

BEFORE THE HONOURABLE MAHARASHTRA
ADMINISTRATIVE TRIBUNAL
MUMBAI

BENCH AT AURANGABAD

MISCELLANEOUS APPLICATION NO. _____ OF 2024

IN

ORIGINAL APPLICATION NO. _____ OF 2024

DISTRICT : JALGAON

Kamlakar s/o Devidas Rajhans,
Age : 58 Yrs., Occu : Service
(as Police Naik, Ramanand P.S.
Jalgaon), R/o: Wagh Nagar,
Near Auto Stand, Jalgaon.
Mob. No. 9405442691


... **APPLICANT**

VERSUS

1. The Deputy Inspector General
of Police, Nashik Range,
Dakshata Building,
Gadkari Chowk,
Old Mumbai-Agra Road,
Nashik – 2.
2. The Superintendent of Police,
Jalgaon,
7, Mahatma Gandhi Road,
Zilla Peth, Pratap Nagar,
Jalgaon.

... **RESPONDENTS**

THE HUMBLE APPLICATION OF
THE APPLICANT ABOVE-NAMED

17/06/24
BEFORE ME

PARMESHWAR R. KADAM
Notary Govt. of India
Reg. No.: 15755

MOST RESPECTFULLY SHOWETH :-

1. That, the applicant has filed above-mentioned Original Application in this Hon'ble Tribunal being aggrieved by the inaction of Resp. No. 2 in regularizing the period spent out of service by him from 20/09/2008 to 05/11/2009 as his duty period for all purposes and in failing to pay him his full pay & allowances for that period. Further, applicant is also aggrieved by an order dated 19/05/2021 of the Resp. No. 2 and the consequent communications dated 09/12/2021 and 27/01/2022 issued by Resp. Nos. 1 and 2 respectively inasmuch as under the basic order dated 19/05/2021 the Resp. No. 2 has ordered that the period spent out of service by him from 16/07/2011 to 22/06/2018 shall not be treated as duty period for any purpose but for the purpose of pensionary benefits.

2. That, as mentioned in detail in the Original Application, in late 2007 he was placed under suspension by the Resp. No. 2 in view of registration of an offence against him and Smt. Usha d/o Suresh Tiwane on 09/10/2007 u/Ss 498, 497, 323, 504, 506 r/w 34 of the Indian Penal Code and Ss. 3 and 4 of the Protection of Women from Domestic Violence Act, 2005. Said offence was registered against applicant and Smt. Tiwane on the complaint of applicant's wife viz. Sangeeta on the allegation that the applicant and Smt. Tiwane had indulged in extra-marital affair and had ill-treated her on account thereof.

3. That, on the said backdrop, on 22/01/2008 a Departmental Enquiry (DE for short) was initiated not only against the applicant but also against said Smt. Tiwane. It was a common DE initiated against applicant and Smt. Tiwane. Further, said DE was

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initiated by Resp. No. 2 concerning and in relation to the same allegations on the basis of which the above referred offence was registered against the applicant and Smt. Tiwane.

4. That, having initiated said DE against applicant and Smt. Tiwane though a lot of intervening developments took place in relation thereto, which may not be required to be stated here in great details, but suffice to say that, on 20/09/2008 Resp. No. 2 had straightway issued an order dismissing both him and Smt. Tiwane from service in exercise of the power vested by virtue of Article 311 (2) (b) of the Constitution of India.

5. That, on the said backdrop and being aggrieved by the order of his dismissal from service dated 20/09/2008, applicant had approached this Hon'ble Tribunal and filed an O.A. bearing no. 452/2009 inter-alia praying for quashment of the said order of his dismissal. As like him, Smt. Tiwane had also approached this Hon'ble Tribunal and filed an O.A. bearing no. 453/2009 praying for the same relief. Pertinently, both those O.A.s were heard together by this Hon'ble Tribunal and were even disposed of by a common order dated 10/09/2009 by which this Hon'ble Tribunal was not only pleased to quash and set aside respective orders of dismissal from service of the applicant and Smt. Tiwane, but was pleased to further direct their reinstatement in service however with a clarification that quashment of the dismissal orders was not to take away right of Resp. No. 2 to proceed with the DE in accordance with procedure prescribed by service Rules and by following rules of natural justice.

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Secretary Govt. of India
Gen. No. 16755

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6. That, in pursuance to the above referred decision rendered by this Hon'ble Tribunal, Resp. No. 2 had issued two orders on 06/11/2009 reinstating applicant and Smt. Tiwane back in service and further ordering their continuation under suspension so as to go ahead and further conduct the DEs already initiated against them. However, though on the one hand said action of reinstating applicant and Smt. Tiwane was taken by Resp. No. 2, but on the other hand Writ Petition Nos. 1221 of 2010 and 1220 of 2010 were also filed by the State of Maharashtra and Resp. No. 2 against the applicant and Smt. Tiwane respectively before the Hon'ble High Court, Bench Aurangabad assailing the order dated 10/09/2009 of this Hon'ble Tribunal.

7. That, the above referred Writ Petitions however were not pressed before the Hon'ble High Court by the State of Maharashtra and Resp. No. 2 in view of the order dated 06/11/2009 of Resp. No. 2 reinstating the applicant and Smt. Tiwane back in service. And therefore, on 22/02/2010 both those Writ Petitions were disposed off by the Hon'ble High Court.

8. That, on the aforestated backdrop Resp. No. 2 had got conducted DE against applicant and Smt. Tiwane and ultimately said authority was pleased to issue an order on 16/07/2011 imposing the punishment of 'removal from service' upon the applicant and Smt. Tiwane.

9. That, having been served with above referred order of his removal from service, on 12/09/2011 applicant had preferred an Appeal against it to the Inspector General of Police, Nashik, which

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however came to be dismissed at the hands of said authority vide an order dated 01/11/2012.

10. That, after receipt of above order dated 01/11/2012 dismissing his Appeal applicant had preferred a Revision Application to the Director General of Police (DGP), Mumbai on 18/01/2013. However, said Revision Application was rejected by the DGP on 28/01/2014 thereby confirming the order of Resp. No. 2 removing him from service.

11. That, in above mentioned circumstances and basically being aggrieved by the order dated 16/07/2011 of Resp. No. 2 removing him from service the applicant was again constrained to approached this Hon'ble Tribunal and file an O.A. bearing no. 114/2015. Likewise, even Smt. Tiwane had also simultaneously filed her separate Original Application bearing No. 115/2015.

12. That, pertinently above referred O.A. Nos. 114 and 115 of 2015 filed by the applicant and Smt. Tiwane respectively were heard together and finally decided by this Hon'ble Tribunal under a common order dated 18/08/2017 by which the order of removal from service of the applicant and Smt. Tiwane dated 16/07/2011 alongwith orders dated 01/11/2012 and 28/01/2014 passed by the I.G.P., Nashik and D.G.P., Mumbai respectively in the Appeal and Revision filed by them were all quashed & set aside with directions to Resp. No. 2 to reinstate the applicant and Smt. Tiwane in service. Under the said order this Hon'ble Tribunal was further pleased to direct that the DE initiated against applicant and Smt. Tiwane be conducted by giving an opportunity to both of them to defend themselves and by giving

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opportunity to cross examine the witnesses. Said DE was ordered to be completed in three months.

13. That, being aggrieved by the above referred order dated 18/08/2017 of this Hon'ble Tribunal the State of Maharashtra, the DGP, Mumbai, the IGP, Nashik and the SP, Jalgaon (i.e. present Resp. No. 2) had filed Writ Petition bearing nos. 4192 and 4193 of 2018 in February 2018 in the Aurangabad Bench of the Hon'ble Bombay High Court against the applicant and Smt. Tiwane respectively. However, both those Writ Petitions were disposed of by the Hon'ble High Court vide a common judgment dated 05/06/2018 thereby upholding the order dated 18/08/2017 of this Hon'ble Tribunal.

14. That, immediately after passing of above judgment by Hon'ble High Court on 05/06/2018, Resp. No. 2 was pleased to reinstate the applicant and Smt. Tiwane in service and issue an order appointing an Enquiry Officer to conduct the DE against him and Smt. Tiwane afresh.

15. That, though the above referred action was taken by Resp. No. 2 immediately after decision of the Hon'ble High Court, however the DE against applicant and Smt. Tiwane was not completed within three months as directed by this Hon'ble Tribunal and on the contrary it was prolonged for a period close to two years. Thereafter, on 12/08/2020 Resp. No. 2 was pleased to pass the final order in DE against applicant and Smt. Tiwane imposing minor punishment of withholding of their respective yearly increment for a period of two years without affecting their future increments. As such, the common DE which was initiated against applicant and Smt. Tiwane by Resp.

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No. 2 way back in 2008 was finally concluded most belatedly in 2020 by imposition of a minor penalty upon them. Pertinently, for said prolonged pendency of the DE against him, the applicant was not responsible in any manner whatsoever. Further, it may be stated here that said punishment imposed upon him by Resp. No. 2 was accepted by the applicant inasmuch as he did not challenge the same in Appeal.

16. That, in view of all the above mentioned facts it is explicitly & abundantly clear that since the year 2007 applicant has been suffering a lot in the sense that he has not only been placed under suspension twice during the periods 17/10/2007 to 19/03/2008 and 06/11/2009 to 15/07/2011, but he has also been twice thrown out of service during the periods 20/09/2008 to 05/11/2009 and 16/07/2011 to 21/06/2018 on account of the orders of his dismissal from service and removal from service respectively. Needless to say that, being aggrieved by the above referred adverse actions taken against him, the applicant has repeatedly been required to approach this Hon'ble Tribunal and not only that, but he has also been required to defend himself before the Hon'ble High Court in two rounds of litigation sustained against him by the State of Maharashtra and the present Resp. No. 2.

17. That, in the above mentioned circumstances, it goes without saying that the applicant has been incurring unexplainable financial burden since the year 2007 onwards that too when he was twice thrown out of service during the above mentioned periods from 20/09/2008 to 05/11/2009 and 16/07/2011 to 21/06/2018. Pertinently, the first period during which applicant was out of service while was of more than a year, the second period was close to seven years.

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Needless to say that, during those periods the applicant had absolutely no source of income and he was literally rendered to penury and had found it impossible to make both the ends meet for himself and his family.

18. That, in the above mentioned circumstances, though it is true that the applicant was reinstated in service in the mid of the year 2018, however because of all the above mentioned unfortunate incidents in his service career he was not getting his salary at the rates which he actually deserved on the basis of Pay Commission recommendations, but was getting the same at very lower rates. In addition to that, the failure of Resp. No. 2 to take appropriate steps and decide the above referred periods of suspension and the periods spent out of service by the applicant added to his misery.

19. That, pertinently the aforesaid situation still is being faced by the applicant inasmuch as he is drawing his salary at very lower rates that too without getting any benefits of Assured Career Progression Schemes and/or functional promotion, etc. Apart therefrom, applicant's own health as also his family life have been disturbed because of the severe financial crunch faced on account of the unfortunate developments that have taken place since 2007 onwards.

20. That, on the aforesaid backdrop, after issuance of the communication dated 27/01/2022 by Resp. No. 2 though the applicant was required to approach this Hon'ble Tribunal and file the present Original Application within one year from that date i.e. on or before 27/01/2023, he couldn't do so in view of all the aforesaid difficult &

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hard circumstances faced by him in which, as stated supra, he was literally rendered penniless and absolutely had no finances to think of and approach this Hon'ble Tribunal, because since after being reinstated in service in the mid of 2018 the applicant was not only getting meager salary, but thereafter the most difficult time of pandemic Covid-19 had also intervened. And hence, applicant couldn't approach this Hon'ble Tribunal within the stipulated period of limitation thereby resulting in causing of delay in filing of his Original Application. However, as stated in all the preceding paragraphs the applicant could not approach this Hon'ble Tribunal and file his Original Application due to the peculiar circumstances and the reasons stated therein and as a result the delay is caused, which however deserves to be condoned in the interest of justice.

21. That, the applicant on the background of afore-mentioned facts & circumstances also humbly submits that the delay caused is just accidental and it is not at all intentional or deliberate or due to any lethargic approach on the part of the applicant and hence the same is deserving to be condoned in the interest of justice moreso in the light of the fact that the applicant has got a very good case on merits and he has all the hopes of succeeding therein.

22. **THE APPLICANT, THEREFORE, PRAYS THAT,**

- A) This Misc. Application may kindly be allowed.
- B) Delay of 523 days caused in the filing of above mentioned Original Application may kindly be condoned in the interest of justice.

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- C) Any other appropriate relief as may be deemed fit by this
Hon'ble Tribunal be granted.


PLACE : Chh.Sambhajinagar

AVINASH S. DESHMUKH

DATE : / /2024

(Advocate for the Applicant)


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DARNESHWAR R. KADAM
Notary Govt. of India
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VERIFICATION

I, Kamlakar s/o Devidas Rajhans, Age : 58 Yrs., Occu : Service (as Police Naik, Ramanand P.S.Jalgaon), R/o: Wagh Nagar, Near Auto Stand, Jalgaon, do solemnly affirm and state on oath that the contents of this Misc. Application in Paragraph Nos. 1 to 21 are true and correct to the best of my personal knowledge and those of Paragraph No. 22 are my humble prayers before this Hon'ble Tribunal. Hence, attested at Chhatrapati Sambhajnagar on this 29th day of 2024.

Explained and identified by

Saket
AVINASH S. DESHMUKH
 Advocate

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DEPONENT

AFFIDAVIT

Solemnly affirmed before me
 by Shri / Sm: Kamlakar S/o Devidas Rajhans.
 Age 58 Yrs Occup: Service
 R/o. Jalgaon
 Tq. Jalgaon Dist. Jalgaon
 Who identified by Adv. Saket Jashi
 Whom He/ She is personally Known.

NOTED & REGISTERED
 AT Sr No. 2032/2024
 THIS DOCUMENT CONTAINS
11 PAGES

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29/11/24
PARMESHWAR R. KADAM
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