

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/2782/2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

Date : - 2 AUG 2016

M.A. No. 216/2016 IN O.A. No. 428/2016.
(Sub :- Punishment (Pension) Major)

1 Shri Ram Y. Kamble,
R/at. 01 A, Yogeshwar Tower, Katemanaveli Naka, Pune Link Road,
Kalyan (E), Dist. Thane-421 306.

....**APPLICANT/S.**

VERSUS

1 The State of Maharashtra, Through
The Secretary, Civil Supplies Dept.,
Mantralaya, Mumbai-32.

2 The Controller Rationing and
Director Civil Supplies, Mumbai,
Having Office at 5th Floor, Royal
Insurance Bldg., 14, J.T. Road,
Churchgate, Mumbai-20.

...**RESPONDENT/S**

Copy to : The C.P.O. M.A.T., Mumbai.

*The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the 01st day of **August, 2016** has made the following order:-*

APPEARANCE : Ms. S.P. Manchekar, Advocate for the Applicant.
Mrs. A.B. Kololgi, P.O. for the Respondents.

CORAM : **HON'BLE SHRI R.B. MALIK, MEMBER (J).**

DATE : **01.08.2016.**

ORDER : Order Copy Enclosed / Order Copy Over Leaf.

Amal
2/8/2016

**Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.**

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.216 OF 2016
IN
ORIGINAL APPLICATION NO.428 OF 2016

DISTRICT : THANE

Shri Ram Yashwant Kamble.)...Applicant

Versus

1. The State of Maharashtra & Anr.)...Respondents

Ms. S.P. Manchekar, Advocate for Applicant.

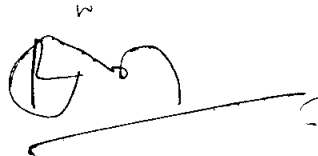
Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 01.08.2016

ORDER

1. This is an application wherein the basic case of the Applicant is that there is no delay. However, if delay was there, then the same may be condoned. In that case.



the quantum of delay is pegged as at one year, ten months and two days.

The Applicant is a retired Rationing Officer. He retired on 30.6.2012. There was a departmental enquiry pending against him at that time. Punishment was awarded to him whereby 5% of his monthly pension was withheld forever. That order is impugned in the OA which is dated 6.7.2013. This MA has been presented on 10.5.2016.

I have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Smt. A.B. Kololgi, the learned Presenting Officer for the Respondents.

The basic submission of the Applicant is that the slashing of the pension is a continuing wrong in as much as that much amount will be deducted forever from his monthly pension. and therefore, the bar of limitation would not operate. In this connection, my attention is invited by Ms. Manchekar, the learned Advocate for the Applicant to **Union of India Vs. Tarsem Singh, (2008) 8 SCC 648.** Para 7 thereof needs to be specifically taken note of. The concept of continuing wrongs in the context of continuing



cause of action has been explained by the Hon'ble Supreme Court. It is held that a service related claim, if based on continuing wrong will be such as to be immune from the bar of limitation.

5. The learned P.O. in stoutly opposing this MA, has tried to distinguish **Tarsem Singh's** case for the reasons set out by her in Para 12 of the Affidavit-in-reply to this MA. It apparently appears to be her submission that the Rule of **Tarsem Singh** will be applicable in case of disability, pension of Army Serviceman on medical grounds etc. and not in case of the punishment resulting into slashing of the pension. Even a cursory perusal of **Tarsem Singh's** case would not bear the learned P.O. out. I think it is very clear that the Rule thereof will be squarely applicable hereto.

6. The learned P.O. has severely assailed the Applicant for lacking in vigilance in the matter of agitating his rights. The cause assigned is set out in the Paragraph of the Affidavit-in-reply in which there is reference to the Supreme Court Judgment in **U.P. Jalnigam and Another Vs. Jaswant Singh and Another** (2006) 11 SCC 464. Another Judgment referred to is



the matter of State of Maharashtra Vs. S.M. Kotrayya,
1996 (6) SCC 267.

Now, in my opinion, the issue of indolence or lack of vigilance is fact specific. What is required to be implemented is the principles of law laid down by the Hon'ble Constitutional Courts to the case at hand. This particular matter, in my view, is fully governed by the Rule of Tarsem Singh's case and on facts, even otherwise, the delay is not so exorbitant as to disentitle the Applicant from being heard.

In the first place, therefore, there is no delay going by Tarsem Singh's case. Assuming, however, the delay was there, then the basic principle of the law of limitation not only under Section 5 of the Limitation Act, but also under the general principles which govern the matters to which Limitation Act, 1963 is applicable demonstrable contumacious conduct indicative of careless sweeping over the rights should be there. And unless by the passage of time, third party rights have been created whereby an innocent third party would be hit hard for the indolence, the Court will lead the need to ensure a decision on merit. The delay will have to be condoned. Here also, by allowing the Applicant to argue his OA, the Tribunal



shall be putting on anvil the validity of the disciplinary action against him and no third party is going to be adversely effected. Therefore, examine it from any angle or facet and I think the application deserves to be allowed.

9. It is held that in the first place, there is no delay in bringing this OA, but even if there was delay, the same is hereby condoned. The Applicant and the Office of this Tribunal are directed to process this OA, so as to be brought before the Division Bench II on 29th August, 2016 for filing reply.

Sd/ 01.08.16
(R.B. Malik)
Member-J
01.08.2016

Mumbai
 Date : 01.08.2016
 Dictation taken by :
 S.K. Wamanse.

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TRUE COPY
Arvind
 2/8/2016
 Asstt Registrar/Research Officer
 Maharashtra Administrative Tribunal
 Mumbai.