

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC. APPLICATION NO.485 OF 2014  
IN  
ORIGINAL APPLICATION NO.856 OF 2014**

Sudhakar D. Thakur.

**)...Applicant**

**Versus**

1. The State of Maharashtra & 3 Ors. **)...Respondents**

**Shri S.S. Dere, Advocate for Applicant.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 20.01.2016**

**ORDER**

1. This is an application for condonation of delay which according to the application filed, when the matter was assigned to the Bench at Aurangabad is eight years. But that really does not appear to be so and in any case, it will have to be examined as to in the set of facts, when the



time began to run for being computed on the anvil of law of limitation.

2. I have perused the record and proceedings and heard Mr. S.S. Dere, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

3. I hold that in the first place, there is no delay and in any case, if the delay is there, the same needs to be condoned.

4. The matter relates to an issue of seniority. The OA was filed in Aurangabad Bench on 4<sup>th</sup> December, 2013. At the time of hearing, I was taken through the record of the OA also, although the purpose was limited for this MA. It appears therefrom that Shri S.M. Bhavsar who was immediately above the Applicant in fact retired on 31.7.2013, and therefore, legally and not just technically, the claim of the Applicant would ripen for being considered on 1.8.2013 and there was no delay, if the OA was brought on 4<sup>th</sup> December, 2013. However, in order to complete the discussion on the assumption that the above finding may not be exactly accurate though it is only an assumption, I find that in deciding such matters, the concept of cause of

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action as is understood even in the traditional law will have to be properly construed and understood and that too, in the light of not just the existence of right, but the challenge posed thereto, and therefore, by pointing out stray documents here and there and a few sentences here and there, one cannot canvass a case for the bar of limitation. There must be concrete material to suggest that there was substance in challenge posed, so as to put the concerned litigant on notice that his right was under challenge. Now, in so far as the present matter is concerned, the Applicant belongs to Scheduled Tribe and the State is in duty bound to act positively as it were not just under any other provision of law, but under the mother of all laws namely the Constitution of India, and therefore, instead of posing the challenge on the ground of limitation and such technicalities as any other cantankerous litigant would do, I should have thought that the State had acted in a manner consistent with the Constitutional mandate. Therefore, the promotion related matters, especially for those with the constitutional protection, in my opinion, are a class by themselves and that would be so even while we consider the issue of delay and condonation of delay.

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5. Mr. Dere, the learned Advocate, in my view was spot on while inviting my attention to the seniority list at Page 14 of the OA, which shows that the seniority list may not have been finalized even as on 1.1.2013. If it was finalized at any time thereafter. Therefore, whatever else may or may not happen, but the issue of limitation would not come in the way of the Applicant.

6. Mr. A.J. Chougule, the learned P.O. pointed out that in fact in the OA, as filed by the Applicant, the claim to promotion is from 2004, and therefore, in any case the OA is barred by limitation. In my opinion, however, for all the reasons above discussed, the issue of limitation will have to be examined in the context above referred to. The averments in the application will be relevant, but they will have to be read consistently with the nature of the proceeding such as it is viz. this MA, and therefore, in so far as the contention is concerned, at least that will have to be made. Further, in any case, the basic principles that application such as this one, should not be sacrificed at the alter of procedure will be there to be understood and followed, and therefore, I find it difficult to agree with Mr. Chougule's submission.

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7. In view of the foregoing, therefore, although the application may have shown that the delay was eight years, the Tribunal need not get ransomed into going thereby because ultimately doing justice is the judicial duty of the Tribunal. I am very clearly of the view that either the delay is not there at all or even if there was delay, in the present set of circumstances, the same will have to be condoned. It is accordingly directed that this application is allowed with no order as to costs. The Applicant and the Office of this Tribunal are hereby directed to process the matter further and in the absence of any other Office objection, get the OA registered, so as to be placed before an appropriate Bench for being dealt with in accordance with the law.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**20.01.2016**

Mumbai

Date : 20.01.2016

Dictation taken by :

S.K. Wamanse.

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