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Thakur

No. MAT/MUM/JUD/1174/16  
- 5 APR 2016

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO.8 OF 2016  
IN  
ORIGINAL APPLICATION NO.994 OF 2015**

**DISTRICT : PALGHAR**

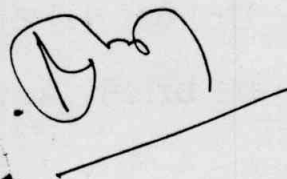
Smt. Ulka w/o. Ulhas Hatkar. )  
Age : 60 years, Pensioner R/o. D-301, )  
Vishnu Co-op. Housing Society, )  
Agashi Road, Behind Kamanwala Societyi,) )  
Virar (W), District : Palghar. )...Applicant

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Finance Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Secretary. )  
Agricultural, Animal Husbandry, )  
Dairy Development & Fisheries Dept,) )  
Mantralaya, Mumbai 400 032. )...Respondents

**Shri S.D. Gaikwad, Advocate for Applicant.**

**Shri N.K. Rajpurohit, Presenting Officer for Respondents.**



P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 04.04.2016

### JUDGMENT

1. This is an application for condonation of delay in moving the Original Application (OA) seeking the benefit of Time Bound Promotion from 1995 and 2<sup>nd</sup> benefit (ACP) after 12 years thereafter.
2. I have perused the record and proceedings and heard Mr. S.B. Gaikwad, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.
3. The issue is as to whether sufficient cause is made out for condonation of delay and my finding thereon is in affirmative for the following reasons.
4. Even as the Affidavits and to a certain extent addresses at the Bar made free reference to the fact that fall within the domain of the OA, it must be clearly understood that in this MA, I am not at all concerned with the merit of the OA. Unless the facts that are relevant for this MA may have to be briefly adverted to, but that again

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would not be for the purpose of deciding any fact at issue in the OA. The crux of the matter, therefore, is as to whether the Applicant has been able to make out a case for condonation of delay on the anvil of sufficiency of cause.


5. The Applicant has now retired w.e.f. 31.7.2014 after rendering service for about three decades. She came to be appointed as a Clerk Typist. There was some issue with regard to the date from which her regular appointment should be counted. Again the details thereof are not material herefor. It seems that, according to the Applicant, she should have been given the Time Bound Promotion from 1.8.1995 whereas the Respondents support their move of having granted it from 1.12.2006. The Applicant claims to have made representations and those representations are in fact there in the OA. She made representation on 28.1.2014 and reminders on 10.4.2014 and 30.6.2015. The State of Maharashtra vide its Memorandum of 13.5.2014 informed the Applicant that in as much as she was not a party to the OA which was mentioned therein, she would not been entitled to any relief. That was mentioned in her 1<sup>st</sup> representation viz. **O.A.581/2012 and others Vs. State of Maharashtra and others, dated 20.2.2013.** A Single Bench presided over of the Hon'ble Vice-Chairman granted relief to the Applicant.



A copy of the said order has been perused by me. The Applicant claims to be similarly placed as those Applicants and that is one aspect of the matter. I express no final opinion about it.

6. The record would show that after having made the representations in the year 2014, the Applicant made one more representation in 2015. It is very clear that she was trying to take the benefit of the doctrine of parity with the Applicants of the above referred OAs after they succeeded in their move before the Hon'ble Vice-Chairman. In this behalf, I express no opinion in so far as the matter falling within the realm of OA is concerned, but the issue is as to whether it can be said as a blanket observation that the conduct of the Applicant was contumacious or totally indolent or negligent.

7. Mr. N.K. Rajpurohit, the learned Chief Presenting Officer is right in stating the principle based on the judgment of the Hon'ble Supreme Court in **Jaydeo Gupta Vs. State of Himachal Pradesh (1997) 11 SCC Page 13** that repeated representations would not save the limitation. However, the word, "repeated" is highly significant and has got a contextual connotation peculiar to such matters. In the present set of facts, in my view,






the Applicant cannot be assailed of just keeping the pot boiling so to say.

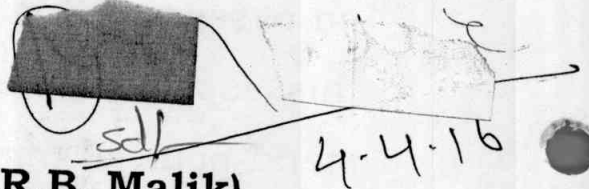
8. Similarly, other factors remaining constant if the Applicant merely seeks to take advantage of the pendency and then decision of the batch of earlier OA will by itself be no passport for success as far as she was concerned. But this aspect of the matter has to be considered from the stand point of this MA. I may mention it that the attitude of the Respondents that just because the Applicant was not a party Applicant in the earlier OAs, she would not be entitled to the relief itself would have to be closely examined, if the OAs were to be heard.

9. In view of the above discussion, I do not think the Applicant can be accused of indolence or negligence or contumacious conduct. Therefore, remaining alive to the principles emanating from a number of binding judicial precedents which have it that unduly rigid attitude should not be adopted in such matters and the idea must be to do justice, this Misc. Application must be succeed.

10. For the foregoing, the delay is condoned. The Original Application shall be heard on merit. The Applicant and the Office are directed to process the matter



and in as much as the Affidavit-in-reply has already been filed, place it for further consideration before the appropriate Bench for which the Applicant may mention the same. The Misc. Application is allowed in these terms with no order as to costs.

  
**(R.B. Malik)**  
**Member-J**  
**04.04.2016**

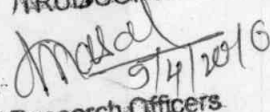
Mumbai

Date : 04.04.2016

Dictation taken by :

S.K. Wamanse.

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Ass't. Registrar / Research Officers  
Maharashtra Administrative Tribunal  
Mumbai