

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

WRIT PETITION NO. 4580 OF 2022

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| 1. Chief Engineer, Sinchan Bhavan, Near
Old Secretarial Building, Civil Lines,
Nagpur. | Petitioners
(Ori.Resp.No.2) |
| 2. The Superintendent Engineer,
Command Area Development
Authority, Ajani, Nagpur. | (Ori.Resp.No.3) |

-Versus-

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| 1. Shri Suresh S/o Panjabrao Giri, Aged
about 64 years, Occ.: Retired, R/o
MHADA Colony, Amravati Road,
Near Bole Petrol Pump, Nagpur. | Respondents
(Ori.Applicant) |
| 2. State of Maharashtra, Through its
Secretary, Water Resources
Department, Mantralaya, Mumbai-
400032. | (Ori.Resp.No.1) |
| 3. Regional Special Enquiry Officer,
Departmental Enquiry Section, Govt.
of Maharashtra, Old Secretarial
Building, Civil Lines, Nagpur. | (Ori.Resp.No.4) |

Mr. T.M.Zaheer, counsel for the petitioners.
Mr. P.K.Mishra, counsel for respondent No.1.
Mr. N.S.Rao, AGP for respondents-State.

CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.

DATE : 13TH JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

Heard.

2. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. By the present petition, the order dated 14/06/2022 passed by the Maharashtra Administrative Tribunal, Nagpur (hereinafter referred to as “Tribunal”) in Civil Application No.197 of 2020 in Original Application (OA) No.418 of 2020 has been challenged.

4. The respondent No.1 has filed OA No.418 of 2020 challenging the order dated 24/04/1992. Along with the said application, the respondent No.1 has also been filed Civil Application No.197 of 2020 for condoning the delay in preferring the OA. The petitioners objected the application

for condonation of delay on the ground that there is inordinate delay of 27 years and that has also not been properly explained. After hearing both the parties, the Tribunal allowed the application for condonation of delay. Feeling aggrieved by the order of condoning the delay, the present writ petition came to be filed.

5. Heard the learned counsel for the petitioners and the respondents.

6. It is contended on behalf of the petitioners that in spite of delay of 27 years, that too not properly explained by the respondent No.1, the Tribunal without considering the objection of the petitioners, condoned the inordinate delay. The learned counsel for the petitioners would submit that even though the appeal against order of the year 1992 has been disposed of in the year 2003, still there is delay of 17 years, which has not been considered by the Tribunal. According to him, the order of the Tribunal is erroneous and is required to be set aside.

7. *Per contra*, the learned counsel for the respondent No.1 supported the order of the Tribunal. The learned counsel submitted that after disposal of appeal, review application came to be filed, which came to be disposed of recently. Therefore, it cannot be said that there is delay of 27 years in preferring the OA. The Tribunal has considered all the aspects of the matter and condoned the delay.

8. We have given thoughtful consideration to the rival submissions of the respective parties. We have gone through the impugned order of the Tribunal.

9. Indisputably, by the OA No.418 of 2020, the order of year 1992 passed by the Disciplinary Authority, inflicting the punishment of withholding 3 increments in future has been challenged. The appeal was preferred, which was dismissed in the year 2003 and the present OA came to be filed in the year 2020. However, while preferring the application for condonation of delay, it was claimed that there is delay of only 23 months.

10. Perusal of the impugned order shows that the reason for condoning the delay has been mentioned that each and every period should not be explained when there is a merit in the submission that the delay can be condoned and the matter can be decided on merits.

11. Evidently, the appeal has been disposed of in the year 2003 and OA has been filed after 17 years. The learned counsel or the respondent No.1 submits that since there was review petition pending, the OA could not be filed in the year 2003. There is no such law that period of a review application be excluded from the period of limitation. Be that as it may, but the fact remains that even in the year 2010, the respondent No.1 was informed that the review petition cannot be entertained and the present OA came to be filed in year 2020 claiming delay of 23 months only.

12. There is delay of 17 years and the reason given by the Tribunal that each and every delay is not required to be condoned. Without

satisfying itself whether the respondent had sufficient cause for not preferring OA within time, the Tribunal erroneously condoned the delay. The Tribunal has not considered the facts of the case while condoning the delay. We find that the impugned order dated 14/06/2022 is not sustainable and therefore, it is set aside. Accordingly, the writ petition is partly allowed.

13. The matter is remanded back to the Tribunal for fresh consideration.

14. Rule is accordingly disposed of. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)