IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.535 OF 2018
IN
ORIGINAL APPLICATION NO.901 OF 2018

Shri Subhash A. Mhamunkar.)
Working as X-ray Technician at Gokuldas)
Tejpal Hospital, Near Police Commissioner's)
Office, Lokmanya Tilak Marg, Fort, G.P.O,)
Mumbai – 400 001.)**...Applicant**

Versus

1. The Chief Secretary,)
State of Maharashtra, Mantralaya,)
Mumbai – 400 032.)

2. The Addl. Chief Secretary.)
Medical Education & Drugs Dept.,)
Mantralaya, Mumbai – 400 032.)

3. The Director.)
Medical Education & Research,)
Govt. Dental College Building,)
4th Floor, St. Georges Hospital Campus,)
Mumbai – 400 001.)

4. The Superintendent.)
Gokuldas Tejpal Hospital,)
Near Police Commissioner's Office,)
Lokmanya Tilak Marg, Fort, G.P.O,)
Mumbai – 400 001.)**…Respondents**

Mr. P.L. Rathod, Advocate for Applicant.

Mr. S.D. Dole, Presenting Officer for Respondents.

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

DATE : 15.02.2019

O R D E R

1. This Misc. Application is for condonation of delay under Section 5 of Limitation Act.

2. The Applicant has filed O.A.901 of 2018 challenging the communication dated 27.03.2001 as well as 12.04.2012 whereby his request for treating suspension period as a duty period for all purposes has been rejected. Though the Applicant has challenged the impugned orders dated 27.03.2001 as well as 12.04.2012, the M.A. for condonation of delay is filed contending that the delay is of 5 years and 6 months only. The Applicant contends that, because of depression, ailment and ignorance of law, he could not file O.A. within one year, and therefore, prayed for condonation of delay for 5 years and 6 months.

3. Whereas, the Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying that there is any sufficient cause for condonation of delay. The Respondents further contend that the challenge in O.A. being to the order dated 27.03.2001 which is basic order, the delay is of 17 years which is not at all explained by any cogent or sufficient reasons. The grounds raised by the Applicant viz. family difficulties, depression, etc. are misleading and false. There is no sufficient explanation for huge and inordinate delay of 17 years. As such, the Applicant's contention that the delay is of only 5 years and 6 months is misconceived. The Respondents, therefore, prayed to dismiss the application.

4. Shri P.L. Rathod, learned Advocate for the Applicant reiterated the contentions raised in the application and sought to contend that the delay is of only 5 years and 6 months, if counted from order dated 12.04.2012. He further

urged that because of ignorance of law, depression and other family difficulties, the Applicant could not approach the Tribunal, and therefore, justice oriented approach is necessary rather insisting on hyper-technicalities of law of limitation.

5. Per contra, Shri S.D. Dole, learned Presenting Officer for the Respondents pointed out that, though the Applicant has challenged two impugned orders cause of action having arose on 27.03.2001, there is delay of 17 years which is not at all properly explained and the grounds raised by the Applicant cannot be accepted as a sufficient cause for huge delay of 17 years.

6. Now, let us see whether cause of action accrues to the Applicant on 27.03.2001 or on 12.04.2012. In this respect, material to note that, by order dated 27.03.2001, the disciplinary authority has passed order whereby his suspension period from 11.12.1993 to 09.09.1997 was regularized by partly granting Earned Leave, Half Pay Leave and Extra-ordinary Leave under Rule 72 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. It appears that the Applicant was suspended in view of criminal prosecution for the offence under Sections 420, 421(4) of Indian Penal Code. However, he was acquitted on 20.06.1997. Therefore, he was reinstated in service. As per disciplinary authority, the acquittal was not honourable, but he was acquitted giving benefit of doubt. Therefore, the disciplinary authority thought it appropriate not to treat the suspension period as a duty period, but it was regularized by grant of leaves as stated above. The material point to note is that the said decision was taken by order dated 27.03.2001 and it was communicated to the Applicant. It is nowhere the contention of the Applicant that it was not communicated to him. Suffice to say, the cause of action accrued on 27.03.2001 itself. However, he did not initiate any proceedings within reasonable time. It appears that, he made representations from time to time and it was in reference to one of his representation dated 28.06.2011, he was again communicated by impugned

order dated 12.04.2012 that the decision in this behalf has been already taken and conveyed to him by impugned order dated 27.03.2001, and therefore, the question of regularizing the suspension period does not survive. As such, the communication dated 12.04.2012 was in response to his application / representation which cannot extend the period of limitation.

7. Needless to mention that making subsequent representations will not extend the period of limitation. At the most, he could have approached the Tribunal after a lapse of period of six months from the date of filing the first representation which was made on 26.08.2008. However, he did not take any steps to initiate the proceedings and remained silent. Sufficient to say, he was not vigilant to take appropriate legal action and mere filing of representation from time to time cannot extend the period of limitation. In this behalf, a reference may be made to the Judgment of Hon'ble Supreme Court in ***(1989) 4 SCC 582 (S.S. Rathore Vs. State of Madhya Pradesh)*** wherein the Hon'ble Supreme Court held that, mere filing of representation will not give fresh cause of action and right to sue accrues when the impugned order has been communicated to the concerned employee. Therefore, the submission advanced by the learned Advocate for the Applicant that the delay is to be counted from order dated 12.04.2012 is fallacious and misconceived.

8. Reliance placed by the learned Advocate for the Applicant on the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.2994/2016 (Dilip H. Surwade Vs. State of Maharashtra & Ors.) decided on 14th July, 2016*** being arising from different facts, is of no assistance to the Applicant. In that case, the Applicant was kept under suspension by order dated 23.12.2008, and thereafter, he made representation for revocation of suspension, which was rejected on 17.04.2014. He, thereafter, approached M.A.T. along with application for condonation of delay. As the delay, if considered from 17.04.2014, it was found short and liable to be condoned. In fact situation, the delay was condoned.

9. The learned Advocate for the Applicant further placed reliance on ***2004(6) BomCR394 (Gulabrao D. Pol Vs. Union of India & Ors.)*** and the Judgment of Hon'ble Bombay High Court in ***Writ Petition No.10241 of 2012 (Basawant D. Nandgavali Vs. The Secretary, Water Resources Department & Ors.) decided on 08.03.2013*** wherein principles to be borne in mind while the application for condonation of delay has been reiterated that the approach of condonation of delay ought to be justice oriented and not to have hyper-technical approach and the word 'sufficient cause' under Section 5 of Limitation Act should receive a liberal construction, so as to advance substantial justice. There could not no quarrel about this legal proposition. However, even applying the said principle, it is difficult to hold that the Applicant has made out any case of sufficient cause for condoning the huge and inordinate delay of 17 years. Even assuming for a moment that the Applicant got cause of action from the date of second impugned order dated 12.04.2012, in that event also, the explanation sought to be rendered by the Applicant is not at all satisfactory.

10. Needless to mention that the ignorance of law is not excuse, and therefore, the submission advanced by the learned Advocate for the Applicant that due to unawareness, the Applicant could not approach the Tribunal is nothing but lame excuse. The Applicant has produced one Coronary Angiography Report dated 08.04.2017 in which he was advised to undergo Angioplasty. Except this report, there is absolutely no material on record to show that the Applicant was suffering from any such serious ailment continuously for five years. In fact, he was on duty in the said period. Therefore, the ground raised by the Applicant's Advocate that due to illness and related depression, the Applicant could not approach the Tribunal has to be rejected.

11. True, while deciding the application for condonation of delay, the Court should adopt liberal, pragmatic and justice oriented approach, as substantial justice is paramount. There has to be sufficient ground for condonation of delay

and length of delay is not material. What is important is the sufficiency of the grounds raised for condonation of delay. Whereas, in the present case, there is absolutely no such convincing or reasonable ground to explain the delay of 17 years or even of 5 years, if cause of action is set accrued on 12.04.2012. The Applicant was not vigilant and slept over his right. As such, there was inaction for years together. The explanation sought to be offered is nothing but lame excuse and it cannot be accepted to condone such a huge and inordinate delay. There is gross negligence on the part of Applicant.

12. I have, therefore, no hesitation to sum-up that the Applicant has failed to make out a case to condone the delay and the application deserves to be dismissed.

13. The Misc. Application stands dismissed and O.A. also stands disposed of. No order as to costs.

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

Mumbai
Date : 15.02.2019
Dictation taken by :
S.K. Wamanse.
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