

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

MISC. APPLICATION NO. 38 OF 2015

IN

ORIGINAL APPLICATION NO. 124 OF 2010

WITH

MISC. APPLICATION NO. 37 OF 2015

IN

ORIGINAL APPLICATION NO. 124 OF 2010

DISTRICT : MUMBAI

Shri Dudhnath Prabhunath Benbansi.)...Applicant

Versus

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

Shri P.S.Bhavake, Advocate for Applicant.

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

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 18.08.2016

PER : Shri R.B. Malik (Member) (J)



ORDER

1. This is an application for condonation of delay in presenting the application for setting aside of the order of dismissal of the O.A. and restoration thereof. The delay is of 04 years, 11 months and 26 days which is just 4 or 5 days shy of 5 years.

2. We have perused the record and proceedings and heard Mr. P.S. Bhavake, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer (P.O.) for the Respondents.

3. The Applicant came to be dismissed from service on 11.05.2009 by the 1st Respondent. He brought the O.A. 124/10 which went by default on 14.02.2011. At Exhibit 'A' of this M.A, there is a copy of the said order. It is clearly recorded therein that after that matter was admitted on 24.06.2010, no one appeared for the Applicant on 16.09.2010, 30.09.2010, 20.10.2010 and 22.11.2010. None appeared on 17.01.2011 and 14.02.2011 also and, therefore, the O.A. was dismissed in default on 14.2.2011.

4. M.A. 37/2016 came to be presented for restoration of that O.A. and this M.A. No.38 of 2016 was presented on



13.01.2016 for the relief aforestated. Since that M.A. itself was delayed by 5 years, this M.A. 38/16 has been moved for condonation of delay in moving the said M.A. 27/16. The only cause assigned is Advocate related. According to the Applicant having been rendered jobless, he went to his native place and relied solely and entirely on his advocate.

5. We are deeply conscious of the legal position that the duly contested decisions of a *lis* is a course of action that must be preferred to ex-parte disposals and in that sense, the interest of the justice must prevail as a consideration rather than technicalities. However, equally true is the position that the law would help those that are vigilant rather than indolent. Almost from the day one, the Applicant allowed the O.A. to remain languishing till it was dismissed for default and it was, therefore, that the delay of about 5 years was caused. We refuse to accept that this much delay was for the Advocate related cause. There has to be some limit somewhere. No doubt, as one loses the job, one suffers but that is precisely why the legal course of action is provided. Some Delay in that behalf can be accepted. A little longer delay can also be accepted but provided it was satisfactorily explained.

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6. However, it cannot be accepted just for the asking that for five years nothing was heard from the Advocate and yet the Applicant did nothing. That is something quite unbelievable. We, therefore, remain unimpressed by the case sought to be made out by the Applicant for condoning the delay in bringing the M.A. for restoration of the O.A. The M.A.38/16, therefore stands hereby dismissed and nothing survives in M.A.37/16. The O.A. was already dismissed for default. No order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)
18.08.2016

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN
18.08.2016

Mumbai

Date : 18.08.2016

Dictation taken by :

N.M.Naik.

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