

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.108 OF 2016
IN
ORIGINAL APPLICATION NO.228 OF 2016**

Mr. Drupatrao P. Jadhav.

)...Applicant

Versus

1. The State of Maharashtra & 2 Ors. **)...Respondents**

Shri K.R. Jagdale, Advocate for Applicant.

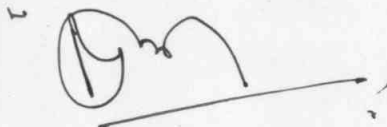
Shri K.B. Bhise, Presenting Officer for Respondents.

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

DATE : 10.01.2017

ORDER

1. This is an application for condonation of delay in bringing the Original Application (OA) which in turn seeks the relief of grant of deemed date to the Applicant for the post of Senior Bacteriologist Assistant with effect from February, 2000 so as to bring him at par with his batch



mate Mr. Padghan and further the relief of promotion to the post of Chief Bacteriologist, Group-B is also sought in the OA.

2. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer for the Respondents.

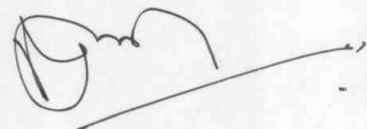
3. The issue is as to whether a cause capable of being called, "sufficient cause" for condonation of delay is made out in the context of the provisions of Section 21(3) of the Administrative Tribunals Act, 1985 and my finding thereon is in the negative for the following reasons.

4. Be it noted right at the outset that I am deeply conscious of the said legal position that regardless of the nature of the parent proceeding, such applications for condonation of delay, etc. are required to be approached liberally with a view to advance the cause of justice rather than technicality. Further, a logical conclusion of every *lis* after contest has to be always preferred to what can be called, "ex-parte disposals".

A handwritten signature in black ink, consisting of a stylized 'G' followed by a horizontal line.

5. If despite this awareness, this MA is going to fail, there are weighty reasons for the same. Now, in the above background, turning to the MA, I find that, according to the Applicant, there is no delay at all. The Applicant has pleaded that he had approached this Tribunal by filing **OA 124/2000 before the Nagpur Bench (Shri D.P. Jadhav Vs. State of Maharashtra and 4 others, dated 20th August, 2007)**. A Division Bench of this Tribunal there at Nagpur by the order opined that there was no merit in the case of the Applicant in the matter of seeking promotion because he had refused promotion and at that time, no roster point was available to the Scheduled Caste. The relief sought therein was for promotion to the post of Senior Bacteriologist Assistant and seniority over the private party Respondents was also claimed therein. The said order of this Tribunal has become conclusive, binding and final because it was not challenged on the judicial side at all.

6. Returning to the present facts in this MA, it is alleged that the Respondents had misled the Nagpur Bench of this Tribunal and furnished incorrect, false and incomplete information that no roster point was available for the Scheduled Caste category candidate and further that two persons had been taken under general category



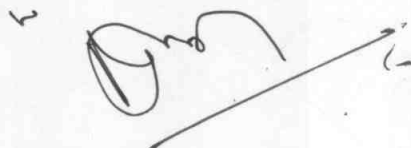
and it was because of this alleged misrepresentation that the OA was dismissed by the Nagpur Bench of this Tribunal. It is worthy of being recalled that the said order of the Tribunal was of 20th August, 2007. On Applicant's own showing, the next event took place only on 6.4.2015 when he submitted a representation to the Assistant Commissioner, Backward Class Cell seeking the grant of deemed date of promotion with effect from the year 2000. Mr. Jagdale, the learned Advocate for the Applicant informed me that the Applicant actually got promotion also in the year 2003 and the dispute now only relates to the deemed date. It was in July, 2015 that it came about that the promotion was refused at that time and one post for Scheduled Caste remained vacant. The Applicant then moved Director National Scheduled Caste Commission, Pune informing inter-alia that because of family reasons, he did not accept the promotion in 1999 in the then vacant post for Scheduled Caste candidates, and therefore, deemed date of promotion of February, 2000 was sought by him. He also made it clear that he was not seeking restoration of the promotion which was refused to him in 1988 but only deemed date. According to the Applicant, "if any delay in approaching before this Hon'ble Tribunal was there, the same may be condoned in the interest of justice." He then further claims that it is a case of



continuing wrong and recurring cause of action. Relying upon **Vilas D. Parab Vs. Union of India, 2004(1) All MR 8 (Bombay)**, the case of the Applicant is that the Tribunal is sufficiently empowered to condone the delay. It is further claimed that the Applicant has good case on merit.

7. The Respondents caused the Affidavit-in-reply on behalf of Respondents 1 to 3 to be filed by Mrs. R.P. Dongare, an Administrative Officer in the Office of the State Public Health Laboratory, Pune. In a detailed Affidavit-in-reply, the claim of the Applicant is contested.

8. As I can see it, I have read the MA in close details. It becomes quite clear in my view that for all practical purposes, the essence of the subject matter in the still bourn OA herein and the one decided by the Nagpur Bench of this Tribunal in the year 2007 is substantially the same. In fact, even if one were to proceed further, it is clear that despite that order having been rendered in 2007, the Applicant moved in this matter only in the year 2015 and that is on his own showing. Now, in this background, one may usefully refer to the Hon'ble Supreme Court Judgment in **C. Jacob Vs. Director of Geology & Mining & Anr., Special Leave Petition (C) No.25795 of 2008, dated 3rd October, 2008** with particular reference to the



observations of Their Lordships, in Para 3 and subsequent Paragraphs and also to another Judgment of the Hon'ble Supreme Court in the matter of **Union of India Vs. A. Durairaj, AIR (SCW-2011-0-873 (Para 7).** These two Judgments were cited by the learned PO Shri Bhise.

9. Mr. Jagdale, the learned Advocate for the Applicant told me that both these Judgments are distinguishable because they were the matters where the Applicants were flogging dead horses as it were, by making repeated representations so as to keep enlivened the cause of action. I do not entirely agree with Mr. Jagdale in this behalf. The essence of the matter is that as laid down by the Hon'ble Supreme Court, the claims that become stale by efflux of time should not be allowed to be agitated and re-agitated before the judicial forum and that candidate is clearly applicable to the present facts.

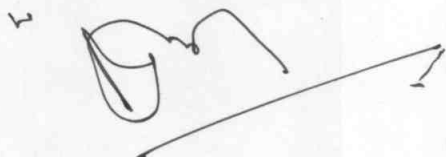
10. Mr. Jagdale relied upon **Writ Petition No.7272/2013 (Nageshwar D. Dagle Vs. The Chief Forest Conservator, Pune, dated 13th September, 2013.**

I have carefully perused that particular Judgment of the Hon'ble Bombay High Court which in fact was carried from a decision of this Tribunal and in that matter, the Tribunal did not condone the delay on facts including a fact relating

to the acceptance of resignation, the Hon'ble High Court was pleased to hold that the delay ought to have been condoned.

11. The present facts as must have become clear are clearly distinguishable from the facts of **Nageshwar Dagle** (supra). Further, here, the issue of promotion, and therefore, the deemed date has already been conclusively determined by the Nagpur Bench of this Tribunal, and therefore, even in this MA, it can safely be held that if life was infused into the time barred OA, it would be a futile exercise.

12. Mr. Jagdale told me that in so far as the present MA is concerned, I should concern myself only with the facts falling within the MA and not with the merit of the still bourn OA. Now, as far as the present matter is concerned, if the facts get intertwined and are pleaded by none other the Applicant himself, I cannot possibly help. If there are certain consequences that must follow and the effect to be given to the earlier Judgment of this Tribunal at its Nagpur Bench, I do not think, I can possibly shut my judicial eyes thereto. The principles analogous to res-judicata would surely apply and for that, I have to look to nothing else except the MA itself, Mr. Jagdale surely does



not expect me not even to read his own MA. If I did that, I am afraid, I cannot condone the delay. This Misc. Application is, therefore, devoid of merit and the same is accordingly dismissed with no order as to costs and for record, OA 228/2016 also gets concluded herewith.

Sd/-

(R.B. Malik)
Member-J
10.01.2017

10.01.17

Mumbai

Date : 10.01.2017

Dictation taken by :

S.K. Wamanse.

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