

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.271/2018
with MA No.203/2018.

Date of Decision: 15.02.2019.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Vijay Narayan Bandiwadekar,
 Chargeman (Retd.), P.No.94018 L,
 Aged 61 years, C.No.54, Naval Dockyard.
 R/at B-202, Thakur Apartment Cooperative
 Housing Society Ltd., Shiv Vallabh Road,
 Ashokvan, Borivali (E), Mumbai 400 066.

2. Edward Richard Cardoza,
 Chargeman, P.No.9401 B, Aged 54 years,
 C.No.54, Naval Dockyard. R/at Doms Park,
 PH (I) Co-operative Housing Society Ltd.,
 Bhabola – Chulne Road, Near Suyog Nagar,
 Vasai (W), Dist. Thane 401 202. ... *Applicants*

3. Anjelina Francis Gonsalves,
 Chargeman, P.No.93834 R, Aged 54 years,
 C.No.54, Naval Dockyard. R/at Umrala
 Maradi (Mansebhat) Nalasopara (W),
 Post Office – Sopra, Taluka Vasai,
 Dist. Thane 401 203.

4. Surekha Pratap Palande, Chargeman,
 P.No.93823 K, Aged 54 years, C.No.55,
 Naval Dockyard. R/at Raj Legacy, C/816,
 LBS Marg, Paper Mill Compound, Vikhroli
 (W), Mumbai 400 083. ... *Applicant Nos.3 & 4 are
 deleted.*

(By Advocate Shri A.I. Bhatkar)

VERSUS

1. Union of India, through
 The Secretary, Ministry of Defence,
 South Block, New Delhi 110 001.

2. The Secretary, Ministry of Personnel,
 PG & Pensions, Dept. of Pension & Pensioners'

Welfare, 3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110 003.

3. The Chief of Naval Staff,
Integrated Headquarters, Ministry of Defence
(Navy), Sena Bhavan, New Delhi 110 011.
4. The Flag Officer Commanding-in-Chief,
Headquarters, Western Naval Command,
Shahid Bhagatsingh Road, Mumabi 400 001.
5. The Admiral Superintendent,
Naval Dockyard, Lion Gate,
Mumbai 400 023. **Respondents**

(By Advocate Shri N.K. Rajpurohit)

ORDER (Oral)
Per : R.N. Singh, Member (J)

Heard Shri A.I. Bhatkar and Shri N.K. Rajpurohit, learned counsels for the parties.

2. MA No. 203/2018: By this MA, the applicants are seeking condonation of delay in filing of the present OA. Learned counsel for the applicants submits that though strictly there is no delay in filing of the present OA inasmuch as the impugned order dated 31.07.2015 is passed in cyclostyle and cryptic manner and the same does not disclose any specific reason for denial of the benefit. However, the present MA has been filed as a matter of abundant precaution. Learned counsel for the applicants further submits that in the

present OA non-grant of Financial Upgradation under ACP/MACP is involved and no third party interest is involved in the present OA and non-grant of benefit under the said scheme is causing recurring loss to the applicants. He has relied upon the judgment of. **Rajiv Tandon Vs. Government of India & Ors.**, 2012(2) SLJ (CAT) page 129 and refers to para 13 thereof which reads as under:

*"13. On the first blush or *prima facie*, there does appear to be delay in filing the present OA but the question that arises is that only because of that, should this OA be dismissed? It is too well settled a proposition of law that the rights of a litigant cannot be lightly dealt with, and delay to become fatal has to be unreasonable or unexplained, and that, in our view, would depend upon the facts and circumstances of each case. There cannot be any straitjacket formula in that regard and, therefore, it cannot be said that if the OA has been filed after the specified period of years, the same has to be dismissed. In our view, there may be such facts and circumstances where even on year's delay may be fatal, whereas in others, a delay of nine years, as in the present case, may not be fatal. It has been held by the Hon'ble Supreme Court in *Tridip Kumar Dingal & Others Vs. State of West Bengal and Others*,*

2009(2) SLJ 196 (SC)=(2009) 1 SCC 768, that there is no upper or lower limit as to when a person can approach the Court, and that the question is one of discretion and has to be decided on the basis of facts before the Court, depending on and varying from case to case, and further that it will depend upon what the breach of fundamental right and the remedy claimed are, and when and how the delay arose. The delay normally comes in the way of a person if the claim is stale and meanwhile the impugned orders have attained finality, or where the rights of third party may have accrued in the meantime. The delay will also come in the way of a litigant if in the interregnum and rights of his adversaries may have been settled."

3. Learned counsel further relies upon the law laid down by the Hon'ble Apex Court in **M.R. Gupta Vs. Union of India & Ors.**, 1995 SCC 73 and also in the case of **State of Madhya Pradesh & Ors. Vs. Yogendra Shrivastava**, 2011(1) SCC (L&S) 251.

4. Learned counsel for the applicants further submits that in spite of request to grant aforesaid benefit to the applicants, by way of a non-reasoned order dated 31.07.2015 the respondents have not taken into consideration the various grounds taken

in the representations made by them for redressal of their grievances. The Respondents have filed reply opposing the MA. We have gone through the reply and also heard the learned counsel for the respondents. However, we find force in the submissions made by the learned counsel for the applicants. In view of the facts and law discussed above, **the MA is allowed.** Delay, if any, in filing of the OA is condoned.

5. Initially the present OA was filed by the applicants (04 in number) jointly on being aggrieved of the impugned order dated 31.07.2015 (Annex.A-1) issued by the Respondent No.5 in respect of Applicants Nos.1 & 2 refusing to grant 3rd Financial Upgradation in the Grade Pay of Rs.4600/- in the hierarchy of Grade Pay under the Modified Assured Career Progression Scheme (MACP) on completion of 30 years of services on the ground that the applicants have drawn ACP. Vide order dated 11.04.2018 of this Tribunal in the aforesaid OA, the applicants 3 & 4 who are deleted from the array of parties and who are given liberty to agitate

their claim separately, if so advised and thus the present OA is filed only by the Applicants nos. 1 & 2 and the MA seeking permission to file the OA jointly was allowed by this Tribunal in respect of applicants nos.1 & 2 vide the said order dated 11.04.2018.

6. It is the admitted case that aggrieved of the impugned order dated 31.07.2015, the applicant no.1 has submitted a representation dated 28.06.2016 to Respondent No.5 followed by further representations dated 05.07.2016, 21.07.2016, 10.08.2016, 12.08.2016, 23.09.2015 and 03.10.2016 with request to the respondents to clarify as to how the applicant has got three promotions and thus become ineligible for grant of 3rd Financial Upgradation in the Grade Pay of Rs.4600/-.

It is also the admitted fact that applicant no.2 also submitted representation dated 30.07.2016 followed by another representation dated 21.10.2016 with request to the respondents for grant of 3rd Financial Upgradation in the Grade Pay of Rs.4600/-.

Pending the aforesaid representations, the



applicants have filed the present OA. Learned counsel for the applicants submits that vide impugned order dated 31.07.2015 though the respondents have rejected the claim of the applicants for grant of benefit of 3rd MACP on the ground that they have got three promotions also, however it is not clear from the said impugned order on which date and to which post the applicants have got these three promotions. In the aforesaid background, the learned counsel for the applicants submits that the applicants would be satisfied if the OA is disposed of with direction to Respondent No.5 i.e. the Admiral Superintendent, Naval Dockyard, Lion Gate, Mumbai to consider the aforesaid pending representations of the applicants Nos.1 & 2 and dispose of the same by passing a reasoned and speaking order in a time bound manner. To this effect, there is no objection from the learned counsel for the Respondents.

7. In the aforesaid background, the OA is disposed of with direction to Respondent No.5 to consider the pending representations of applicants nos.1 & 2 and to pass a

reasoned and speaking order thereon within two months of receipt of certified copy of this order. In case the respondent no.5 does not find the aforesaid pending representations of the applicants readily available, he may inform so to the applicants Nos.1 & 2 and the applicants are directed to supply another copy of such representations to the respondent no.5. We make it clear that we have not expressed our opinion on the merits of the claim of the applicants by way of instant order.

8. In the aforesaid terms, the OA is disposed of. No order as to costs.

(R.N. Singh)
Member (J)

dm.

JWJ
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2/8/2

(Dr. Bhagwan Sahai)
Member (A)