

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.793 OF 2019**

**DISTRICT : MUMBAI**

Shri Dattatraya Pandurang Nagare. )  
Age : 48 Yrs., Occu.: Rationing Officer, )  
Matunga and residing at B-202, Swami )  
Vivekanand CHS, Sion Koliwada, )  
Mumbai – 400 022. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Food Civil Supplied & Consumer )  
Protection Dept., Madam Cama Rd, )  
Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai 400 032. )

2. The Controller of Rationing & )  
Director, Civil Supplies, LIC Building )  
5<sup>th</sup> Floor, 14, Jamshethji Tata Road, )  
Mumbai. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 24.11.2021**

## **JUDGMENT**

1. In the present O.A, the Applicant has challenged the impugned order of punishment dated 03.08.2013 passed by Respondent No.2 imposing punishment of withholding of one increment with cumulative effect and in alternative, he prayed for direction to Respondent No.1 to hear his revisions as well as application for condonation of delay afresh on merit.

2. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

3. When the matter is taken up for hearing, at the very outset, the learned P.O. raised objection about maintainability of O.A. and I find substance therein.

4. The following are the events material for consideration :-

(i) The Respondent No.2 – Controller of Rationing and Director Civil Supplies by order dated 03.08.2013 imposed punishment of withholding of one increment with cumulative effect in departmental enquiry invoking Rule 6(2) and Rule 9(3) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979').

(ii) Though order of punishment was appealable and appeal is required to be filed within 45 days, the Applicant did not prefer any appeal and remained silent spectator.

(iii) It is only on 21.09.2016, the Applicant filed revision/review invoking Rule 25(a) of 'D & A Rules of 1979' before Respondent No.1, that too, without making any application for condonation of delay.

(iv) The Respondent No.1 by order dated 28.12.2016 rejected the said revision on the ground that it has been filed belatedly after three years and four months and not maintainable.

(v) Thereafter, Applicant again filed Review Application quoting Rule 25(a) of 'D & A Rules of 1979' on 09.03.2017 before Respondent No.1 with prayer to condone the delay. That time, no separate application was made for condonation of delay, but prayer was made in revision memo.

(vi) The Respondent No.1 rejected it by order dated 03.04.2017 stating that appellate authority has taken decision not to condone delay and accordingly dismissed the revision.

(vii) Then again, Applicant filed application for condonation of delay accompanied with Review Application on 27.04.2018 before Respondent No.1.

(viii) The Respondent No.1 again dismissed it by order dated 31.07.2018 on the ground that it is filed after 4 years and 7 months from the date of punishment.

5. It is on the above background, the Applicant has challenged the order of punishment dated 03.08.2013 as well as also challenged the orders dated 28.12.2016, 03.04.2017 and 31.07.2018 and in alternative, he prayed for direction to remand the matter to Respondent No.1, so as to decide the point of condonation of delay and then decide Revisions on merit.

6. The learned Advocate for the Applicant tried to contend that because of ailment of Applicant himself and family members, he could not file appeal within 45 days from the date of order of punishment dated 03.08.2013 and contends that the Applicant was unable to challenge the impugned order of punishment within the period of limitation.

7. Whereas, learned P.O. submits that O.A. itself is not maintainable, since Applicant slept over his right for years together and went on filing revision without filing appeal, that too, without making application for condonation of delay. He submits that the O.A. itself is not maintainable being barred by limitation. He has pointed out that no such application for condonation of delay is filed along with this O.A.

8. Indisputably, the punishment order dated 03.08.2013 was appealable, but Applicant preferred not to file appeal and remained silent spectator for more than three years. Instead of filing appeal, he then filed revision in 2016, that too, without making an application for condonation of delay, and therefore, it was rejected by Respondent No.1 on 28.12.2016. As such, the cause of action was accrued to the Applicant on 28.12.2016 and he should have challenged that order by filing O.A. within the period of limitation of one year. However, he did not file O.A. and went on filing review before same authority again and again.

9. He then filed Review Application on 09.03.2017 and that time, for the first time in revision memo, he prayed for condonation of delay. Even that time also, no separate application for condonation of delay was made. The Respondent No.1 rejected Review Application by order dated 03.04.2017. That was again an opportunity to the Applicant to challenge the said order by filing O.A, but he did not choose to file O.A.

10. Then again, Applicant has filed Review Application along with separate application for condonation of delay before Respondent No.1 on 27.04.2018 which came to be dismissed being barred by limitation by order dated 31.07.2018.

11. Insofar as ground of illness is concerned, some Medical Certificates are produced, but it does not establish the ailment of Applicant and his family members for years together so as to construe that Applicant was

prevented from challenging order of punishment within the period of limitation. Some prescription of medical does not establish continuous ailment, so as to unable to approach legal forum. Those are for short period. As such, it cannot be said that the Applicant was suffering from any such serious ailment for 3/4 years rendering him disabled to file appeal against the impugned order.

12. Needless to mention that mere filing of successive revision which is not permitted in law and would not extend the period of limitation. The Applicant was subjected to punishment by order dated 03.08.2013 which was required to be challenged by filing appeal within 45 days, but for three years, he remained silent and then filed revision instead of filing appeal. Even if it was to be treated as appeal, then it should have been accompanied with application for condonation of delay. However, no such application was made for condonation of delay, and therefore, it was rightly dismissed on 28.12.2016. Therefore, the Applicant ought to have challenged that order before this Tribunal within the period of limitation of one year, since he got cause of action on 28.12.2016. Therefore, this O.A. filed on 14.08.2019 is clearly barred by limitation in terms of Section 21 of Administrative Tribunals Act, 1985. Notably, no such application for condonation of delay is filed along with this O.A. Suffice to say, the challenge to the punishment order dated 03.08.2013 as well as order dated 28.12.2016 are hopelessly barred by limitation.

13. Subsequent filing of revisions twice will not extend the period of limitation, since there was no such statutory provision of filing successive review or revision before the same authority. Therefore, cause of action accrued on 03.08.2013 or 28.12.2016 will not revive. It is only in matter where revision is statutorily provided limitation start from final order in such revision.

14. It is thus apparent that Applicant has slept over his right. The challenge to the order of punishment is barred by limitation and O.A. is liable to be dismissed. Hence, the following order.

**ORDER**

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

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 24.11.2021  
Dictation taken by :  
S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2021\November, 2021\O.A.793.19.w.11.2021.Service Benefits.doc

Uploaded on