

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.354 OF 2016
IN
ORIGINAL APPLICATION NO.788 OF 2014**

Mr. Damodar B. Gade.)...**Applicant**

Versus

1. The District Women & Child)
Development Officer & 3 Ors.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

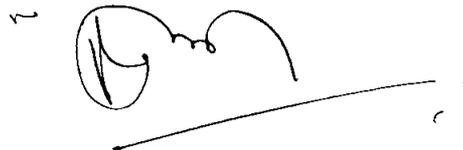
Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondents.

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

DATE : 17.01.2017

ORDER

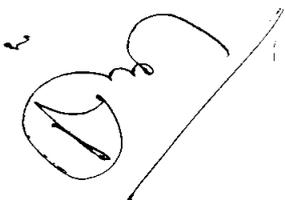
1. This Misc. Application (MA) seeks condonation of delay in bringing the Original Application (OA) which in turn seeks second benefit of the Assured Career Progression Scheme.



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

3. The Applicant having been appointed as a Junior Clerk on 17.8.1973 was given the benefit of the first Time Bound Promotion on 1.10.1994. According to him, the second Time Bound Promotion was due on 1.10.2006. He got the functional promotion on 7.9.2006. He retired on superannuation on 31.7.2007. It is his grievance that he has been denied unjustly the second benefit of the ACP.

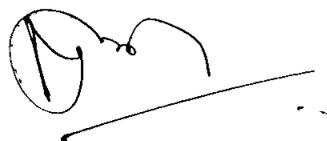
4. He has referred to similarly placed persons moving this Tribunal with OA 834/2011 calling into question the G.R. dated 1/4/2010 which OA was decided on 23rd December, 2013 holding inter-alia that those that retired between 1.10.2006 and 1.4.2010 would also be entitled to the second benefit of the ACP. In this set of circumstances, the Applicant approached this Tribunal by this OA on 27.8.2014 and according to him, that was within one year of the Judgment of this Tribunal in OA 834/2011. The said Judgment was confirmed in a batch of Writ Petition, the leading one being Writ Petition No.7062/2014 (The State of Maharashtra and Ors. Vs.



Datatraya D. Mehta and Ors., dated 24th June, 2016). The Applicant has then referred to a few Judgments in the field which I shall be taking guidance from presently and according to him, it was an instance of continuing wrong, and therefore, either there is no delay and even if there was delay, it was not inexcusable as it were.

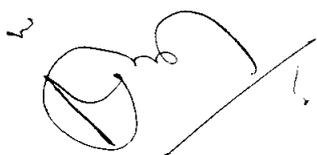
5. On behalf of Respondents 1 and 4, a District Women Child Development Officer Shri Ramesh R. Kangane filed the Affidavit-in-reply setting out the facts *inter-alia* that the OA was barred by limitation. According to the said Affidavit, the 1st Respondent submitted the proposal of the Applicant for the second benefit of the ACP to the 2nd Respondent on 15.10.2011 which was rejected with the observation that Pay Verification Unit had not verified the same. Further, the Respondents have assailed the Applicant for waiting in the wings awaiting the outcome of the earlier OA which according to them is no sufficient cause in view of the Judgment of the Hon'ble Supreme Court in the matter of **State of Karnataka & Ors. Vs. S.M. Kotrayya and Ors. (1996) 6 SCC 267.**

6. It does appear that it cannot be simply brushed under the carpet that there is a delay in bringing this OA. One aspect of Mr. Jagdale's contention has been that it is a



case of continuing cause of action, and therefore, the issue of delay would not really arise. I, however, must make it quite clear that in deciding the applications like the present one, the mere fact that there was a delay by itself would not be sufficient to defeat the application because if there was a delay, the further issue would be as to whether sufficient cause was made out to condone it and in this behalf, there are several Judgments in the field that lay down *inter-alia* that approach of the judicial forum has got to be liberal rather than technical. The cause of justice should not be allowed to be sacrificed at the alter of procedure. Mr. Jagdale in this behalf, relied upon **Collector, Land Acquisition, Anant Nag & Anr. Vs. Katiji, 1988 (19) ECR 565 (SC)**.

7. It is, therefore, quite clear that the interest of justice rather than technicality has to be the guiding light. Although the factum of retirement may not be the panacea of all ills as far as the Applicant was concerned, but the facts remains that it is one aspect of the matter which has to be borne in mind. Pertinently, it is not the sole ground that the Applicant was awaiting the outcome of the OA 834/2011. In fact, reading the application as a whole and in totality of the circumstances, adopting substance to the form that was only one aspect of the matter, and therefore,



if the principles arising from **S.M. Kotrayya** (supra) are applied hereto, I think the proper course of action would be to take a lenient view of the matter rather than too strict one. On sufficiency of cause, therefore, I am of the opinion that the delay needs to be condoned. In this matter, it is not possible to assail the Applicant for having conducted himself in a contumacious manner nor can it be said that he is flogging a dead horse still the less, can it be said that accrued right in favour of any third party is going to be affected in any manner.

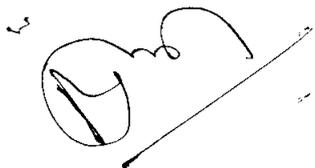
8. Therefore, on its own merit, it may not be possible for me to hold against the Applicant on the anvil of sufficiency of cause.

9. Mr. Jagdale in addition referred me to **Union of India & Ors. Vs. Tarsem Singh, Civil Appeal No.5151-5152 of 2008 (arising out of SLP (C) Nos. 3820-3821 of 2008), dated 13.08.2008.** Therein, the Hon'ble Supreme Court was pleased to explain the concept of continuing wrong as an act which creates a continuing source of injury and renders the doer of the act liable therefor. It was held that if the wrongful act causes an injury which was complete, there was no continuing wrong even though the damage resulting therefrom might continue. If,

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however, a wrongful act of such a character that the injury caused by itself continued, then the act would constitute a continuing wrong, and therefore, a distinction had to be made between the injury caused by the wrongful act and the effect of the said injury. Their Lordships also referred to the Judgment of **M.R. Gupta Vs. Union of India and others, Civil Appeal No.7510 of 1995, dated 21.08.1995 (SC)**. That was a matter where there was initial mistake in fixation of salary and it was held that it was an instance of continuing wrong.

10. Now, facts may differ from case to case. Here, the Applicant has not referred to an order of 2011 rejecting his case, but it was brought on record by the Respondents. It, therefore, appears that once that order was passed, the cause of action accrued and the limitation began to run as it were. Therefore, **stricto-sensu**, it may not be a case of continuing wrong. A distinction will have to be made between initial wrong fixation of pay and instances like the present one where the claim is for the first or the second benefit of ACP. I would, therefore, hold that this may not be an instance of continuing wrong but I have already held that a case is made out by the Applicant on the anvil of sufficiency of cause to condone the delay.

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11. For the foregoing, the delay is condoned. The Office and the Applicant are directed to take all steps necessary to get the OA listed before the appropriate Bench for hearing and decision according to law. The Misc. Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
17.01.2017

Mumbai

Date : 17.01.2017

Dictation taken by :

S.K. Wamanse.

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