

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.388 OF 2021
IN
ORIGINAL APPLICATION NO.790 OF 2020**

Shri Sunanda Umesh Kulkarni)
Age : 75 years,)
R/at 61/C, Soba Park, Vrundavan Society,)
Eklavya College Road, Kothrud, Pune 411038.)...**Applicant**

Versus

1. The State of Maharashtra, through)
its Secretary, Water Resources Dept.)
Mantralaya, Mumbai 400 032.)
2. Chief Engineer, Pune Irrigation Dept.)
Sinchan Bhavan, Pune 411 011.)
3. Superintending Engineer, Irrigation Dept.)
Sinchan Bhavan, Pune.)
4. Executive Engineer, Pune Irrigation Dept.)
New Administrative Building, 'D' wing,)
II Fl. Pune 411 001.)
5. Executive Engineer, Khadakwasala,)
Irrigation Division, Pune.)
6. Deputy Executive Engineer, Pune Irrigation)
Department, Pune.)
7. Accountant General (Accounts & -)
Entitlement)-1, Maharashtra, 2nd floor,)
Pratishtha Bhavan, 101, Maharshi Karve)
Road, Mumbai 400 020.)...**Respondents**

Smt. Punam Mahajan , Advocate for the Applciant

Smt. Kranti Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.12.2021.

JUDGMENT

This is an application for condonation of huge delay of 15 years in filing Original Application which is filed for grant of family pension.

2. Briefly stated admitted facts giving rise to this proceeding are as under:-

The Original Application is filed by Smt. Sunanda Kulkarni. Her husband Umesh Kulkarni (now deceased) joined the Government service on 01.10.1960 as Junior Clerk. While he was serving at Yewat, Tal. Daund, he was granted medical leave for one month. Thereafter he was transferred to Pandhara Sub-Division but he did not join there. He was in service till 1974 and thereafter did not join duty. According to Applicant he was suffering from diabetes which led to gangrene and his feet was required to be amputated and was on medical leave. The Department had issued show cause notice dated 31.12.1975 directing him to resume duties but in vain. As such admittedly, he was not in duty onward 1974 and attained his superannuation on 30.09.1996. Later, he expired on 06.08.2004. It is only in 2010, the Applicant made an application on 03.05.2010 for grant of family pension. Since the Applicant was absent from 1974 and attained the age of superannuation in absenteeism nothing was communicated by the department to her. Thereafter only, she made representations to various authorities including office of Lok Ayukta, office of Maharashtra State Human Right Commission, Mumbai, Member of Legislative Assembly but it was not responded.

3. It is on the above background, she has filed the present O.A. on 22.12.2020 for direction to sanction pension from the date of retirement till the date of his husband (now deceased) and also grant family pension with interest. Along with an O.A., application is filed to condone the delay of 15 years.

4. Smt. Punam Mahajan, learned Counsel for the Applicant sought to contend that the matter being related to family pension, the Tribunal should take liberal approach to condone the delay. It was further contended that the Applicant was pursuing various authorities by making various representations from 2010 and considering her pitiable situation, the delay be condoned so as to decide the O.A. on merit.

5. Whereas, Smt. Kranti Gaikwad, learned P.O. submits that there is huge delay of 15 years without any sufficient explanation and mere filing of representation which were in fact filed for the same in 2010 and subsequently it would not revive cause of action. It is further pointed out that the deceased Government servant in his life time did not raise any such grievance of pension and now after 15 years from the date of husband, O.A. has filed which is hopelessly barred by limitation.

6. True, while deciding the matter about pension/family pension, the Tribunal is required to adopt liberal approach for condoning the delay, if it is reasonably explained and secondly, the Applicant has good case on merit. In present case, admittedly, the Applicant's husband was not on duty from 1974. Though the Applicant contends that he was on medical leave no such documents of medical leave for such a long period is forthcoming except medical leave from 29.04.1974 to 28.05.1974. He was issued show cause notice in 1975 for resuming duties but the Applicant's husband failed to resume duty nor got leave sanctioned. As such, it is apparent that he remained unilaterally absent from duty from 1974 till attaining the age of superannuation on 30.09.1996. There is nothing to indicate that in this period, he made any effort to join or to get leave sanctioned. It is thus quite clear that he remained absent for 22 years till attaining the age of superannuation and even thereafter also he did not make any correspondence nor taken any action for grant of pension in his life time. He expired on 06.08.2004. It is only in 2010,

the Applicant started making representations. She too did not take any steps earlier.

7. As regard limitation of filing O.A. it is governed by Section 21 of Administrative Tribunal Act, 1985.

“ 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.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

8. As such, if no decision was taken on representations. O.A. ought to have been filed within one year from the date of expiry of period of six months of representations period as provided in Section 21(b) of Administrative Tribunal Act, 1985 as reproduced above. However, she did not take any steps in terms of Section 21 of Administrative Tribunal Act which she was required to take. It is after 10 years from representation she has filed this O.A. with application for condonation of delay.

9. Needless to mention that mere making of representation will not extend the period of limitation. The Hon'ble Supreme Court in **State of Tripura and Ors V/s Arabinda Chakraborty & Ors.**

2014 (6) SCC 460 held that the period of limitation commences from the date of which cause of action arising for the first time and simply making representation in absence of any such statutory provisions, the period of limitation should not be extended.

10. True, in present case, the Respondents have not passed any such orders regarding refusal of pension or otherwise. However, the fact remains that the deceased Government servant did not raise any such grievances in his life time. O.A. is filed after 17 years from his death. Whereas on other side, it is clearly seen that the deceased Government servant was unauthorisedly absent from 26 years which entails in forfeiture previous service in terms of Rule 47 of Maharashtra Civil Services (Pension) Rules, 1982. It seems that it is for this reason, the deceased Government servant in his life time did not raise any such grievances.

11. Learned Counsel for the Applicant sought to place reliance on following passage of the decision of the Hon'ble Supreme Court in **(2008) 8 SCC 648 Union of India & Ors. V/s Tarsem Singh**

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

12. In that case, the matter was pertaining to pension of Army personnel who was invalidated out of army service in 1983. However, he approached the Hon'ble High Court in 1999. He was found entitled to disability pension which was not granted to him though it fell due in 1983 when he invalidated out of army service. It is in that context, the Hon'ble Supreme Court held non grant of pension though entitled in law amounts to continuous injury. Whereas in present case, there is no such entitlement to pension which seems to have been forfeited by application of Rule 47(1) of Maharashtra Civil Services (Pension) Rules, 1982.

13. Reliance is also placed on **(2003) 1 SCC 184 S.K. Mastan Bee V/s General Manager, Sough Central Railway & Anr.** in that case, appellant's husband was Gangman in Railway and died in 1969 while in service. In 1991, his widow made an application for grant of family pension which was rejected by the department and then she filed W.P. wherein directions were issued to fix the family pension according to rules. When the matter went before the Division Bench, the Appellant right to family pension was upheld but considering law of limitation to suits relief was confined subsequent to 01.04.1992 i.e. the date on which legal notice was given. It is on this background, the Hon'ble Supreme Court restored the order passed by the Hon'ble Single Judge observing that appellant was illiterate and denial of pension is in violation of Article 1 of the Constitution. The Hon'ble Supreme Court further observed that it was obligatory on the part of Railway to compute payable family pension at their own. As such, in that case there was right to receive family pension. Whereas in present case, applicant's husband seems to have forfeited pension in view of his absenteeism for 26 years. Therefore, the question of family pension does not survive.

14. Be that as it may, insofar as the issue of limitation is concerned, there is huge and unexplained delay of 17 years in approaching the Tribunal (calculated from the date of death of

deceased Government servant). Indeed, his right to receive pension itself seems to have been forfeited in view of absenteeism of 26 years in service.

15. As such, this O.A. is nothing but to revive old and dead claim. Misc. Application is, therefore, dismissed. Hence the following order:-

ORDER

- (A) Misc. Application is dismissed and consequently Original Application also stands dismissed being barred by limitation.
- (B) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai
Date : 20.12.2021
Dictation taken by : VSM
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