

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.522/2016

DISTRICT: - OSMANABAD

Atul S/o. Kerba Waghmare,
Age : Major, Occu. : Service
Tahsil Office Washi,
R/o. C/o. Santosh Deshmukh,
Samarth Nagar, Bhoom,
Tq. Bhoom, Dist. Osmanabad.

...APPLICANT

V E R S U S

- 1) The Collector, Osmanabad
Having office at Osmanabad.
- 2) The Divisional Commissioner,
Aurangabad, Aurangabad Division,
Aurangabad.
- 3) The State of Maharashtra,
Through Principal Secretary,
Revenue Department,
Mantralaya, Mumbai.

...RESPONDENTS

APPEARANCE :Shri N.S.Kadam learned Advocate holding
for Shri D.M.Mane, learned Advocate for
the Applicant.

:Smt. Priya Bharaswadkar, learned
Presenting Officer for the respondents.

CORAM : Hon'ble Shri B.P.Patil, Member (J)

DATE : 22nd August, 2017

J U D G M E N T
[Delivered on 22nd day of August 2017]

The applicant has challenged the order dated 10-07-2015 passed by the respondent no.2 Divisional Commissioner, Aurangabad Divisional, Aurangabad rejecting his appeal challenging the order of respondent no.1 Collector, Osmanabad in departmental enquiry no.35/2015 dated 07-01-2013 and prayed to quash and set aside the impugned orders.

2. It is contention of the applicant that he was appointed as Awwal Karkoon, Supply Office, Bhoom on 01-08-1994. He was suspended due to irregularities in the work and a chargesheet had been issued against him. He had submitted his explanation by letter dated 29-11-1994 in response to the suspension order dated 01-08-1994. A departmental enquiry has been initiated against him. An Enquiry Officer had been appointed in the departmental enquiry. Departmental enquiry was conducted. Thereafter, the Enquiry Officer submitted his report on 11-02-1997 to the respondent no.1.

3. It is further contention of the applicant that, a F.I.R.

had been lodged against him and other officers by then Tahsildar, Bhoom on 02-09-1994 for the offences punishable u/s.217, 409, 467, 468, 420 r/w. 34 of the Indian Penal Code. On the basis of said F.I.R. a criminal case bearing RCC No.32/2000 had been registered against him in the Court of Chief Judicial Magistrate, Osmanabad. Another F.I.R. had been registered against him and others on the basis of complaint filed by then Naib Tahsildar, Tahsil Office, Bhoom on 12-08-1994 for the offences punishable u/s.409, 420, 467, 468, 471 r/w.34 of the Indian Penal Code and a criminal case bearing RCC No.31/2000 had been registered against them in the Court of Chief Judicial Magistrate, Osmanabad. One more complaint filed by the then Tahsildar, Bhoom on 31-07-1994 against him and others for the offence punishable u/s.420, 409, 467, 468 and 217 r/w. 34 of the Indian Penal Code and a criminal case bearing RCC No.75/2000 had been registered against him in the court of Chief Judicial Magistrate, Osmanabad.

4. It is his contention that, RCC No.32/2000 had been ended in acquittal on 03-03-2011. Likewise, RCC

No.31/2000 and RCC No.75/2000 had been ended in his acquittal in view of the judgment and order passed by Chief Judicial Magistrate, Osmanabad on 04-03-2011. It is his contention that the allegations in the criminal case and the departmental enquiry were similar.

5. It is his contention that on 10-10-2012 Collector, Osmanabad issued memo to him, to which, he had replied on 15-12-2012 stating that he had been acquitted by the Chief Judicial Magistrate, Osmanabad in RCC No.31/2000, 32/2000 and 75/2000, respectively. He produced copy of the said decisions before the Collector, Osmanabad. Thereafter, respondent no.1 issued a memo-cum-show cause notice to him to show cause as to why his 2 increments should not be stopped permanently and as to why his suspension period from 04-08-1994 to 20-01-1996 should not be treated as suspension period. The applicant had given reply to it on 10-12-2012. Respondent no.1 after hearing the applicant passed order dated 07-01-2013 and stopped one annual increment with effect on further increments, permanently and treated suspension period from 04-08-1994 to 20-01-1996 as suspension period and

further continuation in the services.

6. The applicant had preferred an appeal challenging order passed by respondent no.1 Collector Osmanabad on 07-01-2013 imposing punishment on him before the Divisional Commissioner, Aurangabad on 18-02-2015 with a request to condone delay of 2 years and 1 month caused for preferring the appeal. Respondent no.2 Divisional Commissioner, Aurangabad rejected the appeal by the impugned order dated 10-07-2015 holding that appeal was time barred and applicant has not shown just and proper reasons for condonation of delay.

7. The applicant has filed O.A. challenging order passed by respondent no.2 Divisional Commissioner, Aurangabad before the Maharashtra Administrative Tribunal, Mumbai. The Tribunal returned the O.A. by its order dated 18-03-2016 observing that it has no territorial jurisdiction. Therefore, the applicant has filed present O.A. and prayed to quash the impugned order/s passed by the Divisional Commissioner, Aurangabad, in appeal no.35/2015 on 10-07-2015 rejecting his appeal challenging the order passed by the Collector, Osmanabad on 07-01-2013 in the

departmental enquiry imposing punishment on him.

8. Respondent no.2 has filed affidavit in reply and contended that the applicant had not shown sufficient cause for condoning the delay caused for preferring the appeal. In the absence of satisfactory explanation, the respondent no.2 has rightly rejected the appeal as it was time barred. It is his contention that there was deliberate and intentional delay in filing the appeal on the part of the applicant. The delay of 2 years and 1 month has not been explained properly by the applicant, and therefore, the respondent no.2 has rejected the appeal filed by the applicant as it was time barred. Therefore, he prayed to reject the O.A.

9. I have heard Shri N.S.Kadam learned Advocate holding for Shri D.M.Mane, learned Advocate for the Applicant and Smt. Priya Bharaswadkar, learned Presenting Officer for the respondents and perused documents produced on record by the parties.

10. Learned Advocate of the applicant has submitted that the applicant was punished in the departmental enquiry by

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the order passed by the respondent no.1 on 07-01-2013, copy of which is at paper book page 90. He has submitted that by the said order, respondent no.1 stopped one annual increment of the applicant permanently and treated suspension period as suspension period. Learned Advocate for the applicant has submitted that charges levelled against the applicant in the departmental enquiry and in the criminal cases filed against him, were similar. He has submitted that the applicant was acquitted of the offences charged against him in the criminal cases by the Chief Judicial Magistrate, Osmanabad but the Collector, Osmanabad had not considered the said aspect and imposed punishment on him holding him guilty of the misconduct. He has submitted that the applicant was working under the control of Collector, Osmanabad, and therefore, he had not challenged the impugned order dated 07-01-2013 passed by the Collector, Osmanabad under apprehension that in case he challenges the order of the Collector, his services will be affected adversely. Therefore, there was delay of 2 years and 1 month in preferring the appeal before the Divisional Commissioner, Aurangabad. He has submitted that the said delay was caused due to the

bona fide mistake on the part of the applicant. Therefore, there was no *mala fide* intention of the applicant in not preferring the appeal in time. He has submitted that, junior employees in his cadre had been promoted and promotion was denied to him because of the punishment imposed on him, and therefore, he has challenged the impugned order dated 07-01-2013 passed by the respondent no.1. He has submitted that said grounds have been mentioned in the memo of appeal filed by the applicant before the Divisional Commissioner, Aurangabad but the respondent no.2 has not considered said reasons and rejected the appeal on the ground that appeal is time barred and the applicant has not given satisfactory explanation for condoning the delay. He has submitted that the order passed by respondent no.2 is not legal and proper, and therefore, he prayed to quash the impugned order by allowing the O.A.

11. Learned P.O. has submitted that the Collector has passed order imposing punishment on the applicant on 07-01-2013. The applicant has not challenged the said order within 45 days as provided under Rule 19 of the

Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Applicant has filed the appeal on 18-02-2015 i.e. after 2 years and 1 month. He has submitted that no just and sufficient cause had been shown by the applicant for condoning the delay caused for filing the appeal. Not a single ground had been raised by the applicant for condonation of delay, and therefore, respondent no.2 has rightly rejected appeal on that ground. Therefore, he supported the impugned order passed by the respondent no.2 on 10-07-2015.

12. On going through the documents on record, it reveals that the Collector, Osmanabad passed order in the departmental enquiry on 07-01-2013 and imposed punishment against the applicant as stated above. The applicant kept mum and he had not challenged the said order till 18-02-2015. When the promotion had been denied to him in the year 2015, he challenged the order of the Collector, Osmanabad by preferring the appeal bearing no.35/2015 before respondent no.2 i.e. Divisional Commissioner, Aurangabad. On perusal of the memo of appeal filed at paper book page 94 dated 18-02-2015,

it reveals that the applicant has prayed to condone the delay on the ground that he was mentally depressed due to the punishment imposed against him by Collector, Osmanabad on 07-01-2013. It is his contention that he had not preferred appeal as he apprehended that he will have to face dire consequences if he challenges the order of the Collector as he was working under him, and therefore, he prayed to condone the delay.

13. On perusal of the record it reveals that the reasons mentioned by the applicant in the memo of appeal are not just and sufficient to condone the delay. He kept mum for about 2 years and 1 month after passing the order by the Collector on 07-01-2013. In the absence of satisfactory and sufficient cause, delay which is inordinate delay of 2 years and 1 month, cannot be condoned. Therefore, the respondent no.2 has rightly rejected the request of the applicant to condone the delay and consequently he dismissed the appeal. Respondent no.2 has recorded reasons while rejecting the appeal and the request of the applicant to condone the delay caused for filing the appeal. There was inordinate delay of 2 years and

1 month in preferring the appeal. The delay seems to be deliberate and intentional. Therefore, in the absence of sufficient cause, delay cannot be condoned. Respondent no.2 has rightly rejected the request and appeal of the applicant. There is no illegality in the impugned order passed by the Divisional Commissioner, Aurangabad dated 10-07-2015, therefore, no interference is called for in the said order.

14. In view of the above discussion, there is no merit in the O.A. Consequently, O.A. deserves to be dismissed. Accordingly, O.A. stands dismissed with no order as to costs.

(B. P. Patil)
MEMBER (J)

Place : Aurangabad
Date : 22-08-2017.