



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

WRIT PETITION NO. 8309 OF 2018

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| 1. Siddharth Punaji Dive, Aged about 62 years, Occupation : Retired (Ex. Jt. General Manager), R/o. S.No.68/3, Dattanagar Kiwale, Dehu Road, Pune-412101. | Petitioner |
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-Versus-

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| 1. Government of India, Through Secretary, Min.of Defence, Department of Defence Production, New Delhi – 110001.
2. Director General Ordnance (Coordination & Service), Directorate of Ordnance, 10-A, S.K.Bose Road, Kolkata – 700001.
3. Chief Managing Director (CMD), Munitions India Limited, Ammunition Factory Khadki, Pune – 411003.
4. The General Manager, Ordnance Factory, Bhandara, Bhandara-441906. | Respondents |
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Mr. Pranav Deshmukh, counsel h/f Mr. K.P.Mahalle,
counsel for the petitioner.
Mrs. Mugdha Chandurkar, counsel for respondents.

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**CORAM : AVINASH G. GHAROTE AND
M.W.CHANDWANI, JJ.**

CLOSED ON : 9TH AUGUST, 2023

PRONOUNCED ON: 31ST OCTOBER, 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. The writ petition challenges the order dated 26/04/2017 passed by the Central Administrative Tribunal, Mumbai Bench at Nagpur (hereinafter referred to as “CAT”), whereby the Original Application No.2103 of 2014 came to be dismissed.

4. The petitioner joined respondent No.2 on 16/01/1992 on the post of Assistant Works Manager by direct recruitment through Union Public Service Commission (UPSC). He was promoted to the post of Deputy General

Manager on 01/04/2003 and on 20/07/2006, he was promoted to the post of Joint General Manager. The petitioner was supplied with a copy of Annual Performance Assessment Report (hereinafter referred to as “APAR”) for the period of 01/04/2009 to 31/03/2010 on 20/11/2010. In the said APAR, the Reporting Authority granted seven points on the assessment of overall grading and the petitioner was categorized as “very good”. However, the Reviewing Authority gave adverse remark against the petitioner and reduced his overall grading from ‘very good’ to ‘good’.

5. The petitioner approached the Director General with a representation dated 06/12/2010, which came to be rejected on 09/05/2011. Due to reduction in grading, the petitioner could not be granted Non-Functional Financial Upgradation benefit, which was extended to his colleagues and similarly placed officials including his juniors. The petitioner preferred the Original Application No.2130 of 2014 before the CAT. By the impugned order, the CAT without going into merit of the case rejected the original application on the ground of delay.

Feeling aggrieved with the impugned order dated 26/04/2017, the present petition came to be filed.

6. The learned counsel for the petitioner would submit that since beginning the petitioner was discharging his duty to the utmost satisfaction of his superior and has throughout clean and unblemished record. Despite agreeing with the report of the Reporting Authority, the Reviewing Authority reduced the grading of petitioner from very good to good with *mala fide* intention so as to keep the petitioner away from the benefit of Non-Functional Financial Upgradation, which was extended to his colleagues and similarly placed officials including his juniors. The reduction is done by Reviewing Authority in cryptic fashion and against the settled guidelines. The learned CAT without entering into the merits of the matter dismissed the original application on the ground of delay vide order dated 26/04/2017. The order so passed by the learned CAT is not sustainable. It is contended that after the CAT passed the impugned order, the health of the petitioner and his wife was deteriorated. Therefore, there is

delay in filing the writ petition. The quashing of the order dated 26/04/2017 passed by the CAT and order dated 09/05/2011 dismissing the representation by the Director General of Ordnance Factory are to be set aside.

7. Learned counsel Mrs.Chandurkar appearing for the respondents vehemently submits that the CAT by an elaborate reasoning has dismissed the original application of the petitioner. The order is justified and well reasoned. The representation of the petitioner was considered by the respondent No.2 and decision dated 09/05/2011 was communicated to him. Rather, the decision on the representation was accepted by the petitioner. Therefore, he remained silent more than about two years and eight months and he had not filed appeal. There is provision of an appeal with the DGOF, Chairman Ordnance Board. The second representation in the year 2014 was filed just to show to have the cause of action to file the original application before the CAT. The petition suffers from

delay and laches. Therefore, the writ petition is liable to be dismissed.

8. Perusal of the order of CAT goes to show that the petitioner did not take any steps after rejection of his representation on 09/05/2011 and in the year 2014 had filed an appeal before the Authorities, which was not legally permissible and on the ground of delay of more than two years and eight months by the impugned order dismissed the original application.

9. Perused the office memorandum of Ordnance Factory Board dated 16/09/2004 which specifically provides the guidelines and forum for representation and timeline in which representation to be filed. Perusal of Clause 4 which gives rise to cause to make representation shows that the officer shall be given an opportunity to make representation against the entry and final grading given in the report within fifteen days from the date of receipt of the entry in APAR. If no representation is received from the concerned officer on or

before fifteen days, from the date of disclosure, APAR will be treated as final. It is further mentioned in Clause-7 that the Competent Authority to whom the representation is made, may decide the representation by rejecting or by modifying the APAR. The decision of the Competent Authority shall be final.

10. Needless to mention that the representation made by the petitioner came to be dismissed by the order dated 09/05/2011. The petitioner kept mum for almost two years and eight months. In spite of having no provision for second representation, the petitioner again made one more representation claiming it to be appeal and which came to be rejected on the ground that there is no provision for second representation/ appeal. It appears after accepting the rejection of representation/appeal that when he could not get promoted, the subsequent representation/appeal was made which was not permissible. Therefore, we don't find force in the argument of the petitioner that cause of action arose on 13/11/2014 when second representation/appeal came to be rejected. The CAT

has held that the period of limitation has not been counted from the rejection of first representation, but the petitioner come with a case of rejection of appeal against the first representation, which is never provided. The CAT has rightly held that the petitioner should have filed original application against the rejection of first representation on 09/05/2011. We do not see any perversity in the impugned order of CAT. Therefore, the impugned order dated 26/04/2017 of CAT does not require interference in writ jurisdiction. Consequently, the writ petition is dismissed.

11. Rule stands discharged. No order as to costs.

(M.W.CHANDWANI, J)

(AVINASH G. GHAROTE,
J)