

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

WRIT PETITION NO.4537/2016

Mrs. Dhanashree w/o Harshavardhan Vairagare

...Versus...

The Union of India, through the Secretary Ministry of Mines, Govt. of India, New Delhi – 110001 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 M.M. Sudame, Advocate for petitioner
Shri S.A. Chaudhari, Advocate for respondent nos.1 to 3

**CORAM : B.P. DHARMADHIKARI AND
ARUN D. UPADHYE, JJ.**

DATE : 08.09.2017

Heard respective Counsel.

2. Advocate Shri Chaudhari points out that he has received copy of rejoinder recently and he is awaiting instructions upon it.

3. However, after hearing respective Counsel, we did not find it necessary to delve upon merits of the controversy.

4. Petitioner filed original application under Section 19 of the Administrative Tribunals Act before Central Administrative Tribunal praying for clubbing her *ad hoc* service of about 4 to 5 years with her regular service. As this prayer was belated an application for condonation of delay was moved and the prayer was to condone delay of one year and three months.

5. Petitioner pointed out that she was praying for quashing and setting aside the order dated 18/8/2010. Representation was moved by her in the matter on 17/6/2010 and it was turned down on 18/8/2010. Original Application was filed on 8/11/2012.

6. Petitioner has thus computed limitation from 18/8/2010.

7. Perusal of impugned order passed by Central Administrative Tribunal on 30/7/2013 reveals that at the stage of motion hearing without any notice to respondents, the Central Administrative Tribunal has refused to entertain the original application. Discussion in impugned order shows that cause of action for seeking such clubbing of *ad hoc* temporary service had arisen way back in 2002 when benefit of first Assured Career Progression Scheme (A.C.P.S.) was released to her.

8. Impugned order therefore shows no consideration of grievance made in application for condonation of delay and ignores the fact that prayer was to set aside order dated 18/8/2010 by which representation was rejected.

9. Whether order dated 18/8/2010 could have been looked into as constituting cause of action in law or then representation moved by her on 17/6/2010 could have constituted a valid excuse for not approaching Central Administrative Tribunal within time, were the only relevant issues at that juncture.

10. If the Central Administrative Tribunal found that no cause of action accrued on 18/8/2010 an opportunity to explain delay from earlier date could have been extended to petitioner

and after considering that explanation, original application could have been rejected.

11. According to Advocate Shri Sudame, identical service put in by one lady Smt. V.L. Kedare has been clubbed with a regular service and she has been given benefit of release of A.C.P.S. accordingly.

12. Advocate Shri Chaudhari is disputing this. He submits that as per his reply, petitioner had earlier filed one original application and that original application is already pending. His effort therefore is to contend that petitioner had earlier approached Central Administrative Tribunal and was aware of injustice done to her. He claims that in such circumstances, it must be presumed that prayer for clubbing of service was given up.

13. We, in present facts, are not required to comment on merits of arguments of Advocate Shri Sudame or Advocate Shri Chaudhari. We find that Central Administrative Tribunal was to consider application for condonation of delay as presented. Whether cause of action accrued on 18/8/2010 or not was not the scope of hearing as other side was then not served. The Central Administrative Tribunal has on the basis of material made available by petitioner found that cause of action had accrued much earlier. However, this has been without extending petitioner an opportunity to explain delay from that date.

14. Impugned order has been passed on very first day of hearing.

15. We, therefore, quash and set aside the order dated 30/7/2013 in Original Application No.388/2013.

16. In fact, this order ought to have been on application for condonation of delay. Consequently, order passed on Review Petition No.6/2015 on 30/3/2016 is also quashed and set aside.

17. Proceedings for condonation of delay are restored back to the file of Central Administrative Tribunal for fresh consideration.

18. Needless to mention that all contentions raised by respondents before this Court are kept open. As instructions on rejoinder are awaited, it is open to respondents to act on it or modify the same before Central Administrative Tribunal and to oppose the prayer made therein.

With these observations and liberty writ petition is allowed. No costs.

JUDGE

JUDGE

Wadkar