

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 48 OF 2021
WITH
ORIGINAL APPLICATION ST. NO. 175 OF 2021

DIST. : NANDED

Shri Chandu Gangaram Waghmare,
Age : 60 years, Occu. : Nil (Pensioner),
R/o. M. Post Naygaon (B),
Tq. Naygaon, Dist. Nanded.

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APPLICANT

V E R S U S

1. The State of Maharashtra
Through : Principal Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai - 32.
2. The Principal Chief Forest Conservator,
Social Forestry, Pune,
Central Building, Pune - 1.
3. The Chief Forest Conservator,
Dy. Director, Social forestry,
Aurangabad.
4. The Chief Forest Conservator
(Divisional), Aurangabad. ..

RESPONDENTS

APPEARANCE :- Shri Suresh D. Dhongde, learned
Advocate for the applicant.

:

Smt. Sanjivani Deshmukh Ghate, learned
Presenting Officer for the respondents.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
DATE : **27th MARCH, 2023**

O R A L - O R D E R

1. Heard Shri Suresh D. Dhongde, learned counsel for the applicant and Smt. Sanjivani Deshmukh, learned Presenting Officer for the respondents.

2. In the present application the applicant is seeking condonation of delay, which has occasioned in filing the annexed Original Application by the applicant. The delay is stated to be of 8 years, 5 months and 15 days. The applicant has filed the annexed Original Application seeking the following reliefs :-

“(A) Kindly allow present Original Application.

(B) Kindly direct the respondents especially respondent no. 3 to extend applicant benefit of Time Bound Promotion from the date 28.4.1998.

(C) Kindly direct the respondents to count all applicant services from their initial date of appointment Time Bound Promotion & Revised Assured Carrier Progress Scheme.

(D) Kindly direct the respondent to re-fix applicants pension with increased pension by extending benefit of Time Bound Promotion with interest @ 12%.

(E) If any other relief as this Hon'ble Tribunal thinks fit.”

3. Shri Dhongde, learned counsel appearing for the applicant submitted that though the applicant is claiming the benefit of time bound promotion from the date 28.4.1998, the cause of action for filing the Original Application in fact arose when the law in this regard is crystallized by the Hon'ble Supreme Court and when the Government issued the G.R. dated 7.10.2016 in that regard. In the circumstances, according to the learned counsel the period of delay has to be reckoned from the date of issuance of said G.R. and not from 1998. The learned counsel submitted that the applicant could not file the annexed Original Application within the stipulated period for the reasons elaborated in the application.

4. The learned counsel pointed out that when this Tribunal allowed the **Original Application No. 424/2017** filed by one **Shri Sheshrao s/o Ramrao Kharate**, who was the co-employee of the present applicant, that the applicant decided to file the Original Application before this Tribunal seeking the benefit of time bound promotion as it was granted in favour of said Sheshrao from the date of his initial appointment.

5. The learned counsel further submitted that once the entitlement of the applicant is held for particular benefit, the applicant must be held to be possessing the continuous cause of action for claiming the said benefit. In order to support his said contention the learned counsel has relied upon the judgment of the Division Bench of Hon'ble Bombay High Court, Aurangabad Bench in case of the **State of Maharashtra & Ors. Vs. Tulshidas Vishwanath Dhanwade, Writ Petition No. 581/2008** delivered on 23.9.2019. The learned counsel invited my attention to para 10 of the said judgment.

6. The learned counsel also brought to my notice the order passed by this Tribunal on 14.2.2023 in **M.A. No. 109/2018 in O.A. St. No. 408/2018 with connected M.As.** As further submitted by the learned counsel present applicant is similarly situated candidate, the delay occasioned in filing the application by the applicants since deserves to be condoned as has been condoned in the said M.As. The reliance is also placed by the learned counsel on the decision rendered by the Division Bench of Hon'ble Bombay High Court, Aurangabad Bench in Writ Petition No. 10513/2015 with Writ Petition No. 10517/2015 delivered on 18.4.2016. Para 5 in the said judgment was read out by the learned Counsel, wherein the Hon'ble Division Bench

has held that in view of the facts in the said matter the period of delay has lost its significance and directions were given to the Tribunal for deciding the matters on merit.

7. In the above circumstances, the learned counsel has prayed for condoning the delay which has occasioned in filing the annexed Original Application by the applicant.

8. Smt. Sanjivani Deshmukh – Ghate, learned Presenting Officer opposed the submissions made on behalf of the applicant. The learned Presenting Officer has pointed out that none of the judgment relied upon by the learned counsel would be of any help as the facts in the judgments relied upon are distinguishable with the facts in the present matter. The learned Presenting Officer submitted that even if it is accepted that the legal position was settled in the year 2016, the delay which has occasioned in filing the accompanying Original Application is inordinate and no such reasons are assigned, which may be held as just and sufficient for condoning the huge delay of 8 years. The learned Presenting Officer further submitted that the employee for his grievance cannot wait for the decision in the matter of someone else and if he adopts such approach he will have to suffer for not initiating the actions within the stipulated period of limitation. The learned

Presenting Officer submitted that such fence sitters are not entitled for any relief. The learned Presenting Officer on the aforesaid grounds has prayed for rejecting the application for condonation of delay.

9. I have duly considered the submissions advanced on behalf of the applicant and the State authorities. I have also perused the documents filed on record. I have also gone through the judgments, which are relied upon by the learned counsel. The learned counsel has heavily relied upon the judgment and order delivered by this Tribunal in case of **Shri Sheshrao s/o Ramrao Kharate** (Original Application No. 424/2017) decided on 17.10.2019. According to the learned counsel said Shri Sheshrao and present applicant both are at par with each other and were co-employees. The learned counsel submitted that after the matter of Shri Sheshrao was decided, the present applicant also decided to file application claiming the said benefit and on principle of parity he is entitled for such relief and as such delay occasioned is to be condoned in the interest of justice.

10. The submissions as are made by the applicant are wholly unacceptable. When said Sheshrao has approached the Tribunal and agitated his grievance same promptness was

expected from the applicant and if he has waited for decision in the case of said Shri Sheshrao, he will have to suffer for not initiating the actions within the stipulated period of limitation. The Hon'ble Supreme Court has turned down the claim of such applicants and held them not entitled for any relief. Moreover, the facts in the case of Shri Sheshrao are different from the present matter. In the said matter the applicant Sheshrao was already granted benefit of ACP scheme and subsequently it was withdrawn and recovery was directed. The main issue therefore in the said matter was whether such recovery can be directed from the said applicant or not. In the present matter the applicant has come out with a case for ACP benefits which accrued in his favour in the year 1998. Why the applicant did not approach within the reasonable period has not at all explained by the applicant in the present Misc. Application.

11. Similarly the judgment relied upon by the applicant in case of the **State of Maharashtra & Ors. Vs. Tulshidas Vishwanath Dhanwade** (cited supra) is concerned, the facts involved in the said matter are altogether different from the facts which are existing in the present matter. Insofar as ratio laid down in the said matter, there cannot be any dispute, however, it is well settled that the ratio has to be applied to the

facts of the case. Therefore, the ratio laid in the case of **State of Maharashtra & Ors. Vs. Tulshidas Vishwanath Dhanwade** (cited supra) cannot be made applicable to the facts of the present case.

12. The learned counsel has also placed reliance on the order in **M.A. No. 109/2018 in O.A. St. No. 408/2018 with connected M.As.** In the said matter delay was of less than one year. In the circumstances, the present applicant cannot take assistance of the said order also. In the instant matter the delay is inordinate and has not been appropriately explained. The delay of longer period also can be condoned if the reasons are just and sufficient, but if no just and cogent reasons are assigned then the delay of even a shorter period cannot be condoned.

13. As noted hereinabove and as has been mentioned by the applicant in para 3 of his application he decided to file the accompanied Original Application after the judgment and order was delivered in the matter of Sheshrao Kharate. In the present application that is the foremost ground taken by the applicant to justify the delay caused on his part in approaching the Tribunal. I have discussed hereinabove that the applicant

cannot claim parity with Sheshrao Kharate as the dispute in the matter of Sheshrao Kharate was altogether different.

14. In addition to the aforesaid ground the applicant has also taken the other grounds, which include lack of finances and pandemic situation, as well as, ailment of the family members. However, in support of the grounds so raised the applicant has not placed on record any evidence. Even otherwise the delay of such huge period cannot be condoned on the aforesaid grounds. When the applicant has failed in bringing on record any just and sufficient reason explaining the delay, the applicant cannot be permitted to raise the stale claim seeking entitlement for the benefit accrued in the year 1998 after long period of 23 years. Hence, the following order :-

O R D E R

- (i) The Misc. Application rejected, however, without any order as to costs.
- (ii) In view of rejection of Misc. Application the registration of accompanied Original Application is refused.

VICE CHAIRMAN

Place : Aurangabad

Date : 27.3.2023