

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO.161 OF 2016  
IN  
ORIGINAL APPLICATION NO.319 OF 2016**

Dr. Narayan D. Patil.

)...**Applicant**

**Versus**

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

**Mr. R.M. Kolge, Advocate for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondents.**

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

**DATE : 20.01.2017**

**ORDER**

1. This Misc. Application (MA) seeks condonation of delay in bringing the Original Application (OA) which in turn seeks the relief of taking benefit of past services from 2.8.1979 to 19.6.1978 by condoning the break in service,




as set out in Prayer Clause (c) of the OA, a copy of which is perused.

2. I have perused the record and proceedings and heard Mr. R.M. Kolge, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer (PO) for the Respondents.

3. The issue is as to whether on the anvil of sufficiency of cause, the present application survives the test so as to condone the delay and my finding thereon is in the negative for the following reasons.

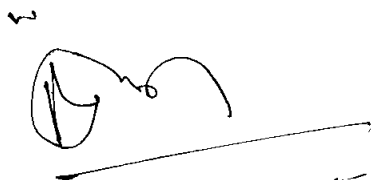
4. Be it noted right at the outset that I am deeply conscious of the legal position that such applications are generally to be approached more with a view to advance the cause of justice and in practical terms, every effort must be made to ensure that a cause brought before a judicial forum is hard and decided on merit rather than what can be called ex-parte disposal or disposal on technical ground, one of which is the bar of limitation. One aspect of the matter is that the approach should be justice oriented, but another one equally important is to make sure that the other side for no fault of his, is not made to suffer from the inexcusable indolence of the

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initiator of action. There are other aspects of the matter, which I shall be presently dealing with.

5. I have already indicated above that the OA seeks to challenge a communication of 31<sup>st</sup> January, 2011, a copy of which is annexed also to the MA. Thereunder, the Government informed the Director of Health Education and Research that the earlier service in Class-II grade of the Applicant could not be effectively counted as asked for by the Applicant. That particular communication was sent by the Dean of the B.G. Medical College, Pune to the Applicant on 16.3.2011. That would mean that at least as on that date, the Applicant became aware that his claim was not going to be accepted and the time began to run for him. Still till 6.4.2016, he did not bring in the present action. The submission of Mr. Kolge, the learned Advocate for the Applicant that in this case, it was a continuing cause of action, cannot be considered in a doctrinaire manner, but in actual practical terms. There is another weighty reason, why it cannot be accepted for which, I shall presently be discussing the Judgment of the Hon'ble Supreme Court.

6. The matter of great significance is that as rightly pointed out by Ms. Gohad, the learned PO although the

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formal rejection of the application of the Applicant was made in 2011, but the events really are of 1971-78. Thereafter, the Applicant continued to serve the Government for long and he had plenty of opportunities to ventilate his grievance which he allowed to be frittered away. In our opinion, therefore, the case of the Applicants has to be considered not on the basis of abstract principles but on hard reality and actual facts. In fact, the Applicant allowed his own claim to become stale and now, for all practical purposes, whatever his learned Advocate Mr. Kolge would say, he is just taking chances, so to say. Any forum of justice would certainly not countenance such an attitude of a litigant and a litigation lacking in sincerity would certainly not be encouraged.

7. I may now turn to the Judgments of the Hon'ble Supreme Court. Before I did that, I must categorically record that I deplore the manner in which the Respondents have cited the Judgments of the Hon'ble Supreme Court. There is no proper citation, several spelling mistakes, free nomenclature of parties and the names of the Hon'ble Judges have been mentioned with utmost carelessness. However, one is respectfully concerned with the principles laid down by the Hon'ble Supreme Court, and therefore, I have myself made efforts to get the copies of the said

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Judgments. But I must repeat that the Respondents will have to be more careful when it comes to citing a Judgment of the Hon'ble Supreme Court and the Hon'ble High Court.

8. In **Administrator of Union Territory of Daman and Diu Vs. R.D. Valand, Civil Appeals Nos.7223-24 of 1993**, the Hon'ble Supreme Court was dealing with a matter where an employee was reverted and the said reversion was set aside by an order of 12.10.1979 with consequential benefits. Now, the Petitioner before the Hon'ble Supreme Court was not the direct beneficiary of that order, but he thereafter, made a representation in 1985 asking the administration to consider him for the same benefit and grant of promotion. The relief was granted ultimately by the Tribunal and the Hon'ble Supreme Court held that such a relief could not have been granted because the Petitioner slept over his right for a long period and allowed his claim to become stale. Another Judgment in the field is of **C. Jacob Vs. Director of Geology & Mining & Anr., Special Leave Petition (C) No.25795 of 2008, dated 3<sup>rd</sup> October, 2008.** That was basically a matter whereafter a long period of time, a stale claim was sought to be revived merely by making representation and moving the Tribunal against the refusal

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by the authorities to do so. Reading the Judgment as a whole *inter-alia* with particular emphasis on Para 6, it would become quite clear that the Hon'ble Supreme Court was pleased to take note of the fact that in such matters, even the order of considering the representations should not be made casually because by passage of time, even the records may become difficult to be had. In **Union of India Vs. M.K. Sarkar, AIR 2009 SC 2158**, a representation was made by a retired employee 22 years after his retirement pertaining to a certain Scheme of which the benefit was sought. Their Lordships referred to **C. Jacob** (supra) and again held that a belated representation in regard to stale or dead issues should not be entertained by any directions by the Tribunal or the Court. A particular passage therefrom in Para 6 may usefully be reproduced.

“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the ‘dead’ issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with



such direction, will extend the limitation, or erase the delay and laches. A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'state' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the Court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

9. Lastly, useful reference could be made to **Union of India Vs. Dorairaj, AIR (SCW) 2011-0-873 = AIR 2011 SC 1084**. It was emphasized by the Hon'ble Supreme Court that stale or dead issues should not be allowed to be agitated and re-agitated.

10. It is, therefore, quite clear that even as the basic principle is to make sure that the cause of justice is advanced rather than decision of a matter on technicality like limitation, but then the interest of the other side also cannot be lost sight of and an insincere claim and a claim which is bordering on complete negligence should not be allowed to be enlivened. That could also be, because with



the passage of time as indicated above, the records would become almost impossible to be had. A sincere litigant has a right to be heard, but a litigant not so sincere has no such right, more particularly when by absence of record, he might make an attempt to carry the day by default.

11. Therefore, as I mentioned at the outset, much as I am conscious of the basic legal principle in matters such as this one, the present are the facts where the Applicant cannot succeed. The Misc. Application is accordingly dismissed with no order as to costs and as a consequence, the OA also gets disposed of.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**20.01.2017**

20-01-17

Mumbai

Date : 20.01.2017

Dictation taken by :

S.K. Wamanse.

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