IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

MISC. APPLICATION NO.458 OF 2019
IN
ORIGINAL APPLICATION NO.608 OF 2019

Dr. Mukund V. Pande.)
Age : 74 Yrs., Date of Birth : 22.12.1945,)
Date of Retirement : 31.12.2003,)
Occu.: Retired as Medical Officer Group-A)
(Class II), R/at. B-904, High Life,)
Anand Nagar, Pune – 411 051.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through the Principal Secretary,)
Health Services Department,)
Mantralaya, Mumbai – 400 032.)

2. The Director of Health Services.)
Arogya Bhavan, 1st Floor,)
St. Georges Hospital Compound,)
Near CST Station, Mumbai.)

3. The Senior Accounts Officer.)
Indian Audit & Accounts Dept.,)
Pratistha Bhavan (Old CGO Building))
101, Maharashi Karve Marg,)
2nd Floor, Mumbai – 400 020.)**...Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 13.02.2020

JUDGMENT

1. This is an application for condonation of delay caused in filing O.A.608/2019 wherein challenge is to the order dated 30th September, 2015 issued by Respondent No.1 as well as order dated 11.12.2018 issued by Respondent No.2 on the basis of order issued by Government dated 30th September, 2015.

2. Shortly stated facts are as under :-

The Applicant was appointed as Medical Officer in the year 1971. During the course of service, he was transferred to various places and in 1985, he was posted at Leprosy Home, Khedgaon, Tal. Karmala, District Solapur. He contends that from 10.06.1985, he was suffering from anxiety with depression and was on medical leave. He was not on duty from 10.06.1985 to 12.08.1997. He contends that in between, he was directed to appear before the Medical Board to get fitness certificate and leave for certain period was also recommended by Medical Board. He seems to have made various representations seeking posting but he was again directed to appear before the Medical Board. Ultimately, he joined as Medical Officer at Gadchiroli on 12.08.1997. Then on 28.03.1998, he made representation for regularization of absence period by treating it as Medical Leave. He made various representations/applications from time to time but no decision was taken and the correspondence was exchanged in between Departments. Ultimately, he stands retired on 31.12.2003 on attaining the age of superannuation. Even after retirement, he seems to have made various representations for regularization of absence and for grant of pension. However, nothing was communicated to him and only correspondence was exchanged between the Departments. Ultimately, when his pension papers were sent to Accountant General, it was returned back by A.G. on the ground that there was no order of regularization of service from 10.06.1985 to 12.08.1997. He then approached to Hon'ble Upa-Lokayukta by filing

complaint on 23.07.2015 seeking direction for grant of pension. During the pendency of proceeding before Hon'ble Upa-Lokayukta by order dated 30.09.2015 issued by Respondent No.1, he was informed that his absence from 10.06.1985 to 12.08.1997 is treated as unauthorized absence amounting to break in service. In the proceeding before Hon'ble Upa-Lokayukta, the directions were issued to reconsider the decision of the Government dated 30.09.2015. However, the Government again by its letter dated 05.11.2018 confirmed its earlier stand of treating absence as break in service. On the basis of it, the Respondent No.2 communicated to the Applicant by letter dated 12.11.2018 that he was not entitled to pension. The Applicant has, therefore, challenged the orders dated 30.09.2015, 05.11.2018 and 12.11.2018 by filing O.A. along with this application for condonation of delay. In application, the Applicant indeed contends that there is no delay in filing O.A. and in alternative, prayed to condone the delay caused in filing O.A.

3. Shri K.R. Jagdale, learned Advocate for the Applicant submits that despite various representations made by the Applicant before retirement as well as after retirement, no decision was taken by the Government and it is only after filing complaint before Hon'ble Upa-Lokayukta, the decision was taken in terms of order dated 30.09.2015 whereby his absence is treated as break in service. He submits that the Applicant bonafidely continues the proceedings before Hon'ble Upa-Lokayukta and ultimately, his complaint was closed as per the communication dated 09.10.2018. Whereas, the O.A. is filed on 03.07.2019, which is within the period of one year from the closure of the complaint by Hon'ble Upa-Lokayukta. In alternative, he submits that even if the delay is counted from order dated 30.09.2015, the period spent in the proceedings continued in the Office of Lokayukta be excluded under Section 14 of Limitation Act. With these pleadigns, he submits that the matter being pertaining to grant of pension and it is a case of recurring cause of action, the delay be condoned.

4. Per contra, Smt. A.B. Kololgi, learned Presenting Officer opposed the application contending that the delay is not satisfactorily explained. She submits that even if the limitation is counted from 30.09.2015, the Applicant was required to approach the Tribunal within one year and having not done so, the O.A. filed in 2019 is barred by limitation.

5. In view of above, the question posed for consideration is whether the delay of 3 years caused in challenging the order dated 30.09.2015 can be condoned in the facts and circumstances of the case.

6. The principles to be borne in mind while deciding the application for condonation of delay are well settled. Shri Jagdale, learned Advocate for the Applicant referred to decision of Hon'ble Supreme Court ***AIR 1987 SC 1353 (Collector, Land Acquisition, Anantnag & Ors. Vs. Katiji & Ors.)*** wherein Para No.3 is as follows :-

> "***3.*** *The legislature has conferred the power to condone delay by enacting Section 5 (Any appeal or any application, other than an application under any of the provisions of Order XXI of CPC, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfied the court that he had sufficient cause for not preferring the appeal or making the application within such period) of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-*
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> > ***1.*** *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
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> > ***2.*** *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
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> > ***3.*** *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay,*

every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

7. He further referred to ***AIR 1998 SC 1322 (N. Balakrishnan Vs. M. Krishnamurthy)*** in Para Nos.9, 10, 11 and 12, the Hon Hon'ble Supreme Court observed as follows :-

"***9.*** *It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in regional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the delay. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammeled by the conclusion of the lower court.*

10. *The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice.*

Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

11. *Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-*

span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis Mum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. *A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."*

8. The learned Advocate for the Applicant also made reference to ***(2008) 8 SCC 648 (Union of India & Ors. Vs. Tarsem Singh)*** where in Para No.5, the Hon'ble Supreme Court observed as under :-

"***5.*** *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."*

9. In view of aforesaid decisions and the principles laid down therein coupled with Section 14 of Indian Limitation Act, the application for condonation of delay deserves to be allowed for the reasons to follow.

10. In O.A, the Applicant has challenged the impugned order dated 30.09.2015 whereby his absence period from 10.06.1985 to 12.08.1997 was treated as break in service. The Applicant joined as Medical Officer in 1971. Because of order of break in service, he lost earlier service period. He was, therefore, found had not completed the period of qualified service for grant of pension. After absence period, he joined on 19.03.1998 and stands retired on 31.12.2003. Therefore, according to Department, his qualified service was hardly six years in view of break in service, and therefore, not entitled to pension. As such, this is not service matter which would affect the rights of other employees. It is individual matter and regarding pension which is the only source of livelihood for the retired Government servant. It is in this context and perspective, the application made for condonation of delay deserves to be considered in judicious manner.

11. The perusal of O.A. as well as M.A. reveals that, during the period of absence, the Applicant had made various representations and also appeared before Medical Board for Fitness Certificate. For some period, the Medical Board recommended for grant of leave. It appears that despite his various representations for joining, the Department was again insisting for Fitness Certificate from Medical Board. Ultimately, he was allowed to join on 19.03.1998. Thereafter also, he made various representations to the Respondents for regularization of absence period but no final decision was taken thereon. Ultimately, he retired on 31.12.2003. Even after retirement also, he made representations for grant of pension and to regularize his absence. The perusal of record reveals that on the representations made by the Applicant, communication was exchanged in between Departments, but no final decision was taken. Indeed, by order dated 07.03.2007, the Deputy

Director, Health Services, Pune had granted provisional pension from 01.01.2004 to 30.06.2004. The record further reveals that pension papers of the Applicant were submitted to the Office of A.G. by letter dated 16.06.2008 but A.G. raised objection about the nature of leave for absence from 10.06.1985 to 12.08.1997 and returned the pension papers by letter dated 09.07.2008. Thereafter again, there was communication *inter-se* Departments, but no final decision was taken. The Applicant kept on sending representations to various Departments for grant of pension. Ultimately, the Applicant had approached the Office of Lokayukta by filing complaint for non-grant of pension on 23.07.2015. It is during the pendency of this complaint, the Government has passed order on 13.09.2015 informing to the Applicant that his absence from 10.06.19985 to 12.08.1997 is treated as break in service and consequently held not entitled to pension. It is further noticed from the record that Hon'ble Upa-Lokayukta directed the Government to reconsider the decision dated 30.09.2015 by its order dated 12.09.2018 and closed the complaint. However, the Government confirmed its stand by letter dated 05.11.2018, and therefore, Hon'ble Upa-Lokayukta again informed the Applicant by letter dated 07.03.2019 that in terms of order passed by Government, he is not entitled to pension. Thus, ultimately, the complaint was closed.

12. All the while, the Applicant in his representation contended that he was kept out of posting despite Fitness Certificate issued by Medical Board, and therefore, serious prejudice is caused to the Applicant in refusing pension to him and subjected to severe injustice by the Department.

13. Thus what transpires from the record that, despite various representations/reminders made by the Applicant, no final decision was taken by the Government about the absence of the Applicant and it is for the first time, by order dated 30.09.2015, he was communicated that the absence period is treated as break in service and consequently, he was

not entitled to pension. As stated above, the order dated 30.09.2015 was passed only after filing complaint before Hon'ble Upa-Lokayukta. Even after decision dated 30.09.2015, the Applicant continued the proceedings there and indeed Hon'ble Upa-Lokayukta had also recommended to the Government to reconsider its decision dated 30.09.2015. However, the Government ultimately confirmed its earlier stand and communicated to the Applicant by order dated 05.11.2018. On the basis of order dated 05.11.2018, the Deputy Director, Health Services, Pune by letter dated 11.12.2018 communicated to the Applicant that he is not entitled to pension. As such, the Applicant was prosecuting remedy in respect of order dated 30.09.2015 before Hon'ble Upa-Lokayukta, but ultimately his complaint was closed. Therefore, he has filed the present O.A. challenging the order dated 30.09.2015.

14. In view of above, in my considered opinion, the period spent in prosecuting the complaint before Hon'ble Upa-Lokayukta deserves to be considered as a sufficient ground to condone the delay, as contemplated under Section 14 of Indian Limitation Act, which *inter-alia* provides for exclusion of time spent in another proceeding in good faith. The Applicant is a retired Government servant and was prosecuting the proceedings in the Office of Hon'ble Upa-Lokayukta in good faith with hope that his grievance will be redressed under the provisions of Maharashtra Lokayukta and Upa-Lokayukta Act, 1971. The perusal of the provision of Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 reveals that the complaint can be filed before the said authority by a person who sustain injustice or undue hardship in consequence of mal-administration or negligence on the part of public servant. In the present case, the Applicant was pursuing the remedy before the said authority in good faith, and therefore, the period spent in the said proceeding deserves to be excluded from the period of limitation.

15. As observed by the Hon'ble Supreme Court in ***N. Balakrishnan's*** case (cited supra), the length of delay does not matter and it is the

acceptability of explanation, which is the only criteria to condone the delay under Section 5 of Limitation Act. The Hon'ble Supreme Court observed that sometime, the delay of shortest period may be uncondonable due to want of unacceptable explanation whereas in certain other case, the delay of long period can be condoned, if the explanation thereof is satisfactory. The Hon'ble Supreme Court further observed that the Rules of limitation are not meant to destroy the rights of party. In the present case, the Applicant is struggling for getting pension. Whether the order of Government treating the entire period of absence as break in service is legal and valid is the question to be decided in O.A, particularly in the context of Applicant's contention that despite various representations, he was not allowed to join the service and was kept out of service for a period of 11 years. In such situation, in my considered opinion, it would be unjust to throw him out of Tribunal on the ground of limitation. It is desirable in the interest of justice that his claim is determined on merit.

16. For the aforesaid reasons, the delay caused in challenging the order dated 30.09.2015, it being sufficiently explained deserved to be condoned. Hence, the order.

O R D E R

(A) The delay caused in filing O.A.608/2019 is condoned.

(B) M.A.458/2019 is allowed with no order as to costs.

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

Mumbai
Date : 13.02.2020
Dictation taken by :
S.K. Wamanse.
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