

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC. APPLICATION NO. 243 OF 2017
IN
ORIGINAL APPLICATION NO.522 OF 2017**

DISTRICT : Pune

1. Shri Raphael A. Demelo)
R/at. House No.355, Survey No.41/1A,)
Chandannagar, Kharadi, Pune 411014.) **..Applicant**

VERSUS

1. The Additional Chief Secretary, Home)
Department, Mantralaya, Mumbai 32.)
2. The Director General of Police, MS, Old)
Vidhan Bhavan, Colaba, Mumbai.)
3. The Commissioner of Police, Pune City,)
Pune 411 001.) **...Respondents**

Shri V.V. Joshi, the learned Advocate for the Applicants
Shri N.K. Rajpurohit, the learned C. P.O. for the Respondents

CORAM : Shri R.B. Malik, Member (J)

DATE : 16th August, 2017

ORDER

1. This Misc. Application seeks condonation of delay in filing the OA. The delay is of three and half years.
2. I have perused the record and proceedings and heard Shri V.V. Joshi, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned C.P.O. for the Respondents. As a matter of fact, the present MA is fully governed by an earlier M.A. decided by this Tribunal dated 31.01.2017 in M.A. 290/16 in OA 740/16 with M.A.292/16 in O.A.741/16 and for facility the said order needs to be fully reproduced :-

“These two Misc. Applications seeking in effect the relief of condonation of delay in bringing the Original Applications are heard together and are, therefore, disposed of by this common order.

I have perused the record and proceedings and heard Shri V.V. Joshi, the learned Advocate for the Applicants and Shri K.B. Bhise, the learned P.O. for the Respondents.

In fact there was a judgment rendered by this Tribunal in its Aurangabad Bench in O.A.No.818/2009 which was followed in number of judgments by the different benches of this Principal Bench including one fasciculus of Original Application leading one being O.A. Nos.849 to 856/2015 (Shri Dilip Bhosale V/s. One Anr. V/s Secretary Water Resource Department and Ors., dated 03.11.2015) rendered by me. The basic premise of the said judgments was that the Respondent should not drive to litigation, the personnel who were so similarly placed as the applicants of the Aurangabad Bench and that was apparently the reason why the present applicants did not move to this Tribunal earlier. The pith of the controversy shall be considered and determined in the O.A. and in my opinion, there does not appear to be a vice of limitation for the afore stated reason and even if a technical hurdle is required to be crossed, it should be allowed to be crossed. It was for this particular reason that I did not accept the request of the learned P.O. for grant of time in these Misc. Applications for filing Affidavit-in-Reply of the Respondent Nos.1 and 2.

It is held that there is no hitch of limitation and, therefore, the office and the applicants are directed to take all steps necessary to make sure that the Original Application Nos.740/2016 and 741/2016 are placed before the bench for hearing and disposal according to law.

Misc. Applications are allowed with no order as to costs.”

This is, therefore, a matter for which the Applicant should not have been driven to this litigation.

3. The learned C.P.O. is very strongly opposing the application, invited my attention to the references to paras.4, 5, 8 and 9 of the Affidavit-in-Reply in which reliance is placed on the judgments of the Hon'ble Apex Court. The ratio is apparently culled out there. It laid down a principle of the law that an indolent party cannot claim to be a recipient of judicial indulgence in the matter of condonation of delay. However, as already mentioned above the present facts are governed by entirely different set of principles for the reasons herein above mentioned. Delay is, therefore, condoned. The office and the applicant are directed to process the OA further so as to place it before an appropriate bench for disposal according to law.

4. Misc. Application is accordingly allowed in these terms with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER (J)
16.08.2017

Date : 16.08.2017

Place : Mumbai

Dictation taken by : VSM

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