

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.107 OF 2017
IN
ORIGINAL APPLICATION NO.885 OF 2016**

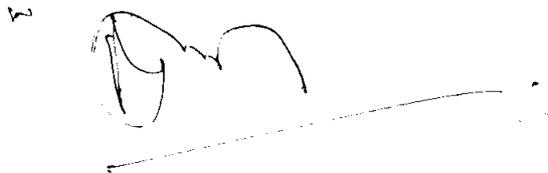
Shri Dinkarrao B. Patil.)
Age : 74 Yrs. Occu.: Nil, Retired Naib)
Tahsildar, Gaganbawada, Dist : Kolhapur)
Residing at Plot No.461, R.K. Nagar)
Society No.6, Pachgaon, Tal. Karvir,)
District : Kolhapur.)...**Applicant**

Versus

1. The District Collector.)
Kolhapur, Having Office at Nagala)
Park, Kolhapur.)
2. The Divisional Commissioner,)
Pune Division, Pune, Having office)
at Old Council Hall, Pune-1.)
3. The State of Maharashtra.)
Through Principal Secretary)
(Revenue), Revenue & Forest Dept.,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Mr. A.V. Bandiwadkar, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.



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

DATE : 05.05.2017

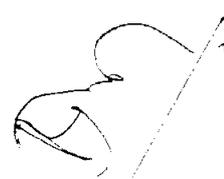
ORDER

1. This is an application for condonation of delay on the assumption that the delay was there.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. S.T. Suryawanshi, the learned Presenting Officer for the Respondents.

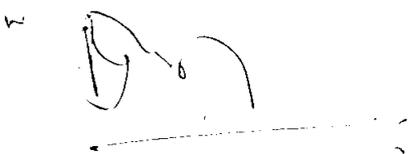
3. In order to make an appropriate decision on this MA, it will be necessary to take a close examination of the synopsis in the OA itself. The Applicant joined the Government service on 20.7.1963. He came to be promoted on 6.7.1978 and then on 17.1.1998 as Awal Karkun and Naib Tahsildar respectively. He retired from Government service on superannuation on 31.3.2000. A G.R. of 8.6.1995 brought into effect, what can be described as 'the first time bound promotion after a period of 12 years'. According to the Applicant, he was entitled and eligible therefor from 1.10.1994. But that was apparently not considered though his juniors were the beneficiaries of the said G.R. On 19.5.2000, the 1st Respondent made an

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order allowing the Applicant to cross efficiency bar (EB). On 17.6.2002, an appeal came to be preferred by the Applicant to Respondent No.2 in the matter. That appeal came to be dismissed on 9.12.2003. A revision was made there against on 21.6.2004 before the 3rd Respondent. According to the Applicant, that revision was not decided and the Applicant submitted a reminder without any effect. That was done on 7.9.2005. Thereafter, on 28.1.2013, the Applicant moved to the Hon'ble Chief Minister by way of a representation whereupon the Respondent No.1 was directed to examine the said representation. Its rejection was conveyed to him on 19.8.2014. The Applicant realized that the attitude of the Respondents was allegedly high handed. He moved the Hon'ble Minister for Revenue. On 29.4.2016, the Respondent No.1 rejected the request of the Applicant and this OA was brought on 24.8.2016.

4. The above detailed events along with the dates, in my view, will make it very clear that the fate of the Applicant in so far as the administrative channel was considered, got sealed long time ago. Even from 2005 and 2013, nothing was done by the Applicant in the matter. A dead horse cannot be enlivened through repeated recourse to representations, etc. I am deeply conscious of the legal position that substantial justice after contest has to be

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preferred to technical considerations. However, there are instances where the whole thing cannot be dismissed as technical when the record manifests the deliberate indolence on the part of the concerned party. In my view, this M.A. is that instance.

5. Mr. Bandiwadekar invited my attention to **Union of India Vs. Tarsem Singh, (2008) 2 SCC (L & S) 765** to buttress his contention of the present one being continuing cause of action. I have carefully perused that Judgment. However, in my opinion, the above discussion would make it clear that the said principles cannot be applied hereto. The facts are clearly distinct. Similarly, reliance on my own order in **MA 283/2016 in OA 706/2016, dated 31.1.2017 (Shri Jayprakash Kulkarni Vs. State of Maharashtra)** will also be out of place. The facts were different and even if, the principles discussed in Para 8 thereof are applied hereto, the result would be the same. For ready reference, I may as well reproduce Para 8 in which **Tarsem Singh's** case was also discussed.

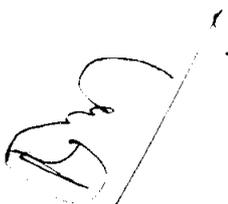
“8. Mr. Bandiwadekar referred me to **Union of India Vs. Tarsem Singh, (2008) 2 SCC (L & S) 765**. In Para 4 thereof, guidelines are issued as to how to construe the word, “continuing wrong”.

It has been Mr. Bandiwadekar's contention that it has been held in Para 7 of **Tarsem Singh's** case itself that the dispute like the present one is an instance of continuing wrong, and therefore, time does not begin to run as it were. Their Lordships in Tarsem Singh's case have laid down the guidelines in the matter of construing the words, "continuing wrong" and recurring cause of action. That was the basis of Ms. Gohad's contention. However, if one were to peruse Para 7 of **Tarsem Singh's** case (supra), it should become clear that at least in the present set of facts, the Applicant carries the day. I can usefully quote the entire Paragraph 7 from **Tarsem Singh** (supra) for guidance.

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing

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wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc. affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts



will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

6. The upshot, therefore, is that, despite the fact that such applications are required to be dealt with liberally, the extent of the liberal approach cannot be such as to even allow the applications like the present one. The same is accordingly dismissed with no order as to costs. Consequently, the Original Application, which is still born, is also dismissed as time barred.

Sd/-

(R.B. Malik)
Member-J
05.05.2017

05-05-17

Mumbai

Date : 05.05.2017

Dictation taken by :

S.K. Wamanse.

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