the Applicant was much harping upon this representations stating that since his representations were under consideration there was no cause of action for the Applicant to file the O.A. In alternative submission, he submits that the Applicant was under bonafide impression that his representation is under consideration, and therefore, sought to condone the delay. According to him, it is the case of continuous cause of action and delay, if any, deserves to be condoned. I find myself unable to accept his submission.

12. Admittedly, once the Appeal was dismissed by Collector, there was no further statutory remedy of filing representation or review. This being the position, the cause of action accrued to the Applicant on 17.01.2014 and mere filing of representations which are not provided in law will not extend further period of limitation. The limitation starts from 17.01.2014 when the Collector dismissed the Appeal. It is only in case of statutory review or representation, a person would get fresh cause of action from the date of final order passed in review or representation.

13. This legal position is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in **S.S. Rathore Vs. State of Madhya Pradesh, reported in (1989) 4 SCC 582**. In this Judgment, the Hon'ble Supreme Court (Judgment of Hon'ble 7 Judge Bench) considered the point of limitation in filing suit or declaration against the order of dismissal from service vis-à-vis the provisions of Administrative Tribunals Act. It has been held that, repeated unsuccessful representations not provided by law will not extend the period of limitation. The principle laid down is that right to sue accrues not when the original order was passed by the authority, but when that order was finally disposed of by higher authority on appeal or representation made by the aggrieved employee in exhaustion of

statutory remedy and where such final order was made on expiry of six months from the date of appeal or representation and time spent on representations cannot be considered and such representations are not contemplated by law. In that case, Appellant was dismissed from service by Collector. Thereafter, his appeal to the Divisional Commissioner was also dismissed. The Appellant served notice under Section 80 of CPC and then filed Civil Suit for setting aside the dismissal. It is in that context, it has been held that the order of dismissal given by Collector did merge in the order of Divisional Commissioner, and therefore, the limitation would start from the date of final order. It would be useful to reproduce Para Nos.20, 21 and 22 are as follows :

**“20.** We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been available of, a six months’ period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

**21.** It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court’s jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

**22.** It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation.”

Thus, the ratio laid down in this authority is in case of statutory appeal only, the limitation would start from the date of order passed in appeal finally and mere filing of representations to the Department will not extend the period of limitation. The present case is fully governed by this principle.

14. At this juncture, it would be apposite to refer the Judgment of the Hon'ble Supreme Court in ***State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. reported in (2014) 6 SCC 460*** wherein again, the same principle as regards law of limitation has been reiterated. The Hon'ble Supreme Court held that the period of limitation commences from the date on which cause of action arises for the first time and simply making of representations in absence of any statutory provision, the period of limitation would not get extended. It is further held that, in absence of any provision with regard to statutory appeal simply making of representations, the period of limitation would not get extended. This authority holds the field and clearly attracted to the present case.

15. Learned P.O. placed reliance on ***(2010) 7 SCC 525 (Naresh Kumar V/s Department of Atomic Energy & Ors.)*** wherein it has been held that where employee keeps making repeated representations which have consistently rejected, it cannot be the ground for not approaching the Court/Tribunal with the period of limitation.

16. Insofar as the decisions referred by the learned Counsel for the Applicant are concerned, those are quite distinguishable. In ***Tarsem Singh's*** case (cited supra), it was the matter pertaining to pension. In that matter, Indian Army personnel was invalidated out of army service in 1983. However, he approached the Hon'ble High Court in 1999. He was found entitled for disability pension which was not granted to him though it fell due in 1983 when he was invalidated out of army service. It is in that context, the Hon'ble Supreme Court held

non grant of pension though he was entitled in law amounts to continuous wrong/injury. However, in this case, the matter pertains to administrative order passed by the Appellate Authority on 17.01.2014 dismissing his Appeal, confirming the order passed by the Disciplinary Authority on 07.10.2003 whereby his period of suspension period as suspension period for all purposes. Similarly, the decisions in **Yogendra Shrivastava and M.R. Gupta's case** (cited supra) are also rising out of claim of higher pay and allowances to which a Government servant was entitled, and therefore, infact situation, it was treated as a recurring wrong. Whereas, the decision in **J.N. Ganatra's** case (cited supra), it is arising from dismissal of the employee by Municipality where the order of dismissal was found patently and grossly in violation of rules to be treated as *null and void*, and therefore, the civil suit was held not governed by limitation prescribed under Gujrat Municipality Act. As such, the facts are totally distinguishable and not relevant for the present matter. Likewise, the decision rendered by this Tribunal in **M.A.No.301/2016 in O.A.1055/2014 with O.A.1055/2014** referred to above is also of no help since all that in that matter, the direction were given to the Respondents to decide the representation in the matter of status of the Applicant.

17. As such, in my considered opinion, the decisions relied upon by the learned Counsel for the Applicant are of no assistance to him in the present situation, in the light of the judgments of the Hon'ble Supreme Court in **S.S. Rathore's and Arabinda Chakraborty & Ors.** case (cited supra) which are directly on the point in issue in the present case.

18. True, while considering the application for condonation of delay, the Tribunal should adopt justice oriented approach and where delay is reasonably explained, it has to be condoned to decide the matter on merit. However, in the present case, there



is huge delay of more than six years and the reason relied upon for condonation of delay is unsustainable in law.

19. In this view of the matter, there is no escape from the conclusion that mere filing of representations which are not provided under law will not extend the period of limitation nor it would infuse life in the claim of the Applicant which is already dead being barred by law of limitation.

20. The upshot of the above discussion is that M.A. is liable to be dismissed. Hence the following order:-

**ORDER**

(A) Misc. Application is dismissed with no order as to costs.

(B) Original Application is accordingly disposed of being barred by limitation.

Sd/-  
**(A.P. KURHEKAR)**  
**MEMBER-J**

Place: Mumbai

Date: 21.10.2021

Dictation taken by: V.S. Mane

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