

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.573 OF 2018
IN
ORIGINAL APPLICATION NO.959 OF 2018**

Shri Deepak B. Chipkar.)...**Applicant**

Versus

1. The State of Maharashtra & Ors.)...**Respondents**

Mr. A. Hire, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.07.2019

ORDER

1. This is an application for condonation of delay of two years and one month caused in filing O.A.No.959/2018 wherein the Applicant has challenged the order dated 21.09.2016 imposing the punishment of reduction to original time scale for two years in Departmental Enquiry (D.E.).

2. The Applicant contends that he had earlier entrusted the matter to one Advocate, who could not handle it properly, and therefore, he decided to change his Advocate and approached another Advocate for filing these proceedings. He, therefore, sought to contend that the period of two years was spent in pursuing

the matter with earlier Advocate, who failed to file O.A. within limitation. On this ground, he prayed to condone the delay of two years caused in filing O.A.

3. The learned Advocate for the Applicant reiterated the ground raised in O.A. stating that there is no intentional or deliberate delay on the part of Applicant and requested to condone the delay to decide the matter on merit.

4. Per contra, Ms. N.G. Gohad, learned P.O. submitted that the cause shown in the application i.e. negligence of earlier Advocate is too vague and does not inspire any confidence. She has pointed out that the Applicant is serving in Police Department and being reasonably aware about legal aspects, ought to have filed the O.A. within the period for limitation. According to her, there are lapses on the part of Applicant and the reason mentioned in the application is concocted.

5. Now, the question is whether the Applicant has made out sufficient cause to condone the delay of two years and one month. True, while considering the application for condonation of delay, the Tribunal should adopt pragmatic and justice oriented approach so as to advance substantial justice and to decide the matter on merit. Needless to mention that expression "sufficient cause" contemplated in Section 5 of Limitation Act must be a cause which prevents a person approaching the Court within reasonable time. In other words, the existence of "sufficient cause" is conditional precedent for condonation of delay. A cause for delay which by due care and attention, the party could have avoided cannot be termed "sufficient cause". As such the test is whether it could have been avoided by the party by exercise of due care and attention. In other words, if it is *bonafide* cause, then such application shall be normally allowed. Nothing shall be deemed to be done *bonafide* or in good faith which is not done with due care and attention. If the person is found negligent and not diligent in pursuing the remedy is not entitled to ask for the condonation of delay on flimsy ground.

6. All that, the Applicant in his application stated that the matter was entrusted to earlier Advocate who did not take appropriate steps, and therefore, he has engaged new Advocate and in that process, a period of two years lapsed. This is the only ground raised in O.A.

7. Significant to note that he has not mentioned the name of Advocate to whom he entrusted the papers earlier nor has given the date of entrusting papers to him and the efforts made by him to pursue the matter with the said Advocate. As such, the application is too vague and no such particulars to show his *bonafide* are forthcoming. It is very easy to seek condonation of delay blaming the Advocate. It must be shown that the Applicant had really engaged the Advocate earlier but he did nothing in the matter despite persuasion by client. For this purpose, the Applicant was required to give some details about the name of Advocate, date of entrustment of the papers, the steps taken by him to pursue the matter with the said Advocate and the date on which he took the papers back from him. In absence of any such details, vague statement that earlier Advocate returned his papers can hardly inspire any confidence. As such, the story developed by the Applicant is nothing but after-thought version and it cannot be termed as "sufficient cause" within the meaning of Section 5 of Limitation Act.

8. There is delay of two years and one month which itself shows that the Applicant was not diligent in pursuing the matter, otherwise he would not have remained silent spectator for two years. As such, there is negligence on the part of Applicant himself. The story make out by him blaming the Advocate failed to inspire confidence. On the contrary, he is obviously negligent, and therefore, not entitled to the discretionary relief under Section 5 of Limitation Act.

9. In view of above, I have no hesitation to sum-up that the Applicant has failed to establish "sufficient cause" to condone the delay and application deserves to be dismissed. Hence, the following order.

ORDER

- (A) The Misc. Application No.573/2018 is dismissed with no order as to costs.
- (B) Consequently, the Original Application No.959/2018 also stands disposed of.

Sd/-

(A.P. KURHEKAR)
Member-J