

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

WRIT PETITION NO. 1254 OF 2019

Kamlakar Kishanrao Phad

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Sujeet D. Joshi, Advocate for the Petitioner.

Ms. P. V. Diggikar, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALA, JJ.**

DATE : 30TH JANUARY, 2019.

FINAL ORDER :

. The petitioner assails the order passed on application for condonation of delay.

2. We have heard Mr. Joshi, the learned counsel for the petitioner and the learned Assistant Government Pleader for respondents.

3. As on the date the petition was filed, the Court certainly would not have entertained the petition. However, when the order was passed six months had already lapsed. Instead of considering the case of the petitioner herein, the Tribunal

granted extension of two years to conclude the Departmental Enquiry, in an application filed by the petitioner for condonation of delay caused in filing original application. Such a recourse is not countenanced under law. Without giving opportunity to the petitioner to dilate on the merits of the matter as to whether departmental enquiry can still proceed further, the Tribunal not only rejected the application for condonation of delay, but also extended time for concluding departmental enquiry by two years. Such a recourse could not have been adopted by the Tribunal in an application of the petitioner.

4. The facts on record suggest that, the departmental enquiry was initiated against the petitioner in the year 2006 and the same is not concluded as yet. The petitioner filed original application bearing Original Application No. 228 of 2018 challenging the departmental proceedings in the said original application. The Tribunal accepted the statement on behalf of respondent that the departmental enquiry would be concluded within six months. The departmental enquiry is not concluded within six months as per the said statement. Naturally, the petitioner would get a right to assail the departmental enquiry on all the available grounds after lapse of six months. The petitioner, however, did not wait for six months and within a month filed fresh original application with an application for condonation of delay challenging the charge sheet of the year

2006. Said recourse certainly ought to have been adopted by the petitioner. However, by efflux of time six months passed and on the day the Tribunal rejected the application of the petitioner, six months had already lapsed. In fact, the Tribunal ought to have considered the grievance of the petitioner and that whether departmental enquiry can be proceeded further, the petitioner had relied on certain circulars and resolution with regard to the continuance of the departmental enquiry after lapse of certain period.

5. The petitioner certainly was not given an opportunity by the Tribunal while extending the period of departmental enquiry by two years. The Tribunal was expected to adhere to the principles of natural justice while extending the period of concluding the departmental enquiry. As it is now six months have lapsed and the departmental enquiry is not concluded, the Tribunal shall consider the case of the petitioner on merits for continuance of departmental enquiry even after six months.

6. Considering the peculiar facts of the present case and also considering the relief claimed in the original application, the petitioner had certainly made out a case for condonation of delay. The application for condonation of delay is allowed.

7. In the light of the above, we set aside the impugned order.

In case there is no other impediment, the Tribunal shall register the original application and proceed with the same in accordance with law.

8. With these observations and directions, the writ petition is disposed of. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Jan. 19