

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.529 OF 2016
IN
ORIGINAL APPLICATION NO.1157 OF 2016**

DISTRICT : SOLAPUR

Shri Shivdas Ramchandra Todkar.)
Age : 60 Yrs, Occ. Retired Govt. Servant,)
R/o. 1B-Wing, Ganga Apartment, Akurdi,)
Pune 35.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)
2. The Directorate of Irrigation)
Research & Development and Zonal)
Circle Office, Pune Circle, 8,)
Moledina Road, Camp, Pune - 01.)
3. Superintending Engineer.)
Bhima Canal Irrigation Dept.,)
Sinchan Bhavan, Solapur - 3.)
4. Superintendent Engineer.)
Mechanical Circle, Central Bldg,)
Pune - 01.)...**Respondents**



Mr. R.M. Kolge, Advocate for Applicant.

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

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

DATE : 01.08.2017

ORDER

1. This Misc. Application (MA) is presented seeking condonation of delay in bringing the Original Application (OA) which in turn seeks relief of grant of deemed date of promotion as Junior Clerk as on 1.8.1980 and further the claim for higher time bound scale in the pay scale of Rs.4000-6000 as per 5th Pay Commission.

2. I have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer (PO) for the Respondents.

3. Let me open the discussion with a clear observation that I am deeply conscious of the legal position that the application such as the present one needs to be considered with a view to advance the cause of justice rather than technicality. The approach has to be liberal rather than rigid. Bearing this very clearly in my mind,



however, I am constrained to find that this application for condonation of delay does not succeed.

4. The Applicant came to be appointed as a Peon (Group 'D') on 28.6.1977. On 21.6.1983, he came to be promoted as a Junior Clerk in Group 'C'. He holds the degree of B.A.Hon. He has retired on 31.5.2015. One Mr. A.P. Sakhare came to be appointed as a Mazdoor and Peon on 1.10.1977. He was promoted as Assistant Store Keeper on 1.8.1980 in Group 'C' post. He was SSC and he also has now retired. As a retiral benefit, Mr. Sakhare was getting more pension than the Applicant was getting after his retirement. Ever since 1983 till almost 2016, the Applicant went on making representations after representation and yet nothing came out of it. Perusal of the OA will show that on 15.9.2009, the Government wrote to the Superintending Engineer concerned after receiving a proposal of the grant of deemed date to the Applicant seeking clarifications on the issue of how as per Rules, a Peon could have been appointed as Assistant Store Keeper. How Mr. Sakhare was given that post. The deemed date of the post of Assistant Store Keeper was not admissible for clerical staff vide the Circular of 6.6.2002 that was not properly examined by the Department concerned. There is another communication to the State Government from the



Assistant Superintending Engineer, Solapur dated 18.2.2010 and another one dated 25.4.2011. A request was made to grant to the Applicant the deemed date of 7.8.1980. It is a clearly admitted position that nothing came out of it and the Applicant retired.

5. By the Affidavit-in-reply, the MA is opposed. Mr. Kolge and Mrs. Kololgi, both made submissions consistent with their briefs.

6. The record makes it quite clear that, for the last more than 35 years when the cause of action arose for the first time, the Respondents were not so disposed as to accept the case of the Applicant with regard to the grant of deemed date. The two last referred letters from the Assistant Superintending Engineers were only recommendatory and even thereafter, nothing came about. It is too much to accept that the Applicant went on the belief that relief will be extended to him. What really happens when the steps are not taken in time is that the evidentiary material relevant to the determination of the cause goes on vanishing. Mr. Kolge told me that the issue of deemed date of promotion is the matter which is completely personal to the Applicant and nobody is going to be affected thereby, and therefore, the delay needs to be



condoned. In the first place, I find that, by their act of omissions in responding to the various representations of the Applicant, the Respondents made it clear that, they were not so minded as to accept his case, and therefore, the cause of action straightaway occurred and as they say, the time began to run. There is a letter dated 25.4.2011 which is referred to above and it opens with the recitals that the then Superintending Engineer of Bhima Project Circle, Solapur had appointed Mr. Sakhare as Assistant Store Keeper. That Office was discontinued and closed in 1993. Now, to my mind, there cannot be any better illustration of the justification for what I have just mentioned as to what happens when the party concerned sleeps over his right. I am prepared to grant to the Applicant that he is bound to wait for at least some time to see as to what was the outcome and in that behalf, if the period of limitation also expired, the point of condonation can still be considered. However, here the delay is too enormous to be ignored. The clear reasons have not been set out but I can still decipher from whatever is stated in the application that the said Mr. Sakhare was given preferential treatment, but that was way back in 1980 and ever since then, the Applicant awaited and awaited 35 years and then about more than a year after retirement. It is not such a small period to be made light of. Therefore,

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whatever reasons are discernible are not such as to be sufficient to condone the delay. Mr. Kolge relied upon **State (NCT of Delhi) Vs. Ahmed Jaan : 2008 (6) SLR 447.** There, by the impugned order, the Hon'ble High Court was pleased to reject the application for condonation of delay and the matter was carried to the Hon'ble Supreme Court. It is clear that, in so far as the reasons were concerned, they were not properly considered and the matter was worked out only on the ground of delay. The law laid down by **Ahmed Jaan** is that, in dealing with an application for condonation of delay, the delay by itself can be no answer. The reason assigned for condonation should be carefully examined. Bearing that principle in mind, when I examine the present facts, I find that the Applicant fails on that anvil. The reasons are hardly sufficient to condone the delay.

7. Mr. Kolge then relied upon **Nagpur Distillers, Nagpur Vs. State of Maharashtra : 2007 (2) MLJ 285.** The crux of the matter was that the Petitioner was being sought to be visited upon with adversity for the fault which ultimately lay with the slow moving Government machinery. Now, viewed in a proper perspective, this is not the state of affairs that obtain herein.



8. In view of the foregoing, I am therefore constrained to hold that, no sufficient cause is shown for condonation of delay and this Misc. Application is accordingly dismissed with no order as to costs and the still born Original Application whose fate depended upon this Misc. Application is also dismissed. No order as to costs.

Sd/-

(R.B. Malik)
Member-J
01.08.2017

1-8-17

Mumbai

Date : 01.08.2017

Dictation taken by :

S.K. Wamanse.

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