

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.622 OF 2015
IN
ORIGINAL APPLICATION NO.1103 OF 2015**

Shri Vitthal R. Sakate.

)...Applicant

Versus

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

Shri J.N. Kamble, Advocate for Applicant.

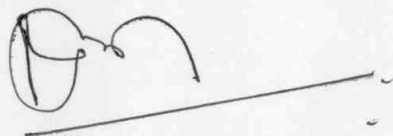
Shri A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 05.01.2017

JUDGMENT

1. This Misc. Application for condonation of huge delay will have to be rejected even as we are deeply conscious of the legal position that by and large, such applications have to be approached more with a view to

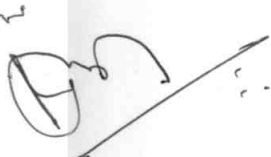


advance justice and they should not be decided on technical grounds. The fact of awareness of this aspect of the matter and these principles having been borne at the back of our mind must be clearly understood.

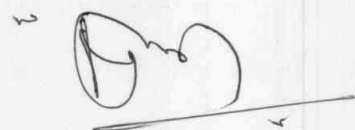
2. We have perused the record and proceedings and heard Mr. J.N. Kamble, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents.

3. In the still born OA, the quashing and setting aside of the orders dated 8.11.1976 and 2.2.1985 are sought. By the first order which was confirmed by the second one, the Applicant's cessation from job on the ground of actionable and unexplained absence from duty was made. The said OA as well as this MA came to be presented before this Tribunal on 21.12.2015.

4. The Applicant is an Ex-SRPF Constable. Taking the various events and dates from his own MA, he came to be appointed in the year 1965. He was sick and on leave during 20.1.1976 and 11.4.1976. On 12.4.1976, he attended Office but was apparently down with Malaria. A notice was issued to him by the Commandant, SRPF-Respondent No.2 on 8.4.1976 which according to the



Applicant, he did not receive. He similarly did not receive another notice of 19.4.1976 and thereafter on 8.11.1976, he came to be dismissed by an order of 8th November, 1976. It would appear therefrom that an enquiry was held against him which culminated into the said order of dismissal. A little more than one year thereafter, on 5.12.1977, he preferred an appeal to D.I.G, Armed Force, Pune which appeal was rejected on 14.8.1978. It was in fact dismissed because it was time barred. In November, 1981, he submitted, "an appeal" to the Hon'ble Chief Minister on which the Secretary, Home Department informed him on 14.6.1982 that he should file an appeal to the Director General of Police. On 12.4.1983, he submitted an appeal to the said authority which was rejected vide the letter dated 16.11.1983. Then, the next event that took place was on 14.3.1990, when the Applicant requested the Hon'ble Chief Minister for reinstating him. On 27.12.1991, the Director General of Police communicated to him that his appeal had already been rejected on 2.2.1985. On 21.8.1992, the Director General of Police addressed another communication whereby he was informed of the said rejection. He then moved this Tribunal with OA 982/2013, a copy of which is at Exh. 'H' and which in fact needs to be fully reproduced.



"Heard Shri J.N. Kamble, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. We have heard the rival submissions. Although the applicant has sought the relief in this MA of permission to reconstruct the record of the OA No.982 of 2014, Shri Kamble, Ld. Advocate for the Applicant now submits that this MA be disposed off with permission to withdraw the OA with leave to file fresh OA on the same cause of action.

3. Shri Chougule, Ld. PO leaves the matter to the Tribunal but he makes a statement that the issue of limitation in that event be left open.

4. The applicant is allowed to withdraw OA No.982 of 2014 with leave to file fresh OA on the same cause of action keeping all the stands open to both the sides to agitate on the points including the limitation. OA is disposed off accordingly with no order as to costs. MA No.502 of 2014 does not survive and stands disposed off accordingly."

5. Having mentioned all these facts, the Applicant has prayed that in the interest of justice, the delay should be condoned.

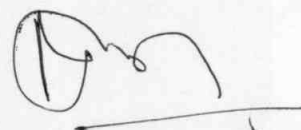
6. The Respondents have opposed this MA and Mr. A.J. Chougule, the learned PO though was as usual suave, but vociferous in opposing it.

7. We have in extenso dealt with the contents of the MA. It must have become quite clear that there is not even

A handwritten signature, possibly 'B. S.', is written in the bottom left corner of the page. The signature is in dark ink and appears to be a stylized representation of the letters.

an apology of any reason which could fall within the bracket of "sufficient cause". The events have been narrated and the relief has been sought. The delay is extra-ordinarily long and required serious explanation, if not on technical anvil at least to come true to a reasonable person's test. In fact, in view of the foregoing, it is not even necessary for us to mention anything in detail. The various dates and the time distance between them are self-explanatory. There must be the manifestation of a conduct as prompt and serious in pursuing the remedy. We find to our utter dismay complete lack of those qualities in this particular application. The events started taking place more than 40 years ago and this is one of the matters where the Respondents cannot be blamed at all for whatever predicament, the Applicant may have suffered, and therefore, despite the repeated information to him of his move having been rejected and several opportunities having presented themselves to the Applicant to move for the judicial remedy, if he did not do so, then we are afraid, he must thank himself and we shall not be in a position to advance any remedy to him.

8. The learned PO in that connection referred us to an unreported Judgment of the Hon'ble Supreme Court in **Special Leave Petition (Civil) Nos.6609-6613/2014**



(Brijesh Kumar and others Vs. State of Haryana and others, dated 24th March, 2014).

9. The need to be liberal in such matters does not mean that the judicial process should be allowed to be made light of or the interest of the other side which in this matter at least, has been unsuspecting should be completely glossed over, we are afraid and so are we constrained to hold that there is no merit in this MA and the sincerity and seriousness are the two attributes that this MA is lacking in. The same is accordingly dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
05.01.2017

Mumbai

Date : 09.01.2017

Dictation taken by :

S.K. Wamanse.

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