

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.595 OF 2015
IN
ORIGINAL APPLICATION NO.1050 OF 2015
WITH
ORIGINAL APPLICATION NO.1050 OF 2015**

DISTRICT : MUMBAI

Bhaskar Jagannath Khedkar.)
Age : Major, Occ. Agriculture,)
R/o. Ghatshil Pargaon, Tq. Shirur Kasar,)
District : Beed.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
General Administration Department,))
Mantralaya, Mumbai - 400 032.)
2. The Director, Information &)
Technology, General Administration)
Department, Mantralaya,)
Mumbai 400 032.)
3. The Director, Accounts & Treasuries)
M.S, Nariman Point, Mumbai - 21.)
4. The Pay & Accounts Officer,)
M.S, Bandra Kurla Complex,)
Bandra (E), Mumbai - 400 051.)...**Respondents**



Shri Kishor D. Khade, Advocate for Applicant.

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

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

DATE : 10.02.2016


JUDGMENT

1. This is a Misc. Application (MA) for condonation of delay of 2923 days.

2. I have perused the record and proceedings and heard Mr. Kishor Khade, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

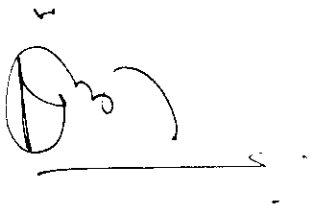
3. The point is as to whether the delay needs to be condoned and I am constrained to find it in the negative for the following reasons.

4. The Applicant got appointed from what can be described as "Freedom Fighter Quota" to the post of Higher Grade Clerk in the office of the Respondent No.4 - Pay & Accounts Officer, Bandra (E). He admittedly could not clear the MS-CIT examination within two years from the date of his appointment. The perusal of his OA for the



purposes strictly limited herefor would show that the Applicant could not clear the said examination and in all fairness, he has used the expression, "Failed" in that behalf. Ultimately, after a show cause notice and its reply, the services of the Applicant came to be terminated w.e.f. 7.12.2007. It would appear from the correspondence annexed to the Affidavit-in-reply to this MA dated 15th November, 2007 that the Applicant had not been able to clear the said examination and the Assistant Director, Accounts & Treasuries sought guidance from the Government (Exh. 'RM-2'). The Government vide what is Exh. 'RM-3' (Page 14 of this MA) dated 25th April, 2009 rejected the move for condoning the said aspect of the matter and in effect also to refuse to extend the time to comply.

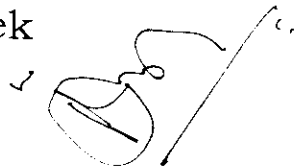
5. Now, even according to the Applicant, he had preferred another OA being OA 724/2007 seeking extension of time for submitting the Certificate of clearance of the said examination. That OA came to be rejected on 7.12.2007 and it was thereafter that the Applicant sought to seek redressal from high political executives before bringing this OA which was lodged in the office of this Tribunal on 10.12.2015 at Aurangabad and was then in due course assigned to the Principal Bench.



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6. Be it noted here that while answering the issue and by employing the phrase "constrained to", it has been made clear that it is not one of the most preferred orders to be made of rejection of such applications. The authorities have been cited by both the sides, but the essence of the authorities is that and that is of central importance that interest of justice must be preferred to the narrow technicalities and if it is even slightly possible, then logical end to every lis has to be preferred as a course of action to the disposals ex-parte or on the ground of limitation.

7. However, having said so, one cannot be too liberal to completely err on the other extreme. After-all, when the law of limitation bars the remedy, there is definitive purpose behind it and that cannot be defeated at the instance of a litigant who may not have been vigilant enough to rush to the judicial forum in time to seek redressal. Having mentioned the various dates and the events, it is not even necessary for me to delve into that aspect of the matter again. It is quite clear that in this matter, the Applicant moved this Tribunal with another OA way back in 2007 unsuccessfully. Both the sides have not taken the trouble to place on record a copy of the said judgment, but taking the case of the Applicant hook, line and sinker that was a proceeding initiated to seek



extension of time to submit the said Certificate and it was rejected. If that was so, then on an extremely formidable aspect of the matter, for all practical purposes, the same controversy in a different form, but of the same substance is being sought to be re-agitated. In any case, once that order had become conclusive and binding, even this Tribunal would be barred from entertaining another OA in which the substance of the matter would be the same such as it was in the disposed of OA. Therefore, for all practical purposes, even if the present OA was to be heard, it would be a futile exercise and the concept of interest of justice does not require futile exercises to be performed.

8. Further, the fate of the Applicant as far as the Respondents are concerned was already sealed way back in 2009 and it is not now possible to accept that the Applicant was awaiting the outcome of his representation. As far as the Respondents were concerned, they had already taken a decision which was final at their end and one has to therefore consider this aspect of the matter from the stand point of the year 2009 and not 2016 as far as the legal position emanating inter-alia as a result of a few pronouncements of this Tribunal as well as the Hon'ble Constitutional Courts are concerned which came to be rendered much after 2009. Therefore, the Applicant

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cannot successfully argue that the delay was because he waited and waited and waited. That appears to be a ground more of desperation than genuine.

9. Therefore, although there is nothing to feel happy about rejecting this application, but that is how the matter stands as per the principles of law applicable hereto. The Misc. Application, is therefore, dismissed with no order as to costs and as a consequence, nothing remains in the OA, which is also dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
10.02.2016

Mumbai
Date : 10.02.2016
Dictation taken by :
S.K. Wamanse.