

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**MISC APPLICATION NO 304 OF 2015
IN
ORIGINAL APPLICATION NO 974 OF 2015
WITH
ORIGINAL APPLICATION NO 974 OF 2015**

DISTRICT : NASIK

Shri Surendra Shankar Joshi)
Occ : Retired Government servant,)
Add : Manohar Bunglow, Dhruv)
Nagar, Near Motiwala College,)
Nasik 422 222.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400 032.)

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2. Superintending Engineer &)
Joint Director, MERI,)
Dindori Road, Nasik 422 004.)
3. Superintending Engineer,)
Hydrology Project Circle,)
[Analysis], Dindori Road,)
Nasik 422 004.)
4. Accountant General (A & E)-1)
Maharashtra State,)
101, M.K Road, Mumbai -20)...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 13.04.2016

ORDER

1. Heard Shri C.T Chandratre, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Misc Application has been filed by the Applicant seeking condonation of delay, which according to him is 1 year and 10 months, in challenging the order

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dated 28.2.2013 by which his request for grant of first Time Bound Promotion from 1.1.1998 was rejected.


3. Learned Counsel for the Applicant argued that the Applicant was given first benefit of Assured Career Progression Scheme from 1.4.2001, though he had completed 12 years of service on 1.1.1998. As a result, he would not complete 24 years before his retirement to be eligible to get second benefit of A.C.P scheme as per G.R dated 1.4.2010. The Applicant retired on superannuation on 31.1.2013 and did not complete 12 years of continuous service after he was granted first A.C.P benefit on 1.4.2001. Learned Counsel for the Applicant argued that Modified Assured Career Progression Scheme was introduced by G.R dated 1.4.2010. On 26.9.2002 when the Respondent granted Time Bound Promotion to the Applicant from 1.4.2001 instead of 1.1.2001, it was not realized by the Applicant that he would not become eligible to get second benefit of A.C.P scheme, as he would retire before completing 12 years of service after getting first benefit. The Applicant, therefore, made a representation to the Respondent on 12.7.2012. The said representation was rejected by letter dated 28.8.2012 without reading it in the proper context. The Applicant against made another representation on 3.12.2012. That request too was rejected on 28.2.2013, which is impugned in the present Original Application. Learned Counsel for the Applicant argued that there is a

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delay of 1 year 10 months which may be condoned in the interest of justice.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that there is delay of more than 12 years in challenging the order dated 26.9.2002. The Applicant has also not explained as to why he did not make any representation after, the G.R dated 1.4.2010 was issued. Even the claim of the Applicant that cause of action has arisen after his representation was rejected by communication dated 28.2.2013 is incorrect as the representation of the Applicant dated 28.6.2012 was rejected on 28.8.2012 itself. Learned Presenting Officer argued that Hon'ble Supreme Court has held that repeated representations do not revive an issue which has become stale. No cause of action is created by rejection of such representations. Learned Presenting Officer argued that M.A for condonation of delay may be rejected.

5. It is seen that the Applicant has filed representation on 28.6.2012, in which he has stated that he was granted Time Bound Promotion on 1.4.2001 though he should have been granted the same on 1.1.2001. As a result he is deprived of his second benefit of A.C.P scheme because he retired before 1.4.2013. He therefore requested for review of the ~~name~~^{date} of his Time Bound Promotion (Exhibit A-5 of O.A). There is no



mention of the order, he sought to be reviewed, nor the date from which he was seeking Time Bound Promotion. There is absolutely no mention of any grounds on which he was seeking review of order granting him Time Bound Promotion from 1.4.2001. Merely because a Government servant will suffer financial loss can never be a ground to seek review of an order, unless there are factual or legal grounds to do so. In the Misc Application, the Applicant claims that his representation was not considered in proper context. When there was no context in the representation dated 28.6.2012 the reply of the Respondent no. 3 dated 28.8.2012 cannot be faulted. Even in O.A no 974/2015, the Applicant has simply claimed that he was entitled to first Time Bound Promotion from 1.1.2001. However, how he was so entitled is not mentioned. The Applicant is evidently trying to revive a stale issue and create a 'cause of action' by making repeated representations that too without giving any grounds for challenging the order which was issued in 2002.

6. Hon'ble Supreme Court in **C. JACOB Vs. DIRECTOR OF GEOLOGY AND MINING- AIR 2009 S.C 264**, have observed that:-

"....Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally,

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there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allows or dispose of such application/petitions (many a time even without notice to the other side), without examining matters on merits, with a direction to consider and dispose of the representations. The Courts /Tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any decision on rights and obligations of parties. Little do they realize the consequence of such a direction to consider, If the representation is considered and rejected, the ex-employee files and application/writ petition, not with reference to original cause of action of 1982, but by treating the rejection of the representation given in 2000 as the cause of action. A prayer is made for quashing the rejection of representation and for grant of relief claimed in the representation.”

This is a hypothetical case explaining how a person creates a cause of action to revive a stale claim.

Hon'ble Supreme Court has held in **UNION OF INDIA Vs. M.K. SARKAR - LAWS (SC) - 2009-12-79** that when a belated representation is decided, it does not furnish a fresh cause of action.

7. The facts in the present case are remarkably similar. The Applicant has challenged a decision taken in 2002 in the year 2015. He, however, made a representation on 28.6.2012, on a cause of action which arose in 2002 and now challenges rejection of representation by letter dated 28.8.2012 claiming it as a cause of action. Only difference in the hypothetical case and the present case is that this Tribunal had not directed the Respondents to consider the Applicant's representation. However, belated representation without disclosing any ground to challenge the order passed in 2002 cannot create a fresh cause of action. The Applicant has not explained as to why he did not challenge the order dated 26.9.2002. The ground that he realized now that he would not get second benefit of A.C.P scheme cannot be held to be valid ground to challenge an order. There is no explanation to explain the delay of more than 12 years and the Misc Application is not sustainable.

9. Having regard to the aforesaid facts and circumstances of the case, Misc Application is dismissed. As the Misc Application for condonation of delay is

dismissed, nothing survives in the Original Application,
which is also dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 13.04.2016

Dictation taken by : A.K. Nair.