

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
MISCELLANEOUS APPLICATION NO.338 OF 2019  
IN  
ORIGINAL APPLICATION NO.600 OF 2019**

**DISTRICT : KOLHAPUR**

Shri Milind Manohar Dhule, )  
Age 41 years, Unpaid Copying Clerk in the office of )  
Tahsildar, Tal. Kagal, District Kolhapur )  
R/o Shahu Vasahat, Kagal, District Kolhapur )..Applicant

Versus

1. The District Collector, Kolhapur )  
2. The State of Maharashtra, )  
Through Principal Secretary, )  
Revenue Department, Mantralaya, Mumbai-32 )..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 5<sup>th</sup> December, 2019

PRONOUNCED ON : 9<sup>th</sup> December, 2019

**J U D G M E N T**

1. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. This MA is for condoning the delay in filing the OA.

**Brief facts:**

3. The applicant was appointed as Copying Clerk on 31.10.1997 in the establishment of respondent no.1 (Collector, Kolhapur). Following the policy decision taken by the Government by GR dated 10.3.2005 for absorbing persons who worked for 10 years in the service, the applicant filed OA No.1038 of 2014. On 11.12.2014 the applicant was allowed to withdraw the OA with liberty to file a fresh application for the same relief.
4. The applicant made representations on 2.4.2014 (Exh.C pg.18), 27.8.2015 (Exh.E pg.21), 22.11.2016 and 27.11.2017 (Exh.I pg.56 of OA).
5. On 27.6.2019 the applicant has filed present OA No.600 of 2019 praying to provide him benefits of the GR dated 10.3.2005 and set aside the impugned order dated 4.12.2017 (Exh.A pg.16 of OA) issued by respondent no.1. The impugned order rejected his representations mentioned above. The impugned order stated as under:

“महसूल विभागातील जे विनावेतन प्रतिलिपीक दिनांक १०.०३.२००५ च्या शासन निर्णयाच्या दिनांकास सलग १० वर्ष व त्यापेक्षा जास्त काळ सलग कार्यरत होते त्यांना महसूल विभागात तृतीय श्रेणीतील उपलब्ध रिक्त पदावर सामावून घेणे अनुज्ञेय राहिल अशी तरतूद आहे.

आपल्या विनंती अर्जाचे अवलोकन केले असता, आपणास दिनांक १०/०३/२००५ रोजीच्या शासन निर्णयान्वये विनावेतन प्रतिलिपीक म्हणून १० वर्षे पुर्ण झालेली नसलेने तसेच शासन निर्णय दिनांक ०२/०९/२०१६ नुसार

अटीची पुर्तता करत नसल्याने आपल्या विनंती अमान्य करणेत येऊन आपला विनंती अर्ज निकाली काढणेत आलेला आहे.”

(Quoted from page 16 of OA)

6. On 27.6.2019 the applicant has filed present MA No.338 of 2019 in OA No.600 of 2019 for condoning the delay of 6 months and 22 days in filing the OA.

7. As per the record produced by the applicant he had made representation on 2.4.2014 stating that he has been serving from 31.10.1997 and therefore he should be absorbed as Talathi and he had filed OA No.1038 of 2014 which was allowed to be withdrawn on 11.12.2014 with liberty to file a fresh application for the same relief.

8. Even then the applicant has submitted that the delay be counted from the date of impugned order viz. 4.12.2017 and not from the date of directions issued by the Tribunal on 11.12.2014.

9. In the MA the applicant has mentioned various reasons in support of his prayer for condoning the delay. The same are summarized as under:

(i) *The applicant decided to change the Advocate to enable him to review the decision or to approach the Tribunal afresh. The Advocate asked him to file fresh OA.*

(ii) *He did not have adequate funds for the litigation.*

(iii) *He did not have proper guidance. However, one retired Dy. Superintendent of Police guided him and helped him financially to meet the litigation expenses.*

(iv) *He learnt that similar matters OAs No.385/2017 and 695/2017 have been filed.*

(v) *He decided to wait for the decision of these OAs so that he may get the same relief.*

(vi) *On 17.5.2019 OAs No.385/2017 and 695/2017 have been decided and the applicants were allowed the relief of absorption.*

(vii) *The applicant became aware that on 25.2.2019 the Hon'ble Bombay High Court had decided Writ Petition No.6162 of 2018 confirming the decision of the Tribunal dated 9.8.2017 in OA No.1134 of 2016, which according to the applicant, has similar facts.*

(viii) *He therefore approached the same Advocate who had filed earlier two matters.*

10. Ld. Advocate for the applicant has prayed to condone the delay. He has relied on the judgment dated 6.11.2019 of the Hon'ble Bombay High Court in Writ Petition No.2000 of 2019 in Pradip Sudhakar Bhore Vs. The Superintendent of Police, Sangli & Ors. The relevant portion from the same is as under:

*“8. The petitioner has explained the said delay of one month by making necessary averments in the Original Application. In Para 3 of the said application the petitioner stated that after receipt of the Revision order, he suffered from mental shock and he was required to look after his health which consumed a lot of time. The petitioner has also stated that being without any source of income, he had to look after the welfare of his family with the financial help from his relatives and friends. In Para 4 of the said application the petitioner stated that it is only in January-February 2018, he could become stable. The petitioner was thereafter advised to file Original Application in the Maharashtra Administrative Tribunal. It is the specific contention of the petitioner that he received advise from the Friend Officer/Defence Assistant only in the month of May 2018. In Para 5 the petitioner has further stated that he approached the lawyer at Mumbai in the first week of June 2018 and not prior thereto as the Court was closed for summer vacation. He has further stated that his lawyer advised him to*

*collect more papers. The petitioner collected required papers and then approached the lawyer in the second week of June 2018. Thereafter, the lawyer drafted the Original Application and the same came to be filed on 27.06.2018.”*

11. Respondents No.1 & 2 have filed affidavit and contested the claims made by the applicant. According to the respondents, the delay should not be condoned and the MA be dismissed.

Observations:

12. Following the GR dated 10.3.2005 allowing absorption of those who completed 10 years of service, the applicant was aware and made a representation on 2.4.2014. As the same was not decided within a period of 6 months he filed OA No.1038 of 2014. When the matter came up for hearing on 11.12.2014 he was allowed to withdraw the OA with liberty to file fresh application for the same relief. As his grievance persisted, he could have filed fresh OA within the period of limitation viz. one year. Contention of the applicant that he did not have adequate money and he was ignorant about the procedure to be followed is open to questioning. He was working as Talathi and cost of litigation was within his reach. He had filed OA earlier in the year 2014 and was fully conversant with the legal avenues open to him. After 2014 he continued to make representations from time to time and the same has been replied on 4.12.2017. However, continuation of representation cannot be the ground for condonation of delay as per the observations of the Hon'ble Supreme Court in the case of Jai Dev Gupta Vs. State of Himachal Pradesh & Anr., decided on 3.9.1997. The relevant portion is as under:

*“The appellant has preferred this appeal claiming the difference in backwages from the date of his posting as Lecturer in Commercial Arts.*

*Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May, 1989. We do not think that such an excuse can be advanced to claim the difference in backwages from the year 1971. In Administrator of Union Territory of Daman and Diu & Ors. Vs. R.D. Valand 1995 Supp(4) SCC 593 this court while setting aside an order of Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in backwages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking [section 21](#) of the Administrative Tribunals Act for restricting the difference by backwages by one year.”*

Thus the fact that his representation was decided on 4.12.2017, which he has impugned, cannot be considered as satisfactory ground for condoning the inordinate delay from 2014.

13. The fact that the OA by similarly situated persons was filed in the year 2017 was well known as the applicants in these OAs were agitating for the same cause. The contention by the applicant that he waited for the outcome of the OAs till May, 2019 clearly shows that he had decided to file this OA as an afterthought and the plea taken by him that he was ignorant about the procedure and did not have adequate monetary funds is a lame excuse.

14. As seen from the record the GR is issued on 10.3.2005 and therefore the applicant was eligible to demand the implementation of the same right from that date if he was eligible. Rather than moving the appropriate forum immediately he has waited till 2014 and filed OA in the year 2014 which he had withdrawn on 11.12.2014 and was allowed to file fresh application. Even thereafter he preferred not to approach the Tribunal and kept on making representations to respondent no.1. There is inordinate delay of at least five years in filing this OA and is not explained satisfactorily.

15. In the Writ Petition No.2000 of 2019 the Hon'ble High Court had condoned the delay of one month. The facts and circumstances of that case are much different than in the present case. Hence, his reliance on the decision given in W.P. No.2000 of 2019 (supra) is of no assistance in the present case.

16. As stated above the applicant has filed this case as an afterthought and after waiting inordinately for the decision in the similar OAs till May, 2019. This cannot be considered as a satisfactory ground to condone the delay made by him voluntarily.

17. Hence, there is no merit in the MA and the same is therefore rejected for above mentioned reasons. No order as to costs.

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**9.12.2019**

Dictation taken by: S.G. Jawalkar.