

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.372 OF 2017
IN
REVIEW APPLICATION NO.17 OF 2017
IN
ORIGINAL APPLICATION NO.1103 OF 2015
WITH
REVIEW APPLICATION NO.17 OF 2017**

Shri Vitthal Revappa Sakate.)
Age : 62 Yrs., Occu.: Service,)
Residing at Plot No.103, Mendhule Plot,)
Panchashila Nagar, Madhavnagar Road,)
Sangli – 416 416.)...**Applicant**

Versus

1. The Secretary.)
Home Department, Mantralaya,)
Mumbai.)
2. The Commandant.)
State Reserve Police, Group No.2,)
Pune.)
3. The Director General of Police,)
M.S, Shahid Bhagatsingh Road,)
Colaba, Mumbai.)...**Respondents**

Mr. S.A. Kulkarni, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 26.02.2019

ORDER

1. Shortly stated facts giving rise to these applications are as follows :

2. Initially, the Applicant has filed O.A.982/2014 challenging his dismissal from service by order dated 8th November, 1976. However, he withdrew the said O.A. with leave to file fresh O.A. O.A.982/2014 was filed along with application for condonation of delay with M.A.502/2014. In view of withdrawal of proceedings, O.A.982/2014 as well as M.A.502/2014 were disposed of on 26.10.2015. Then, the Applicant has filed M.A.622/2015 in O.A.1103/2015 for the condonation of delay and for hearing of O.A.1103/2015 on merit. The same was rejected on hearing the parties by order dated 05.01.2017. Then again, the Applicant has filed R.A.2/2017 for review of order dated 05.01.2017 passed in M.A.622/2015. R.A.2/2017 was also rejected by this Tribunal on 22.03.2017. While rejecting the application, this Tribunal in Para No.4 of the order held as follows :

“4. Now, even as there is a reference to the provisions of Section 114 which are to be read with order 47 of the Code of Civil Procedure and the relevant provisions of Administrative Tribunals Act, 1985 in support of the RA, but in effect and substantially, the same facts are urged which I had already dealt with in deciding the MA above referred to. The jurisdiction of review is by no means an appellate one. There is a legal requirement of presence of certain facts to justify entertainment of and in a deserving case allowing of the Review Application. I need not get drawn into the academics of the matter. It is very clear that if in the name of review, the same set of facts are urged with some phraseological variations here and there, but keep in the substance in-tact, then in my opinion, such an RA could not succeed. There has to be a clear distinction between the RA and the proceeding which could only be entertained by the forum of higher jurisdiction. That being the state of affairs, I am very clearly of the view that no case is made out for even entertaining this RA and technically even if, it has been entertained, it cannot succeed. The same is accordingly dismissed with no order as to costs.”

3. Being aggrieved by the said order, the Applicant has filed Writ Petition No.1120/2017 before Hon'ble High Court. However, he has withdrawn the said Writ Petition, and therefore, it came to be disposed of on 11.12.2017.

4. After exhausting all above remedies, now again, the Applicant has approached this Tribunal by filing R.A.17/2017 for review of order passed by this Tribunal in R.A.2/2017 on 22.03.2017 along with application for condonation of delay vide M.A.372/2017.

5. All that, in application for condonation of delay, the Applicant in Para No. 5 states as follows :

“5. After the receipt of court order in Review Application No.2/2017, on 22-3-2017, for long period the Applicant relied upon the advise of his Advocate conducting these matters, and was planning to approach the higher appellate courts, however so where in the first week or so, the Applicant came in contract with his earlier Advocate from whom he came to know that the matters are not at all out of limitation, and thereafter, the applicant decided to file the Review Application No.17/2017, which may appear to have been filed after the period of limitation for filing review petition but is immediately filed after he came to know that for the reasons and under the circumstances detailed above in the present Delay Condonation Application, which deserves to be allowed and an opportunity also will have to be afforded to the applicant to show that the matters are not filed after the period of limitation, and the orders passed by this tribunal are **PER INCURIAM** & are at nullity, and approach to the appellate courts is not necessary and that this tribunal itself can entertain and decide the delay condonation application and previous O.A. Applications. The Applicant therefore prays that :

- (a) Above Delay Condonation Application may be allowed & Review Application No.2/17 and Misc. Application No.622/15 & O.A.No.1103/15 be heard and be decided on merits.
- (b) Any other just and equitable order in favour of the Applicant may be passed.”

6. Whereas, the Respondents opposed the application by filing Affidavit-in-reply contending that the Applicant has already exhausted the remedies but he is in habit of filing one application after another and it is nothing but abuse of

process of law. It is further pointed out that no case of condonation of delay has been made out and the application as well as R.A. deserves to be dismissed.

7. Shri Kulkarni, learned Advocate for the Applicant sought to contend that in fact, there is no delay in filing O.A.1103/2015 and all the orders passed by this Tribunal referred to above are *per-incuriam*.

8. The learned Advocate for the Applicant sought to rely on the Judgment of Hon'ble Apex Court in **1990 AIR 10 (S.S. Rathore Vs. State of Madhya Pradesh)**. I have gone through this authority wherein it has been held that, right to sue for cause of action first accrued not from the date of original adverse order but from the date when the order of statutory appeal is made or six months from the date of referring the statutory appeal. On the face of it, this Judgment is of no assistance to the Applicant in the present matter, as he has already exhausted the remedies available to him.

9. As stated above, in M.A.372/2017, there is absolutely no whisper to make out a case for condonation of delay. All that, the Applicant tried to contend that the orders passed by this Tribunal referred to above, are *per-incuriam*, and therefore, they be set aside and O.A.1103/2015 be heard on merit.

10. The present application for condonation of delay as well as R.A.2/2017 has to be rejected in view of aforesaid orders passed by this Tribunal. The Applicant has already exhausted the remedies by filing various applications for condonation of delay and R.A, which has been disposed of by this Tribunal by passing reasoned order. The Applicant ought to have availed remedy from higher judicial forum, but instead he is filing applications one after another, which is nothing but abuse of process of law. He seems to be in habit of persistently filing baseless applications without any iota of merit in the matter. The order passed by this

Tribunal in M.A.622/2015 as well as in R.A.2/2017 has attained the finality. The Applicant had challenged the orders before Hon'ble High Court earlier, but withdrew the Writ Petition. This being the position, needless to mention that the orders passed by this Tribunal having attained finality, now it cannot be again subjected to review. This Tribunal has already held that even R.A. is not maintainable. As such, the matter in issue being already decided finally, it cannot be reopened being hit by principle of *res-judicata*.

11. There is absolutely no substance in the application and it deserves to be dismissed. Hence, the following order.

ORDER

- (A) The M.A.372/2017 is hereby dismissed.
- (B) In view of disposal of M.A, the R.A.17/2017 is disposed of.
- (C) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 26.02.2019
Dictation taken by :
S.K. Wamanse.