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IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.371 OF 2015
IN
ORIGINAL APPLICATION ST. NO.613 OF 2015

DISTRICT : SOLAPUR

Shri Santosh Somnath Pawar.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : 18.01.2016

JUDGMENT

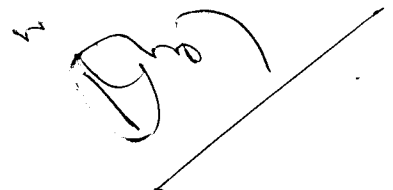
1. This is an application seeking condonation of delay in bringing this Original Application (OA) in effect seeking appointment to the post of Police Constable (PC)



which got held up on account of the pendency of a criminal prosecution against the Applicant. The delay is according to the Applicant of 11 months and according to the Respondents of a little more than two years, calculating from the date of the order impugned in the OA.

2. I have perused the record and proceedings and heard the submissions at the Bar advanced by Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. It is not necessary to closely examine the facts falling within the realm of the OA itself. It would suffice to mention that the Applicant reached the final stage of appointment, but ultimately his undoing was a criminal prosecution and in that connection, the information that the Applicant had furnished against clause 11(c) of the Attestation Form. A copy thereof is annexed to the Affidavit-in-reply. For the sake of record, it needs to be mentioned that by an order of 11.7.2012 in disposing of the Regular Criminal Case No.120/2010, the learned Judicial Magistrate 1st Class, Mohor, District Solapur, the Applicant and his co-accused came to be acquitted of the offence punishable under Section 325, 504 read with



Section 34 of the Indian Penal Code (IPC). He was charged of having caused grievous hurt by dangerous means. The Attestation Form was submitted on 4.6.2012 which was just a little less than one month before the order of acquittal.

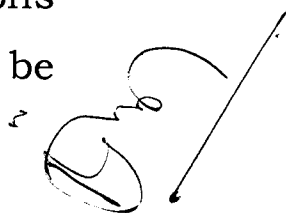
4. It was by an order dated 11.7.2013 that the Applicant received the order herein impugned whereby he was informed that his matter was submitted to the High Powered Committee pertaining to the report about his character and the proposal to appoint him was rejected. The present Misc. Application for condonation of delay was made on 30th November, 2015, after its substitution for the earlier one, that was apparently presented on 22.7.2015. Therefore, it can safely be taken that the Tribunal was moved on 22nd July, 2015. But the delay quite clearly was there, examined in any manner that one would like to. The main ground on which the condonation is sought is that the order impugned in the OA was a bald one without particularizing the reasons as such. The Applicant had to take recourse to the provisions of Right to Information Act to secure the details which took time. In the meanwhile, the Applicant apparently took some help from a political source. The said source and the political party had been named in the Affidavit. It is further mentioned that on

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exactly the same set of facts, another candidate filed OA 352/2014, and therefore, the Applicant was watching the outcome thereof. On the basis of all these facts, the condonation of delay is sought.

5. The Affidavit-in-reply to a 10 page application runs into 18 pages. It has been elaborately pleaded as to how it is absolutely necessary to have people of impeccable integrity and character in the Police Force and hence, the requirement of Attestation Form, etc. Then there is a reference to the criminal case that was pending against the Applicant. As to the political source aspect of the matter, it is the case of the Respondents that there is no legal significance thereof. The Applicant was guilty of deliberate negligence and indolence. The Applicant could not rely upon the pendency of another matter in order to seek condonation of delay. A profuse reference is made to the case law in the Affidavit itself.

6. Now, be it noted right at the outset that going by the principles that emanate from the first principles enshrined *inter-alia* in Section 5 of the Limitation Act and also Section 21 of the Administrative Tribunals Act, the approach of the Tribunal in dealing with such applications must be justice oriented. The interest of justice cannot be



sacrificed at the altar of procedure. But, at the same time, a litigant who is completely indolent and allows the things to happen somewhat carelessly cannot turn around and seek judicial indulgence. It is equally true, however, that there has to be some amount of negligence or lack of diligence in such matters for otherwise there would be no provision for an application for condonation of delay. Therefore, the delay itself cannot be cited against the success of the application such as this one. The issue here will be as to whether there are grounds that bring this particular move within the realm of sufficiency of cause. Therefore, sustained assail of a party in the shoes of the Applicant on the ground of delay itself may provide some satisfaction to his adversary, but is legally not by itself sufficient to throw out the application itself.

7. Equally true is the fact that there can be a bundle of facts ultimately all converging into the cause assigned for delay and consequently for the condonation thereof. The judicial forum has to examine the cumulative effect of all these fact components. It is not as if each fact component has to be examined in isolation and either accepted or rejected. That would not be an appropriate approach to deal with such matters.

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8. It must be remembered that this is a matter falling within the realm of service jurisprudence. There are certain peculiarities of this class of litigation which may not necessarily be there in other category of causes though falling within the broad head of civil causes. Now, as far as the present matter is concerned, the Applicant no doubt was intimated that he would not be appointed, but then he had made it up to that stage, and therefore, there is justification in his grievance that he was groping in the dark with regard to the reasons for the rejection of his claim. This must be understood in the context of the fact that he had been by then acquitted of the offence that he was charged with. Therefore, he had to take recourse to the process under RTI Act.

9. Another aspect of the matter is that a similarly placed litigant had filed the OA as already discussed above, which was pending. He was, obviously, whatever his Advocate might contend waiting in the wings to find its outcome. Ms. Gohad, the learned P.O. in that behalf referred me to an unreported judgment of the Hon'ble Supreme Court in **Special Leave Petition (Civil) No.6609-6613/2014 (Brijesh Kumar & Ors. Vs. State of Haryana and Ors, dated 24.3.2014)** for which purpose, one can specifically peruse Para 12 thereof. Mr. Bandiwadkar, the



learned Advocate on the other hand relied upon a judgment in the matter of **Maharaj Krishan Bhatt Vs. State of Jammu and Kashmir and others, (2008) 2 SCC (L & S) 783**. That was a matter arising out of a test for promotion from Constabulary to PSI. The Hon'ble Supreme Court was pleased to hold that in the matter of appointment to the public services similarly placed persons should not be discriminated against.

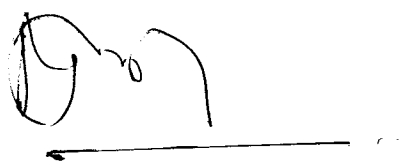
10. We have already mentioned above that the present one falls within an exclusive category of cases which may not necessarily be similar in all respects with the other category of civil cases. **Brijesh Kumar** arose out of Land Acquisition matter and the delay was about 10 years. Going by the observations of Their Lordships in Para 11 of **Brijesh Kumar** itself, it would be found that a distinction has to be made between delay and inordinate delay and bona-fides or absence thereof. It must be found if the cause is sufficient.

11. In addition, as already mentioned above, public services which are constitution regulated, the mandate against discrimination between two similarly placed persons inheres and must be respected. Therefore, even as one might frown upon the Applicant, waiting from behind



the screen for the outcome of that other matter that by itself would not be sufficient to deny to him the judicial remedy, if he is otherwise found eligible because, it is the duty of the judicial authority to make sure that the constitutional tenets are respected and upheld.

12. The learned P.O. relied upon another unreported judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh Vs. Parvez Khan, dated 1st December, 2014** wherein dealing with an M.P. matter governed by the Recruitment Rules of that State, Their Lordships laid down the principles *inter-alia* to the effect that the antecedents and character of those seeking appointment to the Police Force must be exemplary and without reproach. In the first place, those principles will have to be considered in depth, if the OA was to be heard on merit. But even for the purpose hereof, it needs to be noted that in the ultimate analysis, the Applicant came to be acquitted and consequently, the scope of the judicial scrutiny would get narrowed down as permitted hereby. Mr. Bandiwadekar relied upon **Sonerao Sadashivrao Patil and another Vs. Godawaribai, 1999 (2) Mh.L.J 272, Gulabrao Dharma Pol Vs. Union of India, 2004 (4) Mh.L.J 701** which *inter-alia* held all about the approach being liberal in such matters.



13. In view of the foregoing, I find that even as there is no approving indolence, but in the present set of facts, a case is made out for condonation of delay.

14. The delay is condoned. The Misc. Application is allowed with no order as to costs. The Office and the Applicant may now process the OA and in the absence of any other office objection, place it before the Bench for being dealt with in accordance with law.

Sd/-

(R.B. Malik)
Member-J
18.01.2016

Mumbai

Date : 18.01.2016

Dictation taken by :

S.K. Wamanse.

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