

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION NO 41 OF 2016**

DISTRICT : BULDHANA

Shri Premdas Varjan Jadhav ,)
Occ : Unemployed, R/o: Vitthalwadi,)
Tal - Mehakar, Dist-Buldhana,)
Maharashtra.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Inspector General of Police,)
Having office at Colaba, near Regal)
Cinema, Mumbai.)
2. Superintendent of Police,)
For Lohmarg Police, having office at)
Ajni, Nagpur.)...**Respondents**
3. The Director General of Police,)
Through Spl. IG of Police (estt.),)
Colaba, Mumbai.)

Shri N.B Rathod, learned advocate for the Applicant.

Shri P.N Warjekar, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)**

DATE : 11.08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri N.B Rathod, learned advocate for the Applicant and Shri P.N Warjekar, learned Presenting Officer for the Respondents

2. This Original Applicant has been filed by the Applicant challenging the order dated 28.8.1998 passed by the Respondent no. 2 and the order dated 17.12.2015, passed by the Respondent no. 3.

3. Learned Counsel for the applicant argued that the Applicant was appointed as a Police Constable by the Respondent no. 2 by order dated 14.5.1998. He joined the Service. But by impugned order dated 28.8.1998, his services were terminated as not required. The Applicant was orally informed that he did not disclose in the attestation form about pendency of a criminal case against him. The Applicant filed appeal against order dated 28.8.1998 on 26.9.2001. The appeal was not decided for six months and the Applicant filed O.A no 283/2014 and by order dated 31.1.2015, this Tribunal directed the Respondent no. 1 to decide the appeal within a period of 4 weeks. The order in appeal was passed on 17.12.2015 and this Original Application has been filed challenging the same. Learned Counsel for the Applicant argued that in the Bombay Police (Punishment & Appeal) Rules, 1956, there is no provision of any simplicitor termination. Under Rule 4 ibid, a Police

personnel cannot be removed without conducting a Departmental Enquiry. A probationer cannot be discharged from service on account of his unsuitability and that will amount to removal from service as a punishment. The Applicant could not have discharged from service. The Government has issued Circular dated 13.7.1988, which provides that if a candidate had suppressed information about pendency of a criminal case, his services can be terminated, if the offence was of violence or of moral turpitude and if he is convicted by a court of law. This Circular was ignored. The Applicant was very young and could not appreciate how to fill the attestation form. He did not submit false information intentionally. The Respondent no. 2 passed the order without giving any notice to the Applicant. The Applicant was removed from service for participating in political activities before joining service which is untenable. Learned Counsel for the Applicant relied on various judgments, which are discussed subsequently.

4. Learned Presenting Officer (P.O) argued that the Applicant was not removed from service by way of punishment. No action was taken against him under the Bombay Police Act or the Bombay Police (Punishment & Appeal) Rules and as such, there was no question of any appeal against the order dated 28.8.1998. The Applicant's services were terminated as he submitted false information in the Attestation Form. The Attestation Form made it clear that if false information was furnished, services of a candidate were liable to be terminated. The Applicant's services were terminated in terms of conditions of the Attestation Form. As

the Applicant was not accused of any misconduct after he joined service, there was no question of holding any Departmental Enquiry (D.E) against him.

5. Learned Presenting Officer argued that the present Original Application is hopelessly barred by limitation. Hon'ble Supreme Court has held that a dead cause of action cannot be revived by filing a belated representation and obtaining order from a Court/Tribunal to decide that representation. Decision on such a representation will not revive a dead cause of action.

6. Learned Presenting Officer argued that a discharge simplicitor is permissible provided when the foundation of such an order is unsatisfactory performance. However, in the present case, the services of the Applicant were terminated for giving false information.

7. The Applicant has stated in O.A that the Respondent no. 3 has passed the order on 17.12.2015 and therefore, the Original Application is within limit. Let us examine the order dated 17.12.2015. It is passed by the Director General of Police, Maharashtra State, Mumbai. It is noted that there is no appeal against 'Simplicitor Termination' under the Bombay Police Act. The Applicant's services were terminated as he had furnished false information in the Attestation Form, and it was clearly mentioned in the Attestation Form that a candidate furnishing false information was liable to be terminated. Before that the Applicant had filed O.A no 283/2014 before this Tribunal. By

judgment dated 31.1.2015, this Tribunal directed the Respondent no. 3, to take a decision on the appeal/representation dated 26.9.2001 within a period of 4 weeks. In the case of C. JACOB Vs. DIRECTOR OF GEOLOGY & MINING, AIR 2009 S.C 264, Hon'ble Supreme Court has examined the issue of the modus of representation adopted by several claimants/petitioners to get over the bar of limitation / delay and laches. Hon'ble Supreme Court has held that:-

“Every representation to the Government for relief may not be replied on merits. Representations relating to matters which have become stale or barred by limitation can be rejected on that ground alone, without examining the merits of the claim.”

It is further held that:-

“When a direction is issued by a Court/Tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount do disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the Court or Tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgement of a jural relationship to give rise to fresh cause of action.”

8. In the present case, the order of termination of services of the Applicant was passed by the Respondent no. 2 on 28.8.1998. The Applicant did not challenge the order before any judicial forum till 2014, when he was acquitted in the criminal case in 2001. Repeated representations to authorities will not keep a claim alive for 13 years. This judgment of Hon'ble Supreme Court is applicable in toto in the present case, and this Original Application is liable to be dismissed on the ground of limitation only.

9. The Applicant claims that he had filed an appeal against the order dated 28.8.1998 before the Respondent no. 3, who has held that no appeal lies. At the most, the Applicant can be said to have file a representation. As the Applicant was not punished, there was no question of holding a D.E against him. A D.E is started only for a misconduct during the employment. The Applicant's services were terminated as he furnished false information in the Attestation Form. Even if G.R dated 13.6.1988 is considered, the Applicant was involved in a case of mob violence. The judgment delivered by Learned Judicial Magistrate, First Class, Mehkar in C.R no 111/2011 in Cr.C. no. 72/1998 dated 28.3.2001 makes it clear that the Applicant was alleged to be part of a mob and was accused of rioting. The decision of the Respondent no. 2 dated 28.8.1998 was based on the situation obtaining then. If the Applicant was acquitted on 28.3.2001, and if his representation for taking him back in service was not considered, it could have taken recourse of available legal remedies in time. He did not file Original Application till 2014, when the matter has become stale. We

find that on merits also, the order dated 28.8.1998 was legal and proper, as the Attestation Form itself made it clear that furnishing false information may lead to termination of services.

10. We find that this Original Application is not maintainable for the reasons mentioned hereinabove and it is dismissed with no order as to costs.