

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

BENCH AT AURANGABAD.

WRIT PETITION NO.4257 OF 2016

Syed Khamar Ali S/o Syed
Mehboob Ali ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.G.R.Syed, advocate for the Petitioner.
Mr.D.R.Kale, A.G.P. for the State.
...

**CORAM : S.V.GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

Date : 08.08.2017.

PER COURT :

1. Misc. Application filed by the petitioner for condonation of delay in lodging the Original Application is rejected. Aggrieved thereby, the present petition.

2. Mr.Syed, learned counsel submits that the Tribunal failed to consider that the pension is not a bounty but hard earned money of the

petitioner. The cause of action to seek pension is a continuing cause of action, as such the question of delay would not arise. The petitioner had approached this Court seeking pensionary benefits. However, this Court directed the petitioner to avail the alternate remedy, as such the petitioner had filed Original Application. There was delay of 1223 days. The learned counsel submits that the Tribunal has taken a hyper technical approach. Considering the fact that the petitioner is claiming pension, the Tribunal ought to have taken a liberal approach.

3. Learned A.G.P. supports the order and submits that earlier also the petitioner had approached the Tribunal and the Original Application filed by the petitioner bearing No.O.A.No.536/2002 is dismissed.

4. We have considered the submissions. It appears that the petitioner had rendered service between 1966 and 1985 for about 19 years. The petitioner had not rendered pensionable service.

5. Be that as it may, the petitioner had filed earlier Original Application No.536/2002 with the following reliefs :

"7. The applicant therefore, prays that this Hon'ble Tribunal be graciously pleased :

(a) To call for records and personal file of the applicant.

(b) To set aside and quash the impugned order dt.21.5.92 and 6.7.92 at Exh.F. Colly.

(c) To restrain respondents by a suitable preventive direction from taking any action as intended vide above orders at Exh.F. Colly.

(d) To direct respondent to release salary of the applicant from 14.10.85, onwards i.e. provident fund gratuity leave salary, with value of surrendered leave salary.

(e) To direct the respondents to take the applicant on duty and/or to issue relieving letter to join duty at the suitable place or division as per their choice.

(f) To grant appropriate relief to which the applicant is found entitled to

(g) To treat the interim period from 14.10.85 till this day as service period."

6. It has been observed that after 1985, the petitioner had abandoned his service. The Tribunal while dismissing the Original Application No.536/2002 observed as under :

"1. Heard Shri R.K.Jadhavar and Shri Pawar learned counsel for applicant and learned Presenting Officer for the respondent authorities.

2. Present application is hit by the bar of Section 21 of the

Administrative Tribunal Act.
Meritwise also the original application is absolutely meritless. By applicant's own showing he appears to have been on duty between 1966 and 1985. Thereafter he was never on duty. He appears to have unilaterally abandoned the service. There is no material on record to show that the period of absence was ever regulated by sanctioning leave of any description ex-post facto. The onus was entirely on the applicant to have the period of absence regulated by having the same sanctioned as leave of whatever description. In the circumstances the entire period of absence is unauthorised absence which has the effect of causing interruption in service. Any interruption in service uncondoned has the effect of setting at naught even the previous service rendered. It is inconsequential whether he was

confirmed or otherwise. No Court/Tribunal can grant the relief claimed in this original application. The O.A. stands dismissed at the threshold. No order as to costs."

7. It has been held by the Tribunal in the earlier Original Application that interruption in service uncondoned has the effect of setting at naught even the previous service rendered. The said finding has become final as it is not assailed. No explanation is given for not taking steps during the interregnum period. The petitioner moved the Tribunal after a long slumber without any explanation. The Tribunal has not committed any error in passing the impugned order.

8. The Writ Petition is dismissed. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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