

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1291 OF 2022

**DISTRICT : MUMBAI
SUBJECT : ACPS**

Shri Khalid Abdul Hai Mehvy)
Age : 72 Yrs., Occ : Retired Govt. Officer)
Address: 3/44, Badani Nagar, Malad (E),)
Mumbai 400 091.)... **Applicant**

Versus

1) The State of Maharashtra,)
Through The Secretary, Employment and)
Self -Employment Department,)
Govt. of Maharashtra,)
Mantralaya, Mumbai – 400 032.)

2) The Director, Directorate of)
Employment and Self Employment,)
Maharashtra State, 3rd floor,)
Konkan Bhavan, CBD Belapur,)
Navi Mumbai 400 614.)... **Respondents**

Shri Chandrkant T. Chandratre, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 10.07.2023.

JUDGMENT

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. When the matter is taken up for hearing it is noticed that the issue of limitation is involved and O.A. could be disposed on the point of limitation only.

3. The Applicant has challenged communication dated 24.12.2021 whereby he was informed that his claim for ACPS for the post of Deputy Director is already rejected by communication dated 03.08.2009 and no ground is made out to review the communication dated 03.08.2009. He was accordingly informed that he is not entitled for benefit of ACPS scheme.

4. The Applicant stands retired on 31.12.2007 as Assistant Director. It is only after retirement he made representation dated 11.02.2009 claiming the benefit of ACPS for the post on Deputy Director. Respondents by letter dated 03.08.2009 informed him that he is not entitled for the said benefit since DPC in meeting dated 04.04.2008 held him unfit for the promotion since he had refused the promotion. Respondents therefore by communication dated 03.08.2009 informed the Applicant that he is not eligible and entitle for the benefit of ACPS.

5. Strangely, the Applicant remained silent for near about 11 years and belatedly made representation on 15.07.2020 again reiterating claim for APCS. His representation dated 15.07.2020 is again rejected by communication dated 24.12.2021 which is challenged by the Applicant in present O.A.

6. The facts as narrated above are not in dispute. It is only after retirement the Applicant raised his grievance by communication dated 11.02.2009 and it was rejected by the communication dated 03.08.2009. As such, cause of action accrued to the Applicant on receipt of letter dated 03.08.2009 and he ought to have been filed the O.A. within one year from 03.08.2009. However, he remained spectator and made representation after 11 years on 15.07.2020. The said representation has been again rejected by communication dated 24.12.2021.

7. Thus, once the Applicant got cause of action in view of communication dated 03.08.2009 he ought to have availed legal remedy

by filing O.A. within one year but admittedly he failed to do so. That apart he remained silent for 11 years and then made representation on 15.07.2020. Such making representation after lapses of 11 years and decision thereon would not extend or revive old and stale cause of action which was accrued to the Applicant on receipt of communication dated 03.08.2009.

8. As per Section 21(i) read with Section 20(2) of Administrative Tribunal Act, 1985 the Applicant was required to file O.A. within one year from 03.08.2009 or in case representation is made, he ought to have been filed O.A. after expiration period of 18 months. However, in present case he did not make any such representation within a period of one year from the communication dated 03.08.2009. He made representation after 11 years on 15.07.2020. This being so, communication dated 24.12.2021 reiterating the earlier decision dated 03.08.2009 would not give the Applicant fresh lease of life to file O.A. challenging the decision of refusal to grant of benefit of ACPS. O.A. is thus hopelessly barred by law of limitation and liable to be dismissed.

9. The submission advanced by learned Advocate for the applicant that for notional purposes the Applicant is entitled for the benefit of ACPS for pension purpose and to that extent relief could be granted is totally palatable. The Applicant fail to challenge communication dated 03.08.2009 within the period of limitation and remained silent for years together. It is only in the case the communication dated 03.08.2009 found incorrect on merit in that event only such cause of action could be permissible. Whereas, in present case the challenge to the claim for the denial of benefit of ACPS itself is hopelessly barred by limitation.

10. At this juncture, it would be apposite to refer the Judgment of the Hon'ble Supreme Court in ***State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. reported in (2014) 6 SCC 460*** wherein again, the same principle as regards law of limitation has been reiterated. The

Hon'ble Supreme Court held that the period of limitation commences from the date on which cause of action arises for the first time and simply making of representations in absence of any statutory provision, the period of limitation would not get extended. It is further held that, in absence of any provision with regard to statutory appeal simply making of representations, the period of limitation would not get extended. This authority holds the field and clearly attracted to the present case.

11. Learned P.O. placed reliance on **(2010) 7 SCC 525 (Naresh Kumar V/s Department of Atomic Energy & Ors.)** wherein it has been held that where employee keeps making repeated representations which have consistently rejected, it cannot be the ground for not approaching the Court/Tribunal with the period of limitation.

12. In this view of the matter, I conclude that O.A. is barred by limitation and liable to be dismissed on point of limitation itself.

13. The Original Application is dismissed with no order as to costs.

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

Place: Mumbai
Date: 10.07.2023
Dictation taken by: N.M. Naik.

Uploaded on: _____