

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2097/2016

Anil s/o Shyamrao Uplenchwar

...Versus...

State of Maharashtra, through its Secretary, Jal Sampada Department,
Mantralaya, Mumbai – 32 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.K. Tambde, Advocate for petitioner
Shri J.Y. Ghurde, AGP for respondent nos.1 and 3

CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 15.06.2016

By this writ petition, the petitioner challenges the order of the Maharashtra Administrative Tribunal, dated 14.1.2016, dismissing the application filed by the petitioner for condonation of delay of more than four years in filing the original application.

The petitioner was working as a Sectional Engineer in the Irrigation Department. A departmental enquiry was conducted against the petitioner and the punishment of stoppage of three increments with future effect and treating the period of his continuous absence from 1.3.2005 to 15.7.2007 as *dies non* was passed. The petitioner challenged the order, dated 2.5.2009 imposing the aforesaid penalty in a departmental appeal. The appeal was, however, dismissed by the order, dated 19.10.2007.

The petitioner had challenged the orders, dated 2.5.2009 and 14.9.2009 before the Maharashtra Administrative Tribunal by filing an original application on 9.1.2015. Since there was a considerable delay in filing the original application, the petitioner filed an application for condonation of delay in filing the original application. The said application was, however, dismissed by the impugned order, dated 14.1.2016 and the Tribunal refused to condone the delay. The petitioner has challenged the said order in the instant petition.

Shri Tambde, the learned Counsel for the petitioner submitted that on 14.1.2016, the Counsel for the petitioner was not present and hence, an opportunity needs to be granted to the petitioner to address the Tribunal. It is submitted that in the absence of any hearing on the application for condonation of delay, the matter needs to be remanded to the Tribunal. It is further stated by referring to internal page 10 of the application for condonation of delay that the Tribunal ought to have condoned the delay in filing the original application. It is stated that the necessary documents for filing the original application were not available with the petitioner and the same were provided to the petitioner by the respondents only on 17.12.2014. It is stated that immediately after the documents were supplied to the petitioner on 17.12.2014, the petitioner had filed the original application on 9.1.2015.

Shri Ghurde, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 and 3 has supported the impugned order. It is stated that the Counsel for the petitioner was heard on the application on the previous date

of hearing and the matter was simply adjourned at his request. It is stated that since the petitioner's Counsel did not remain present on the next date of hearing despite the fact that he was already heard, the Tribunal proceeded to decide the application of the petitioner in the absence of his Counsel. It is submitted that there is an inordinate delay in filing the original application and the delay has not been sufficiently explained. It is stated that the petitioner had applied for necessary documents under the Right to Information Act only on 24.11.2014 and after the petitioner deposited the necessary fees for supplying the documents, the documents were supplied to the petitioner on 17.12.2014. It is stated that the delay of more than four years has not been explained.

On hearing the learned Counsel for the parties and on a perusal of the impugned order, we find that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The penalty was imposed on the petitioner by the orders, dated 2.5.2009 and 14.9.2009 and the said orders were challenged by the petitioner by filing the original application on 9.1.2015. There was a delay of nearly four years in filing the original application. Though the application for condonation of delay is very lengthy, the grounds of delay have been mentioned only in paragraph 15 of the said application. It is stated in paragraph no.15 of the application that when the petitioner contacted his Counsel, the Counsel sought for certain important documents and the said documents were received by the petitioner only on 17.12.2014 under the Right to Information Act. The petitioner has stated that the petitioner immediately filed the

original application on 9.1.2015. The statements in paragraph no.15 of the application, on which reliance has been placed by the petitioner for seeking condonation of delay, are as vague as they could be. The orders that are impugned by the petitioner before the Tribunal were passed in the month of May and September, 2009 and it is not stated in the application as to when the petitioner contacted his Counsel. A vague statement is made that the petitioner contacted his Counsel and his Counsel asked for certain documents, which were received by the petitioner under the Right of Information Act only on 17.12.2014.

We have perused the order dated 17.12.2014 by which the documents are supplied to the petitioner. They make a reference to an application made by the petitioner under the Right to Information Act on 24.11.2014. It is, thus, clear from the documents annexed by the petitioner to the instant petition that though the orders of penalty were passed in May and September, 2009, the petitioner had sought the information under the Right to Information Act on 24.11.2014. The delay from September 2009 till November, 2014 is not explained at all. A party cannot approach a judicial forum at his own leisure and seek the condonation of delay on the grounds that are not sufficient for condoning the delay. No fault can therefore be found with the order of the Tribunal rejecting the application filed by the petitioner for condonation of delay in filing the original application. The Tribunal has rightly observed that there is no reason as to why the petitioner waited for his Counsel to advise him till 2014. It seems that the petitioner had accepted the order of penalty and subsequently woke up after five years to challenge

the same on some legal advise.

The other submission made on behalf of the petitioner for a remand of the matter to the Tribunal on the ground that the petitioner was not granted a fair opportunity of hearing is equally meritless and is liable to be rejected. It appears from the impugned order that the Counsel for the petitioner was fully heard on the application for condonation of delay on 2.12.2015 and the matter was simply adjourned at the request of the Counsel for the petitioner by two weeks. As none appeared on behalf of the petitioner on the day on which the impugned order was passed, the Tribunal had no other course open, but to decide the application for condonation of delay in the absence of the Counsel for the petitioner. In any case, the Tribunal had heard the Counsel for the petitioner on 2.12.2015 and had considered the reasons stated in the application of delay, and hence, it cannot be said that an opportunity of hearing was not granted to the petitioner.

Since the order of the Tribunal is just and proper, the writ petition is dismissed with no order as to costs.

JUDGE

JUDGE

Wadkar