

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.316/2018
IN
ORIGINAL APPLICATION ST. NO.1324/2018**

DISTRICT: AURANGABAD

Padmakar s/o. Vishnupant Kulkarni,
Age : 76 years, Occu. : Pensioner,
R/o. N-4, H/56, CIDCO,
Behind High Court Building,
Aurangabad, Dist. Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,
Godawari Marathwada Irrigation
Development Corporation,
Jalna Road, Aurangabad.
- 3) The Superintending Engineer,
Minor Irrigation (Water Conservation)
Circle, Aurangabad.
- 4) The Executive Engineer,
Minor Irrigation (Local Sector),
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri S.D.Joshi, Advocate for the
Applicant.

:Shri M.P.Gude, Presenting Officer for the
respondents.

CORAM : B. P. Patil, Vice Chairman

Reserved on : 17-07-2019

Pronounced on : 24-07-2019

O R D E R

1. The applicant has filed the present M.A. for condonation of delay caused for filing the O.A.

2. It is contention of the applicant that he has filed the O.A. along with M.A. seeking directions to the respondents to place him in the revised pay scale of Rs.8000-13500 and re-fix his pension and to grant arrears thereof. It is his contention that he had made several representations to the respondents but his representations have not been decided. His colleagues also made representations with the Government against withdrawal of the pay scale granted to them. Thereafter, they approached the Hon'ble High Court by filing the Writ Petitions. The Writ Petitions were disposed of and relief was granted to them. On the basis of decision in the said Writ Petitions the applicant has approached this Tribunal. It is his contention that the delay caused for filing the O.A. is not intentional and

deliberate. It is his contention that the cause of action for claiming pension and pensionary benefits is continuous cause of action, and therefore, it cannot be said that the delay has occurred for filing the O.A. Therefore, he has prayed to condone the delay caused for filing the O.A. by allowing the M.A.

3. Respondents have not filed their affidavit in reply.

4. I have heard Shri S.D.Joshi, Advocate for the applicant and Shri M.P.Gude, Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

5. Learned Advocate for the applicant has submitted that the applicant is claiming pay scale of Rs.8000-13500 w.e.f. 01-10-1994 and consequential benefits by filing the accompanying O.A. He has submitted that there is delay of more than 22 years and the said delay is properly explained by the applicant. It is his contention that the delay caused for filing the O.A. is not intentional and deliberate. Therefore, he has prayed to condone the delay caused for filing the O.A. by allowing the M.A.

6. He has further argued that the claim regarding the revision of the pay scale is continuous cause of action and therefore, question of explaining the delay caused for filing the O.A. does not arise. In support of his submissions, he has placed reliance on the judgment in the case of **M.R.Gupta V/s. Union of India** reported in [1995 (5) SCC 628]. He has submitted that in view of the principles laid down in the said judgment, the M.A. deserves to be allowed by condoning the delay caused for filing the O.A.

7. Learned P.O. for the respondents has submitted that the applicant has not shown sufficient cause explaining the delay caused for filing the O.A. He has argued that in the absence of sufficient cause, contentions of the applicant in that regard cannot be accepted. He has submitted that the applicant has slept over his legal rights for years together and has not approached the Tribunal within the prescribed period of limitation. Cause of action for filing the O.A. arose in the year 1995 and the applicant has not approached the Tribunal within prescribed period of limitation. There is intentional and deliberate delay on the part of the applicant and it has not been explained by the

applicant. Therefore, the learned P.O. has prayed to reject the M.A.

8. Learned P.O. has further argued that the applicant has approached the Tribunal on the basis of decision of Hon'ble the High Court in case of similarly situated persons. He has submitted that it cannot be a ground to condone the delay. He has submitted that the delay caused for filing the O.As. cannot be condoned on that ground. He has further argued that the said contentions cannot be accepted in view of the settled principles laid down by the Hon'ble Apex Court in the case of **Brijesh Kumar & Ors. V/s. State of Haryana & Ors. in SLP (C) Nos.6609-6613 of 2014** decided on 24-03-2014. It has been observed by the Hon'ble Apex Court in the case of **Brijesh Kumar & Ors.** follows:

9. *In P.K. Ramachandran v. State of Kerala & Anr.*, AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-

“Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

10. While considering a similar issue, this court in [Esha Bhattacharjee v. Raghunathpur Nafar Academy & Ors.](#) (2013) 12 SCC 649 laid down various principles inter alia:

“ x x x

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact

vi) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play

x x x

ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x x x

xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

(See also: [Basawaraj v. Land Acquisition Officer](#) (2013) 14 SCC 81)

11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of [Section 5](#) of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by

the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.

13. [In State of Karnataka & Ors. v. S.M. Kotrayya & Ors.](#), (1996) 6 SCC 267, this Court rejected the contention that a petition should be considered ignoring the delay and laches on the ground that he filed the petition just after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. The Court observed that such a plea is wholly unjustified and cannot furnish any ground for ignoring delay and laches.

14. Same view has been reiterated by this Court in [Jagdish Lal & Ors. v. State of Haryana & Ors.](#), AIR 1997 SC 2366, observing as under:-

“Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh’s ratios...Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.”

9. Applicant is claiming pay scale of Rs.8000-13500 on the basis of G.R. dated 08-06-1995. Applicant was aware

about the said G.R. but he had not approached the Tribunal within the prescribed period of limitation. Delay of more than 22 years is caused for filing the O.A. Not a single justifiable reason is put forth by the applicant for condoning the delay caused for approaching the Tribunal within prescribed period of limitation. In the absence of just and proper explanation, inordinate delay of more than 22 years caused for filing the O.A. cannot be condoned. Not only this but the applicant has banked upon the decision of the Hon'ble High Court in case of similarly situated persons for condoning the delay but the applicant cannot take benefit of the said decision. He had slept over his legal rights for more than 22 years. He has not approached this Tribunal in prescribed period of limitation.

10. Therefore, in view of the above facts and circumstances of the case and the settled legal principle laid down in **Brijesh Kumar's** case is applicable in the instant case. In view of the said settled principles there is no just cause for condonation of delay caused for filing the O.A. The applicant is not diligent in pursuing the cause, and therefore, delay cannot be condoned. The delay caused for filing the O.A. is inordinate and it is deliberate and

intentional. Therefore, the same cannot be condoned. There is no merit in the M.A. Consequently, the M.A. deserves to be dismissed.

11. In view of the discussion in the foregoing paragraphs, M.A.No.316/2018 stands dismissed without any order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 24-07-2019.