

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.543 OF 2018
IN
ORIGINAL APPLICATION NO.909 OF 2018
WITH
MISC. APPLICATION NO.544 OF 2018
IN
ORIGINAL APPLICATION NO.910 OF 2018**

Shri D.B. Sakhale & Shri A.M. Shinde.)...Applicants

Versus

1. The Collector & Anr.)...Respondents

Mr. M.B. Kadam, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.05.2019

ORDER

1. These are the applications for condonation of delay under Section 5 of Limitation Act.

2. The facts of M.A.543/2018 are as follows :-

The Applicant was working as Talathi and retired on 30.04.2010. He contends that during his service, he was entitled to the benefit of 2nd Time Bound Promotion, but the same was not granted to him. He has, therefore, filed O.A.909/2018 to extend the benefit of 2nd Time Bound Promotion to him w.e.f.01.10.2009. As the O.A. is filed after the prescribed period of limitation of one year, he has filed application for condonation of delay. He contends that the Respondent by order dated 02.03.2015 extended the benefit of 2nd Time Bound Promotion to similarly situated candidates, and therefore, he got cause of action in 2015. As the O.A. is filed in 2018, he has calculated the delay of three years and prayed to condone the delay contending that it being continuous cause of action, the delay be condoned.

3. The facts of M.A.544/2018 are as follows :-

The Applicant was working as Talathi and stands retired on 30.05.2011. He contends that, during his service tenure, he was entitled to 2nd Time Bound Promotion w.e.f. 01.10.2007, but the same was not granted to him. According to him, such benefit was extended to similarly situated employees by order dated 02.03.2015. However, in this O.A, he has calculated the delay of nine years which seems to have counted from the date of retirement, and therefore, prayed to condone the delay on the ground that it is continuous cause of action.

4. In both the matters, the Respondents resisted the application contending that the Applicants were not at all entitled to 2nd Time Bound Promotion. Their cases were examined, but they were found not fulfilling the criteria laid down in G.R. dated 30.04.2010. The Respondents, therefore, denied that the Applicants have any case of continuous cause of action. The Respondents thus contend that the applications are abuse of process of law and liable to be rejected.

5. As regard condonation of delay, the Respondents contend that such huge and inordinate delay sans satisfactory explanation cannot be condoned on mere asking of the Applicants and prayed to reject the applications for condonation of delay.

6. Shri M.B. Kadam, learned Advocate for the Applicant sought to contend that this is a case of continuous wrong, as the Applicants have been deprived of getting the benefit of 2nd Time Bound Promotion to which they were entitled during the tenure of service. In this behalf, he sought to place reliance on the Judgment of Hon'ble Supreme Court in **2008 (8) SCC 648 (Union of India Vs. Tarsem Singh)** wherein in Para No.7, the Hon'ble Supreme Court held as follows :

“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.”

7. True, the expression “sufficient cause” in Section 5 must receive a liberal construction so as to advance substantial justice and generally, the delays may be condoned where no gross negligence or deliberate inaction or lack of *bonafide* is imputable to the party seeking condonation of delay. Suffice to say, the

Courts/Tribunal should adopt justice oriented approach rather than hyper-technical and if explanation offered for the delay is acceptable, then it has to be condoned, so as to decide the matter on merit and mere length of delay is no material. It is also equally true that the Rules of Limitations are not meant to destroy rights of parties, but they are made to see that the parties do not resort to do dilatory tactics, but seek their remedy promptly.

8. Now, turning to the facts of the present case, the Applicants admittedly, retired in 2010-2011. Though they claims to have been entitled to 2nd Time Bound Promotion in 2009 and 2007 respectively, there is nothing to indicate that they have been deprived of the benefit of 2nd Time Bound Promotion illegally. On the contrary, the Respondents contended that their cases were examined for the eligibility of the benefit of 2nd Time Bound Promotion, but found not entitled. This being the position, even on merit itself, the Applicants appear to have no case. Needless to mention that the Government employee has no vested right to get promotion or benefit of 2nd Time Bound Promotion, as it is subject to fulfillment of the criteria laid down in this behalf. This being the position, the question of continuous wrong or continuous cause of action does not survive. The principle of continuing ground would apply where person establishes his existing right and its breach in the matter of pay or pension, then only the said principle of continuous case of action may attract in the given case. However, in the present case, Applicants were found not entitled to the benefit of 2nd Time Bound Promotion, and therefore, the question of continuous cause of action does not survive. Suffice to say, the submission advanced by the learned Advocate for the Applicant in this behalf is fallacious and misplaced.

9. As regard sufficiency of explanation for the condonation of delay, there is absolutely no explanation much less satisfactory to condone the huge and inordinate delay which comes to around nine to ten years, if calculated from the

date of retirement. Only because to some other employees, the benefit of 2nd Time Bound Promotion was granted in 2015, that would not ipso-facto makes the Applicants entitled to the said benefit. The Applicants retired in 2010-2011, but remained silent spectator for eight years. As such, there is total negligence as well as inaction on the part of Applicants to approach the Tribunal to redress grievance, which in fact, on merit also not maintainable.

10. Suffice to say, the applications for condonation of delay are misconceived and liable to be rejected. Hence, the following order.

ORDER

The Misc. Application No.543 of 2018 and Misc. Application No.544 of 2018 are hereby dismissed. Consequently, the Original Application No. 909 of 2018 and Original Application No.910 of 2018 are disposed of with no order as to costs.

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

Mumbai
Date : 04.05.2019
Dictation taken by :
S.K. Wamanse.