

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13324 OF 2022

Dilip Rangnath Nalwad,
Age 57 years, Occupation : Service,
R/o. Flat No.201,
Pramukh Ashish Building,
Kacheri Road, Anand Nagar,
Karjat, District Raigad – 410 201. ..Petitioner

Vs.

1. The State of Maharashtra,
through the Principal Secretary,
Soil & Water Conservation Dept.
Conservation Dept. Mantralaya,
Mumbai – 400 032.
2. The Principal Secretary,
Water Resources Dept. Govt. of Maharashtra,
Mantralaya, Mumbai – 400 032.
3. The Regional Water conservation Officer,
Soil & Conservation Division,
Sinchan Bhavan, Kopari,
Thane (E) – 400 603. ..Respondents

Mr. Narendra V. Bandiwadekar, Senior Advocate a/w. Mr. Vinayak Kumbhar, Mr. Rajendra Khaire and Mr. Aniket Phapale i/by Ms. Ashwini N. Bandiwadekar for the Petitioner.

Ms. Reen A. Salunkhe, AGP for Respondent Nos.1 to 3 (State).

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATED : 8th JANUARY 2024.

JUDGMENT: (Per Jitendra Jain, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.
2. By this petition under Article 226 of the Constitution of India, the Petitioner seeks to challenge the order dated 11th March 2022 passed by the Maharashtra Administrative Tribunal, Mumbai (for short “the Tribunal”), whereby the Original Application No.761 of 2020 filed by the Petitioner is dismissed on the point of limitation.
3. Brief facts leading to the present petition are as under:-
 - (i) On 18th March 1983, the Petitioner came to be appointed as a Technical Assistant in the Water Resources Department of the State of Maharashtra.
 - (ii) On 16th January 2015, the Petitioner was promoted to the post of Junior Engineer by the Respondents. However, the Petitioner was not satisfied with the said promotion and vide various representations, starting from 7th August 2015 upto 2nd November 2018, sought promotion w.e.f. 1st February 1992. However, since

there was no response to the said representations, the Petitioner on 18th December 2018 filed an Original Application (OA) with the Tribunal which was numbered as OA No.27 of 2019.

(iii) On 28th November 2019, the Petitioner was permitted by the Tribunal to withdraw OA No.27 of 2019 with liberty. Pursuant to the said liberty, 2nd OA No.761 of 2020 was filed by the Petitioner on 15th December 2020.

(iv) On 11th March 2022, the Tribunal dismissed the said OA No.761 of 2020 by placing reliance on Section 20 read with Section 21 of the Administrative Tribunal Act, 1985. The Tribunal came to the conclusion that the said OA is barred by limitation by considering the first representation made on 7th August 2015 as the starting day for calculating the limitation under Section 20 read with Section 21 of the said Act. It is on this backdrop that the present petition is filed before this Court challenging the impugned order dated 11th March 2022.

4. The Petitioner submits that the Tribunal erred in calculating limitation period from 7th August 2015 being the first representation. The Petitioner submits that he had made various representations and the last of the representation was made on 2nd November 2018. The

Petitioner submits that the 1st OA was filed on 18th December 2018, which was within the period specified in Section 21(1)(b) of the Administrative Tribunal Act, 1985 from the date of last representation. The Petitioner submits that the said application was allowed to be withdrawn with liberty on 28th November 2019 and, thereafter, the 2nd Original Application was filed on 15th December 2020. In the meanwhile, there was a pandemic from March 2020 and the limitation period was suspended by the Supreme Court. The Petitioner submits that the Tribunal has not considered the last of the representation made on 2nd November 2018 for calculating the limitation period and has also not considered the effect of order dated 20th November 2019, whereby a liberty was given to the Petitioner. The Petitioner submits that if all these factors are considered then the OA filed on 15th December 2020 was well within the time and, therefore, the impugned order dated 11th March 2022 ought to be quashed.

5. Per contra, the Respondents supported the order of the Tribunal by submitting that the 2nd OA was time barred, if the limitation is counted from 7th August 2015 being the first of the representation made by the Petitioner. The Respondents have therefore prayed for dismissal of the present petition.

6. We have heard the learned counsel for the Petitioner and the Respondents and with their assistance have perused the pleadings of the present petition.

7. It is relevant to reproduce Sections 20 and 21 of the Administrative Tribunal Act, 1985, which reads thus:-

“20. Applications not to be admitted unless other remedies exhausted. -

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.-

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the

application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

8. The case of the Petitioner falls under Section 20(2)(b), since the representations made from time to time were not decided by the Respondents. If that be so, then under Section 21(1)(b), the Application ought to have been made, after expiry of 6 months from the date of representation, within a period of 1 year from the date of such expiry that is, within 18 months from the date of representation. Sub-section 3

of Section 21 empowers the Tribunal to condone the delay if the Tribunal is satisfied that the Applicant had sufficient cause for not making an application within such period.

9. In the instant case, for the purpose of calculating the limitation, in our opinion, the Tribunal was not justified in not considering the last of the representation dated 2nd November 2018, but the Tribunal erroneously calculated the limitation from 1st representation dated 7th August 2015. In our view, the Petitioner had made various representations from 2015 to 2018 and, therefore, for the purpose of calculating limitation under Section 21 of the Act, the representation dated 2nd November 2018 ought to have been considered. Since none of the representations were considered at any point of time prior to filing of the Original Application. It is also important to note that the 1st Original Application was filed on 18th December 2018 as stated by the Petitioner in paragraph 10 of the writ petition, therefore, the 1st Original Application was filed within 18 months from the date of last representation dated 2nd November 2018. It is body's case that the 1st Original Application was not filed within the limitation period provided under section 21 of the Administrative Tribunal Act, 1985. The said 1st Original Application was allowed to be withdrawn by order of the Tribunal dated 21st November 2018 with a liberty to the Petitioner.

Pursuant to such liberty, the Petitioner filed the 2nd Original Application on 15th December 2020. In the meantime, from March 2020, on account of pandemic, the limitation provided under all the Acts were suspended. If this is taken into consideration then the period from 28th November 2019 to 20th March 2020 comprised of 4th months and to which if the period from 2nd November 2018 (being the last of the representation) upto 18th December 2018 (date of filing of first OA) i.e. 1 and half month is added then the 2nd Application filed is well within the limitation period of 18 months specified in Section 21(1)(b) of the Act. The period from 18th December 2018 to 28th November 2019, when the 1st Application was pending with the Tribunal cannot be considered for the purpose of calculating limitation period for filing the 2nd Original Application moreso, when the 1st Application was allowed to be withdrawn with liberty as prayed for.

10. The Tribunal in Paragraph No.7 of its order has observed that mere filing of representation will not extend the period of limitation nor it will give afresh cause of action to the Applicant/Petitioner. In our view, this observation is not justified in the facts of the present case, for the reason that when the Original Application No.27 of 2019 was allowed to be withdrawn on 28th November 2019 by the Tribunal with liberty to file fresh application, it would imply that the Original

Application was not barred by limitation or else the Tribunal would not have given the liberty. If this observation is upheld then the Tribunal vide order dated 11th March 2022 in Original Application No.761 of 2020 would be sitting in Appeal over its own earlier order of 2019 and further without there being any review proceedings, same cannot be done in Original Application filed by the Petitioner. This is not permissible under the scheme of the Act. Therefore, in our view, the observation made in Paragraph No.7 cannot be upheld in the facts of the present case.

11. Therefore, viewed from any angle, the Tribunals order dismissing the proceedings on limitation was not justified.

12. In view of above, the order dated 11th March 2022 passed in Original Application No.761 of 2020 is set aside. The proceedings are remitted back to the Maharashtra Administrative Tribunal, Mumbai to decide Original Application No.761 of 2020 on its own merits and in accordance with law.

13. Rule is made absolute in the aforesaid terms.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)