

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.525 OF 2019

DISTRICT : KOLHAPUR

Dr. Ramchandra B. Nirmale.)
Medical Officer Group 'A' (Retired),)
Age : Adult, Occu.: Retired, Residing at)
107, Tyagraj, Lokpuram, Pokharan Road)
No.2, Thane West.)...**Applicant**

Versus

1. The Commissioner.)
Employees' State Insurance)
Corporation, 6th Floor, Panchdeep)
Bhavan, N.M. Joshi Marg,)
Lower Parel, Mumbai – 400 013.)
2. The State of Maharashtra.)
Through the Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mrs. V.K. Jagdale holding for Shri K.R. Jagdale , Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 25.09.2020

JUDGMENT

1. The Applicant who stands retired on 31.08.2008 has filed O.A. on 07.06.2019 to treat his earlier service from 1978 as regular service for

the benefit of Assured Career Progression Scheme (ACPS) in terms of G.R. dated 20.07.2001 and to re-fix his salary as well as pension.

2. Though the Applicant stands retired on 31.08.2008, he is seeking the relief on the basis of Judgment delivered by this Tribunal in O.A.632/2011 in the matter of Dr. Anjali Warke Vs. State of Maharashtra decided by Tribunal on 12.10.2012. The Applicant and Dr. Warke were admittedly appointed in same batch in 1978 and they were regularized by order dated 02.07.1996 (Page No.43 of Paper Book). The Applicant claims to be similarly situated person, and therefore, has filed the present O.A. belatedly on 07.06.2019 without making any application for condonation of delay. Material to note that when O.A. was filed, the Office has raised specific objection that no application for condonation of delay is filed.

3. The Respondents resisted the O.A. contending that the facts of the decision of Dr. Warke's matter being different, the said decision is not applicable to the present Applicant. The Respondents contend that the benefit of Time Bound Promotion was granted to the Applicant from 2008 considering his service from the date of regularization by order dated 02.07.1996. As the Applicant had completed 12 years' service in 2008, he was not given the benefit of 1st Time Bound Promotion w.e.f. 2008. Whereas, the Applicant is claiming the benefit of Time Bound Promotion from 2001 contenting that his earlier service period from 1978 to 1996 ought to have been considered for the benefit of 1st Time Bound Promotion Scheme.

4. During the course of hearing, specific query was raised by the Tribunal about the law of limitation. All that, the learned Advocate for the Applicant submits that the Applicant's claim is based on the decision delivered in the matter of Dr. Warke, and therefore, the benefit needs to be granted being similarly situated person.

5. The perusal of decision in Dr. Warke's case in O.A.632/2011 reveals that the facts were slightly different. Dr. Warke appears to have

refused promotion on the ground that it was ad-hoc promotion. Whereas, Respondents contend that Dr. Warke having refused promotion, he is not entitled to the benefit of Time Bound Promotion. However, the Tribunal by decision rendered on 12.10.2012 allowed O.A. with the finding that the Applicant was entitled to the benefit considering his entire service since 1978 and he was justified in declining to accept ad-hoc temporary promotion. As such, leaving aside the issue of refusal of temporary promotion, there is no denying that the benefit of 1st Time Bound Promotion was granted to Dr. Warke considering his temporary service from 1978. However, in the present case, the foremost issue which goes to the root of the matter is whether the O.A. is filed within limitation and it is maintainable without filing application for condonation of delay.

6. As per Section 20 of Administrative Tribunals Act, 1985, the Tribunal shall not ordinarily admit an application unless it is satisfied that the Applicant had availed all the remedies available to him under the service rules as to redressal of grievances. Whereas, as per Section 21 of Administrative Tribunals Act, 1985, the Tribunal shall not admit an application unless it is filed within one year from the date of which the Government has passed order about the grievance raised by the employee. Whereas, as per Clause (b), the Tribunal shall not admit an application in case where an appeal or representation such as mentioned in Clause (b) of sub-section 2 of Section 20 has been made and a period of six months had expired thereafter without such final order having been made within one year from the date of expiry of the said period of six months.

7. Now, turning to the facts of the present case, the pleadings does not show that the Applicant has made any such representation to the Respondents raising the grievance of grant of benefit of 1st Time Bound Promotion Scheme considering his temporary service from 1978 to 1996 nor copy of any representation is forthcoming on record. It is thus quite clear that O.A. is solely based on the decision rendered in Dr. Warke's

case which was decided by the Tribunal on 12.10.2012. There is absolutely no averment in O.A. as to how it is within limitation. The pleading is totally silent on this material point. Though Office has raised specific objection on the point of delay, the same is not taken care of and no application is filed for condonation of delay.

8. As stated above, the Applicant stands retired on 31.08.2008. The decision in Warke's case rendered by the Tribunal on 12.10.2012. However, he did not make representation to the Department nor filed O.A. within a reasonable time after retirement. He apparently slept over his right which he claims to have accrued in view of decision rendered by this Tribunal in Warke's case on 12.10.2012. Even assuming that the Applicant being similarly situated person and is entitled for the said relief, the O.A. ought to have been filed in compliance of Section 20 read with Section 21 of Administrative Tribunals Act, 1985. The Applicant slept over his right for more than 11 years from the date of retirement and filed the present O.A. quite belatedly on 07.06.2019. Needless to mention that the issue relating to service matter has to be raised within a reasonable time and one cannot be allowed to slept over his right for 11 years and then to file O.A. for the benefit under the guise of similarly situated person. Therefore, such belated and stale claim of benefit of Time Bound Promotion filed after 11 years from the date of retirement without making any application for condonation of delay or without any pleading to that effect in O.A. is not at all maintainable. If such O.A. is allowed to entertain, the provisions of law of limitation would render nugatory.

9. It would be apposite to refer the decision of Hon'ble Supreme Court **1999 AIR SCW 3911 (Ramesh C. Sharma Vs. Udham Singh Kamal & Ors.)** wherein in Para No.7, the Hon'ble Supreme Court in similar situation held as follows :-

“7. On perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given

before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled, see Secretary to Government of India and Others v. Shivam Mahadu Gaikwad, [1995] Supp. 3 SCC 231.

10. Similarly, in **2001 AIR SCW 2351 (Ragho Singh Vs. Mohan Singh & Ors.)**, the Hon'ble Supreme Court held that in absence of application for condonation of delay, the delay cannot be deemed to have been condoned and appeal was dismissed being barred by limitation.

11. In **AIR 2011 SC 1085 (Union of India & Ors. Vs. A. Durairaj)** in Para No.13, the Hon'ble Supreme Court held as under :-

"13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches."

12. Reference of **1994 AIR SCW 2562 (Secretary to Government of India Vs. Shivram M. Gaikwad)** would be also apposite wherein order of discharge from service was challenged after four years from the date of discharge without making any efforts to explain any delay and to seek for condonation of delay. The O.A. was found barred by limitation and accordingly dismissed.

13. Now turning to the facts of the present case, the decision in Dr. Warke's matter which was decided by the Tribunal on 12.02.2012 would not enthrone fresh lease of life to revive the claim which is otherwise stale and dead.

14. The Applicant ought to have made an application for condonation of delay that he had sufficient cause for not making application within the period of limitation as provided under Section 21(3) of Administrative Tribunals Act, 1985. However, despite objection raised by Office, no such application has been made. Therefore, in absence of any such application, the O.A. cannot be entertained.

15. In view of above, the O.A. deserves to be dismissed being barred by law of limitation. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 25.09.2020

Dictation taken by :

S.K. Wamanse.