

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.577 OF 2019
WITH
MISCELLANEOUS APPLICATION NO.316 OF 2019**

DISTRICT : PUNE

Shri Ashok Fulchand Jadhav,)
Age 47 years, occ. Service,)
R/o Bibwewadi, V.No.122,Near Suhas Mangal Karyalay)
Datta Mandir, Pune)..Applicant

Versus

1. DIG, State Reserve Police Force, Pune)
2. The State of Maharashtra,)
Through Principal Secretary, Home Department,)
Mantralaya, Mumbai)..Respondents

Shri N.P. Dalvi – Advocate for the Applicant

Ms. Neelima Gohad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.P. Kurhekar, Member (J)
RESERVED ON : 15th October, 2019
PRONOUNCED ON : 17th October, 2019
PER : Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri N.P. Dalvi, learned Advocate for the Applicant and Ms. Neelima Gohad, learned Presenting Officer for the Respondents.
2. The above M.A. No.316 of 2019 is for condoning delay of 3 years and 2 months in filing OA No.577 of 2019. In the OA the applicant has prayed to quash the impugned order dated 12.4.2005 and appellate order dated 19.5.2016 (Exhibit F & G respectively in OA). DE was conducted against the applicant for indisciplined behavior, for sending letters to the then Dy. Chief Minister and Home Minister leveling serious charges. The conclusion of the appellate order reads as under:

“निष्कर्ष :-

सदर प्रकरणी अपिलार्थीची बाजू ऐकून घेण्यात आली. तसेच उपलब्ध कागदपत्रे तपासण्यात आली. अपिलार्थीवरील दोषारोप विभागीय चौकशीत सिध्द होत असल्याचे दिसून येते. अपिलार्थी यांचे सेवाभिलेख खूपच निकृष्ट स्वरूपाचे आहेत. तसेच त्यांचे वर्तनही अतिशय बेशिस्त आहे. त्यामुळे अपिलार्थीला शासन सेवेतून बडतर्फ केले. तसेच अपिलार्थीविरुध्द बलात्कार प्रकरणी दौंड पोलीस स्टेशन येथे गु.र.क्र.१०७/२००३, भादंवि कलम ३७६, ४५१, ५०६ अन्वये गुन्हा दाखल होता. सदर गुन्हातील कलम ३७६ व ५०६ मध्ये मा.जिल्हा सत्र न्यायालय, बारामती येथे चालू असलेल्या केसचा निकाल दि. १/२/२००६ रोजी लागला असून, अपिलार्थीला भादंवि कलम ३७६ खाली (०७) वर्ष सक्तमजुरी व रु.५०००/- दंड व भादंवि कलम ४५१ व ५०६ खाली १ वर्ष सक्तमजुरी व रु.५००/- दंड अशा शिक्षा झालेल्या आहेत. त्यामुळे उपरोक्त वस्तुस्थिती विचारात घेता, अपिलार्थी श्री. अशोक फुलचंद जाधव, सपोना/२५१ यांचा फेरअपील अर्ज फेटाळण्यात येत असून त्यांना शिस्तभंग प्राधिकारी यांनी दिलेली “सेवेतून बडतर्फ” ही शिक्षा अपिलात कायम करण्याचा अपिलीय प्राधिकारी तथा मा. राज्यमंत्री गृह (शहरे) यांनी दिला आहे.”

(Quoted from page 58 of OA)

3. According to the applicant while the DE was in process he was arrested for an offence punishable under Section 376 of IPC. The

Sessions Judge convicted him for this offence. He made appeal against the same in the Hon'ble High Court and the Hon'ble High Court allowed his appeal on 18.3.2019 and acquitted him. According to the applicant he was waiting for judgment from the Hon'ble High Court and as such it resulted in delay of 3 years and 2 months. Hence, the applicant has submitted that the delay may be condoned.

4. Respondent No.1 (DIG, SRPF, Pune) has filed his affidavit contesting the MA. According to the respondents DE was ordered against the applicant for his indisciplined behavior in the form of sending application to the then Dy. Chief Minister leveling serious allegations. The applicant further threatened to commit self-immolation before the Secretariat along with his family. However, inspite of providing him repeated opportunities for giving his explanation, he refused to do so. DE was concluded resulting in his dismissal from service. Revision filed by applicant confirmed the punishment of dismissal from service. The affidavit further submits that dismissal of the applicant was for indisciplined behavior and not related to conviction of offence under Section 376 of IPC. Hence, respondents have submitted that the delay should not be condoned as there is no satisfactory reason furnished for approaching the Tribunal after inordinate delay of more than 3 years.

5. We have seen the charges leveled against the applicant in the DE. These pertain to his indisciplined behavior and submitting an application to the Dy. Chief Minister making serious allegations. The applicant has been dismissed as the charges have been proved after conclusion of the DE. We have also seen the orders passed by the appellate authority confirming the punishment. The concluding part of the order mentions that the applicant has been dismissed due to his indisciplined behavior. In addition it also states that the applicant has been convicted under Section 376 of IPC. After taking into account all the relevant material the

order issued by the disciplinary authority dismissing the applicant has been confirmed by the appellate authority. This order has been issued on 19.5.2016 (Exhibit G) and challenged by the applicant.

6. The applicant was at liberty to agitate against this order from 19.5.2016. However, he has preferred not to do so. Meanwhile the applicant had moved the Hon'ble High Court against his conviction under Section 376 of IPC and the Hon'ble High Court acquitted him on 18.3.2019. Following the acquittal the applicant has filed this MA for condoning delay of 3 years and 2 months. There is no link between the acquittal in criminal offence and his dismissal in the DE. The applicant has made unsuccessful attempt to link the two and taking advantage of the acquittal by Hon'ble High Court he has made this effort to approach the Tribunal as an afterthought. The applicant has failed to demonstrate any sound reasoning to condone the delay. MA has been filed hopelessly after prolonged delay and therefore deserves to be dismissed.

7. True while deciding application for condonation of delay the Court or Tribunal should take justice oriented approach and hyper-technical approach should be avoided. As per Section 5 of Limitation Act delay can be condoned if sufficient cause is made out for not preferring OA within the period of limitation. In present case the explanation or reason sought to be afford by the Ld. Advocate for the applicant that because of the then existing conviction under Section 376 of IPC applicant would not have been entitled for reinstatement in service even if he had filed OA within limitation is nothing but fallacious and misconceived. Needless to mention that DE and criminal trial can run simultaneously and the punishment imposed in the DE was in no way connected with the criminal prosecution. Therefore had he been vigilant he ought to have filed OA within limitation but he on his own did not file OA within time on the pretext of pendency of criminal appeal which has nothing to do with final

order passed in DE. The acquittal in criminal appeal will not revive or extend the period of limitation for filing OA. Suffice to say the explanation sought to be afford does not fall within the ambit of sufficient reason as contemplated under Section 5 of Limitation Act. It is obvious that applicant is now trying to take benefit of his acquittal in criminal case to assail penalty imposed upon him in DE which has now attained finality because of not challenging the same within the period of limitation.

8. In view of the foregoing and for the reasons stated above, we reject the MA for condoning the delay and also dispose off the OA. No order as to costs.

(A.P. Kurhekar)
Member (J)
17.10.2019

(P.N. Dixit)
Vice-Chairman (A)
17.10.2019

Dictation taken by: S.G. Jawalkar.