

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

M.A. No. 285/2016 in O.A. St. No. 1950/2015
(Shri Nagnath Gyanba Jadhav V/s. the State of Mah. & Ors.)

**CORAM : HON'BLE SHRI J.D. KULKARNI,
VICE CHAIRMAN (J).**

DATE : 24.08.2017.

ORDER

1. Heard Shri S.D. Dhongde, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for respondents.

2. In this Misc. Application No. 285/2016, the applicant is claiming condonation of delay of four years and two months in filing O.A. St. No. 1950/2015.

3. In O.A. St. No. 1950/2015, the applicant has claimed direction to the respondents to release his one annual increment which was due on 1.1.2007 and also to re-fix his pay and pension with all consequential benefits. He has also claimed deemed date of promotion to the post of Tahsildar from 13.2.2006 with all consequential benefits. The applicant has already got retired on superannuation in the year 2007. He has received last communication from the respondents on 18.10.2010; vide which his claim for promotion has been rejected. It seems

that denial of promotion was in fact communicated to him vide letter dated 20.03.2006. Thereafter, he filed O.A. St. No. 180/2012 before this Tribunal, which was withdrawn on 11.9.2014 and thereafter, with permission this O.A. St. No. 1950/2015 along with M.A. No. 285/2016 for condonation of delay has been filed.

4. Learned Presenting Officer has filed affidavit in reply on behalf of respondent No. 2 and submitted that the delay has not been properly explained and that there is huge delay.

5. Perusal of the reliefs claimed by the applicant in the Original Application shows that the applicant is claiming one annual increment which was due on 1.1.2017 and has also requested to re-fix his pay and pension and all consequential benefits. So far as this claim is concerned, I am satisfied that the re-fixation of proper pay is a continuous cause of action and therefore, if the applicant's claim is genuine on merits, he will be entitled to claim re-fixation for the purposes of pension. In such circumstances, the question of re-fixation of pay and other consequential benefits can be very much considered on merits and for that purpose, it is necessary

to condone the delay in the interest of justice and equity. Whether applicant will be entitled to claim deemed date of promotion to the post of Tahasildar from 13.02.2006 is a question to be considered on merits and the respondents may challenge that claim in the Original Application by filing affidavit in reply. This point therefore, can be kept open so far as the limitation is concerned.

6. In view of the discussions in foregoing paragraphs, I therefore, pass following order:-

ORDER

1. The M.A. No. 285/2016 for condonation of delay in filing O.A. St. No. 1950/2015 is partly allowed. The delay of 4 years and 2 months in filing O.A. stands condoned.

2. It is further made clear that the point of limitation as regards applicant's claim for promotion to the post of Tahsildar from 13.02.2006 is kept open and the respondents will be at liberty to raise that point by filing affidavit in reply in the O.A. Hence, M.A. stands disposed of accordingly. O.A. be registered and numbered. There shall be no order as to costs.

VICE CHAIRMAN (J)

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VICE CHAIRMAN (J).****DATE : 24.08.2017.****ORDER**

1. Heard Shri S.D. Dhongde, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for respondents.
2. Issue notices to the respondents, returnable on 25.09.2017.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.
6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.
7. The respondents are directed to file affidavit in reply within a period of four weeks.
8. S.O.to 25-09-2017.
9. Steno copy and Hamdast is allowed to both parties

VICE CHAIRMAN (J)