

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

WRIT PETITION NO. 11244 OF 2018

Venkat Marutirao Methe

.. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri Ajay D. Deshpande, Advocate for the Petitioner.

Shri S. K. Tambe, A.G.P. for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.**

DATE : 08TH OCTOBER, 2018.

FINAL ORDER :

. The petitioner had filed original application. Subsequently filed an applications for condonation of delay and amendment. Applications for condonation of delay and amendment are rejected.

2. Mr. Deshpande, the learned advocate for the petitioner submits that, the petitioner had specifically challenged order passed by the Disciplinary Authority dated 17.11.2015. The limitation period is of one year for filing original application and if representation is filed six months period can be extended. The petitioner filed representation on 15.09.2016, 06.12.2016 and

26.12.2016. In view of that, the original application challenging order passed by the disciplinary authority dated 17.11.2015 is well within limitation. The original application is filed on 16.02.2017. According to the learned counsel application for amendment was incorporating some pleadings. It is not that by virtue of amendment application for the first time petitioner was challenging the order of disciplinary authority dated 17.11.2015. The prayer was already made in the original application to that extent. The learned counsel further submits that, the petitioner was not considered for promotion because of the departmental enquiry as has been contended by the State in its affidavit in reply. The cause of action thereafter arose on 17.11.2015 after the decision in the departmental enquiry. It cannot be said that there is delay of twenty years.

3. Mr. Tambe, the learned Assistant Government Pleader for respondent Nos. 1 and 2 submits that, the petitioner is claiming due date from the year 1996 and 2006. There was no impediment for the petitioner to challenge the same. By way of amendment petitioner cannot be allowed to raise challenge to the time barred claim. The Tribunal has rightly considered all the aspects.

4. The petitioner in the original application has claimed following reliefs.

- “(A) Original Application may kindly be allowed.
- (B) The respondents may kindly be directed to extent all financial benefits to the applicant as if he was promoted as Superintendent of Land Records on 11.3.1996 and as Deputy Director of Land Records on 3.6.2006 by quashing and setting aside the order of punishment inflicted by the respondent No. 1 upon him under Govt. order dated 17.11.2015 at Annexure 'A-1'.
- (C) The respondent No. 1 may kindly be directed to extend the benefits of Time Scale Promotion Scheme to the applicant w.e.f. 1.8.2001.
- (D) Any other suitable and equitable relief to which applicant is entitled to, may kindly be granted in his favour.”

5. Perusal of the prayers in the original application, it is manifest that the petitioner had challenged the order of the Government dated 17.11.2015 inflicting punishment upon him in the disciplinary proceedings. The State in its affidavit in reply before the Tribunal has stated thus :

“04. As regards Para No. 4 & 5 of the application, I say and submit that the contentions of the applicants are not true and correct and hence it is denied. As Departmental Enquiry against applicant was initiated on 21/11/1991. Due to pendency of disciplinary proceedings against applicant, DPC has taken conscious decision not to

promote applicant as per GAD circular dated 02/04/1976. From the date of initiation of D.E., applicant has not challenged the proceeding denial of or promotion any time till the retirement of applicant I. e. 30/09/2012. Finally, by the order dated 17/11/2015, a punishment of deduction of 3# amount for a period of one year came to be imposed upon him under Rule 27 of MCS (Pension) Rule, 1982. Hence applicant could be considered for further submits that name of applicant was in FIR in accused Column at Sr. no. 2. D. E. was also started."

6. It is the case of the respondents that, the petitioner is not considered for promotion due to pendency of departmental proceedings. The departmental proceedings finally concluded on 17.11.2015. Both the issues with regard to promotion and challenge to the order in the departmental proceedings would over-lap and may be required to be considered together. If challenge to the order of the disciplinary authority is concerned, there is delay of two months and odd days in filing the original application, we are not impressed by the contention of the petitioner that the representation was given by the petitioner. Challenge to the disciplinary proceedings cannot be by way of representation.

7. However, considering that, the delay is only of two months and odd days, we are inclined to exercise our writ jurisdiction and set aside the impugned order rejecting application for condonation of delay. Application for condonation of delay is

allowed. If, there is no other impediment, original application be registered.

8. As far as application for amendment is concerned, the same is rejected on the ground that time barred claim is resorted to. As observed supra, the delay in challenging the departmental proceeding is only of two months and odd days, which we have already condoned. In the light of that, the impugned order rejecting application for amendment is set aside. The Tribunal shall reconsider the application for amendment on its own merits. The learned A. G. P. submits that, the petitioner has remedy of appeal. It is for the Tribunal to consider said aspect. All contentions of respective parties are kept open. The writ petition is accordingly disposed of. No costs.

[S. M. GAVHANE, J.]

[S. V. GANGAPURWALA, J.]

bsb/Oct. 18

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