

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION No.580 of 2018 WITH
MISC. APPLICATION NO.389 OF 018**

P. S. Bhore)
R/o. M. V. Corner, 3rd floor, Shiv)
Dharshan Colony, Near MSEB,)
Vishrambaug, Sangli.)

....Applicant

Versus

1. The Superintendent of Police,)
Sangli, O/at. Vishrambaug, Sangli)
2. The Special Inspector General of)
Police, Kolhapur Range, Kolhapur)
O/at. Tarabai Park, Kolhapur.)
3. The Director General and Inspector)
General of Police, (M.S.), Mumbai)
O/at. Old Counsel Hall, Shahid)
Bhagatsingh Marg, Mumbai 39.)
4. The State of Maharashtra, through)
Principal Secretary, Home Dept.,)
Mantralaya, Mumbai 32.)

....Respondents

Shri G. A. Bandiwadekar, Advocate for Applicant.
Ms N. G. Gohad, Presenting Officer for the Respondents

CORAM : SHRI P. N. DIXIT, MEMBER (A)

DATE : 24.10.2018

ORDER

1. Heard Shri G. A. Bandiwadekar, the learned Advocate for the Applicant and Ms N. G. Gohad, the learned Presenting Officer for the Respondents.

Brief facts of the case are as follows :-

2. The Applicant working as Police Naik/1633 in district Sangli allegedly remained absent from 03.07.2008 to 20.04.2009 and 29.10.2009 to 17.09.2010 total 617 days without permission. He was proceeded against by departmental enquiry and consequently was compulsorily retired by the impugned order dated 23.07.2013. Aggrieved by the same, the Applicant made

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an appeal to Director General of Police. After examining the details furnished by him, the D.G.P. confirmed his punishment of compulsory retirement by the impugned order issued on 10.04.2017. The Applicant has filed the O.A. to quash the impugned order issued on 31.12.2013 (Exb.E1) and 10.04.2017 (Exb.F1).

3. In support of the same, the Applicant mentions that he was seriously ill due to backache and asthma. He further mentions that he was taking medical treatment (Para No.6.27 of the O.A.)

4. During the hearing when learned Advocate for the Applicant was asked to show the documental proof regarding his medical treatment he referred to Exb.G, page 57 of the O.A.. Perusal of Exb. 'G' reads as under:-

"Dr. B. K. Prani
Date : 07.12.2015

Certificate

He is taking treatment for two months and he has been advised for bed rest".

No document supporting his claim of earlier date is on record.

5. Even though the order of Applicant's compulsory retirement was issued on 10.04.2017 and he had one year for filing the O.A., he did not do so. In the Misc. Application filed to condone the delay from 09.04.2017 to 27.07.2018, the reasons mentioned are as under:-

"4. The Petitioner states that it is only in January-February 2018, that he could become stable in his health, where after he could find some time to go through his case papers with the help of his friend officer who helped him in the Departmental Enquiry proceedings. That accordingly he was advised by the Friend Officer / Defence Assistant to challenge the aforesaid impugned orders by approaching the Hon'ble Tribunal. This piece of advise was received by the Petitioner only in the month of May 2018.

5. The Petitioner states that it is thereafter he approached the lawyer at Mumbai in the first week of June 2018 and not prior thereto in view of the court being closed during summer vacation. That thereafter the lawyer advised the Petitioner to collect more papers which were not with him. That accordingly

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he collected such papers and then approached the lawyer in the second week of June 2018. That thereafter the lawyer drafted the O.A. and the same came to be filed on 27.6.2018. That in the circumstances stated above, there is a delay of 1 month in filing the o.A. and therefore, the same may kindly be to condone failing which an irreparable loss, harm and prejudice would cause to the Petitioner which cannot be compensated in terms of money.”

(Quoted from page nos.3 & 4 of the M.A.)

6. Learned Advocate for the Applicant has furnished following judgments on 31.10.2018 in support of his claim:-

“A. AIR 1960 S.C. 265 (Para 19)

19. It cannot be disputed that in dealing with the question of condoning delay under S. 5 of the Limitation Act the party has to satisfy the court that he had sufficient cause for not preferring the appeal or making the application within the prescribed time, and this has always been understood to mean that the explanation has to cover the whole of the period of delay (Vide Ram Narain Joshi V. Parmeswar Narain Mahta, ILR 30 Cal 309 (PC))

B. AIR 1962 S.C.361 (Para 8)

8. The context seems to suggest that “within such period” means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under S.5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed.

C. AIR 1971 S.C. 204 (Para 7)

7. In AIR 1962 SC 361, the Supreme Court has held that in showing the “sufficient cause” for condoning the delay, the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day when the appeal was actually filed.”

7. Learned P.O. for the Respondents has refuted the arguments in the Affidavit. Para No.4 & 5 of the same states as under:-

“4. With reference to contents of paragraph no.3, it is submitted that the contents raised in this paragraph is self motivated and without any documentary evidence of medical certificate regarding the mental and physical health

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condition of petitioner. This is nothing but the imaginary story used to mislead the Hon'ble Tribunal hence denied the same.

5. With reference to contents of paragraph nos.4 & 5, it is submitted that the contents raised in these paragraphs are self motivated and the imaginary grounds mentioned for delay, are far away from the reality regarding the record of the departmental orders passed. The contents of paragraph no.4 & 5 are not trustworthy and misleading to the Hon'ble Tribunal hence denied the same.

(i) It is respectfully submitted that the final order of compulsory retirement of petitioner passed by respondent no.1 on dated 20/7/2013 and the petitioner has admitted in the present delay condonation application that he has challenged the order dated 20/7/2013 passed by the Respondent No.1 the said order dated 20/7/2013 which is final order of punishment and the petitioner has filed the Original Application No.580/2018 on 27/6/2018. If we considered this period between the date of final order and the date of filing Original Application No.580/2018 there is a definite delay of more than 5 years. It is well settled that anyone who feels aggrieved by any order of punishment should approach the Court/Tribunal as early as possible. On this background the Original Application filed by petitioner is barred by limitation as per the provision of section 21 of Administrative Tribunals Act, 1985 regarding the limitation specified in the Administrative Tribunals Act, 1985.

ii) It is respectfully submitted that the reasons of delay are not satisfactorily explained."

(Quoted from page nos.7 & 8 of the Affidavit)

8. The learned P.O., therefore, stated that M.A. as well O.A. is devoid of any merits and deserved to be dismissed.

Findings and discussion:-

9. The fact that the Applicant remained absent for prolonged period and did not furnish any documental proof of his medical treatment is established in the proceedings against him. The Applicant as per his admission was indulging in activities such as participating in cinema and directing the same without permission. Only after departmental action against him was initiated and completed, he has made an effort to show that he was medically unfit. His first preference appears to be for participation in cinema rather than working as policeman. As underlined by the Hon'ble S.C. in the judgment relied upon by the Advocate for the Applicant, it is necessary that the Applicant explains the delay in filing per day beyond the limit described. In the present case, there is

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a delay of three months and seventeen days. Though the prescribed time period available for the Applicant ended on 09.04.2018, the Applicant has filed the O.A. on 27.07.2018 that means there is a delay of more than 3 ½ months. The only reason mentioned by the Applicant is that he was collecting relevant papers. The reasons furnished by him in M.A. for condoning the delay are thus flimsy and not reasonable. As these grounds do not sufficiently explain the delay, the same cannot be condoned and, therefore, Misc. Application is rejected.

10. For the reasons stated above, the Original Application seeking quashing of the order against the Applicant is found without any merits. The impugned order issued against him is based on the facts and legal provisions and does not warrant any intervention from this Tribunal.

11. As such, the M.A. as well as the Original Application are dismissed without costs.

Sd/-

(P.N. DIXIT)
MEMBER (A)