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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1806/2002

New Delhi this the 24th day of February, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Yogesh Chander No.2493/D.
ASI (Min.) in Delhi Police,
(PIS No.27820071)
R/O Flat No.342, Sec.16,
Link Road, Vasundhra,
Ghaziabad, UP ...Applicant.

(By Shri Anil Singal, Advocate)

Vs.

1. Commissioner of Police,
Police Head Quarters,
IP Estate, New Delhi.

2. Jt. Commissioner of Police,
(Spl. Branch) Police Head Quarters,
IP Estate, New Delhi.

1. DCP (Spl.Branch)
Police Head Quarters,
IP Estate, New Delhi. .....Respondents.

(By Advocate: Shri Vimal Rathi for Shri Rajan Sharma)

O R D E R (ORAL)

Justice V.S.Aggarwal:-

The applicant was serving in Delhi Police. He was working as an Assistant Sub Inspector. He was to report in the General Branch on transfer from APP Branch on 11.9.1993 but he did not report. He reported in General Branch only on 1.10.1993 after absenting himself for 20 days willfully and unauthorizedly. Besides that, he had earlier absented himself on two occasions in

October 1993 and thereafter was absenting from 3.11.1993 till the summary of allegations had been served. The charge in this regard had been framed and reads:-

" I, Ram Kumar, Asstt.. Commissioner of Police Special Branch charge you ASI Yogesh Chander No.2493/D for grave misconduct, negligence, carelessness and dereliction in the discharge of your official duty in that you were to report in Genl.Branch on transfer from APP Branch on 11.9..93, but you did not report in Genl.Branch and as such were marked absent vide D.D.No.35 dated 22.9.93. You reported in General Branch on 1.10.93 after absenting yourself for 20 days wilfully and unauthorizedly. Besides this you absented yourself on the following occasions wilfully and unauthorizedly which clearly indicates that you are a habitual absentee:-

Sl. No.	DD No. and date vide which absented.	DD No.and date vide resumed duty.	Total Period
1.	DD No.11 dated 6.10.93(absent marked w.e.f. 4.10.93)	DD No.12 dt. 22.10.93	18 days
2.	DD No.15 dated 26.10.93(absent marked w.e.f. 26.10.93)	DD No.15 dt. 29.10.93	3 days
3.	DD No.20 dated 3.11.93 (absent marked w.e.f. 3.11.93)	DD No.13 dt. 4.2.94	94 days & 2 hours.

"

The enquiry officer had submitted the report against the applicant that he was wilfully and unauthorizedly absent. Acting upon the same, the disciplinary authority on 29.4.1994 dismissing the

applicant from service. The relevant portion of the order reads:-

> "I have gone through the DE file and the relevant documents. The ASI is absent since 3.11.93 and still running absent. This shows that he is an incorrigible type of ASI. The retention of such individual in a disciplined and uniformed force like Delhi Police is highly detrimental to the maintenance of disciplined amongst various ranks. I find in instant case he had remained absent for a long period unauthorizedly and without any intimation/permission of the Superior Officers. In the light of aforesaid discussion and having considered all the evidence of DE file as well as findings of the EO, I find that ASI Yogesh Chander No.2493/D is dismissed from the service with immediate effect. The period of unauthorized absence till date is treated as Leave Without Pay."

Thereafter the applicant had submitted an application through Member Secretary, Delhi Legal Services Authority and the Deputy Commissioner of Police had informed his counter-part Deputy Commissioner of Police, Special Branch, Delhi that under Rule 23 of the Delhi Police (Punishment and Appeal) Rules, 1980, the applicant should in the first instance submit an appeal against the punishment order. The said letter dated 19.6.2001 is to the following effect:-

> "Please refer to your office Memo Nos.2100/HAP/SB dt.6.4.2000 and 4258/HAP/SB (P-1) dt.21.5.2001 on the subject cited above.
>
> As per rule 23 of the DP (P&A) Rules-1980, the applicant should have submitted an appeal against the

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punishment order to the appellate authority within 30 days from the receipt of the original order. The Commissioner of Police, Delhi has desired that the applicant may be asked to make an appeal to the appellate authority first.

The applicant as well as Member Secretary, Delhi Legal Service authority, Patiala House, New Delhi may be informed accordingly. His Ch.Roll, Fauji Missal and DE files (4 parts) are returned herewith. Please acknowledge receipt."

In pursuance of the same, the applicant had filed an appeal which was dismissed by the Joint Commissioner of Police, Special Branch, Delhi as time barred further holding that the applicant had not given any solid reason for delay in submitting the appeal at a belated stage after seven years.

2. By virtue of the present application, the applicant assails the order dismissing him from service with consequential relief that he should be reinstated with consequential benefits.

3. In the reply filed, the application has been contested justifying the order that had been passed holding that there is no ground to set aside the same.

4. During the course of submissions, it was pointed that the appeal had been filed after 7 years of the order dismissing the applicant from service and at this late stage, therefore, as

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necessary corollary, the present application would not even be maintainable. In answer to the same, the learned counsel for the applicant contended that the limitation cannot be a bar in this regard to entertain the application.

5. It is not in dispute that under Section 21 of the Administrative Tribunals Act, 1985, the relief, if any, against the final order can be claimed within one year of the said order. There should be sufficient ground for Condonation of delay and the same must be explained in terms of Section 21 of the said Act.

6. However, the learned counsel for the applicant relied upon a decision in the case of **Ajaib Singh** v. **The Sirhind Co-operative Marketing cum-processing Service Society Ltd. and Anr.**, JT 1999 (3) SC 38. An appeal had been filed before the Supreme Court against a decision of the Full Bench of the Punjab and Haryana High Court. The Supreme Court had held that under the Industrial Disputes Act, no limitation has been prescribed and, therefore, the Full Bench of the said Court was in error in attracting Article 137 of the Constitution. It is in this back-drop that the Supreme Court in para 10 of the judgement held:-

"10. It follows, therefore, that

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the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The Plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent-management on the full bench judgement of the Punjab and Haryana High Court in **Ram Chander Morya** v. **State of Haryana** (1999) (1) SCT 141 is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guide-lines to determine as to what shall be the period of limitation in such cases." However, it went on further to say that "reasonable time in the cases of labour for demand of reference or dispute by appropriate government to labour tribunal will be five years after which the government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay." We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 37-C of the Act to be adjudicated."

7. We know that a decision would be a judicial precedent if it lays down a general principle of law. If the findings are with respect to particular fact in that event it would

be pertaining to the said facts only. As has been noted above, the findings so recorded do not indicate or hold that the period of limitation cannot be prescribed by the legislation and consequently once it is so, this Tribunal drawing its powers from the provisions of the Administrative Tribunals Act, 1985 has no option but to fall back on the relevant provisions of the law.

8. Our attention was further drawn to the subsequent decision of the Supreme Court in the case of **State of Bihar & Ors.** v. **Kameshwar Prasad Singh & Anr.**, JT 2000 (5) SC 389. The Supreme Court once again held that the power to condone the delay has been conferred upon the courts to enable them to do substantial justice. Relying upon an earlier decision of the Supreme Court in the case of **Collector, Land Acquisition, Anantnag & Anr.** v. **Mst.Katiji & Ors.**, JT 1987 (1) SC 537, the Supreme Court held:-

> "11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag & Anr. v. Mist.Katiji & Ors. [JT 1987 (1) SC 537 = 1987(2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law ln a meaningful manner which subserves the ends of justice- that being the life

purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to be benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

Thereupon the following paragraph from the decision of the Supreme Court in the case of **State of Haryana** v. **Chandra Mani & Ors.**, [JT 1996 (3) SC

371 = 1996 (3) SCC 132=] was quoted with approval:

> "It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court- be it by private party or the State- are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient causes to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay- intentional or otherwise- is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in jusitce-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach in justice-oriented process. The court should decide the the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant

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> could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State Cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

9. It is obvious that once again, the Supreme Court did not hold that the period of limitation cannot be prescribed. The period of limitation is prescribed on public policy fixing a life span for legal remedy for general welfare. It is true that time-limit fixed for approaching courts in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented process.

10. in the case of **P.K.Ramachandran** v. **State of Kerala and Another**, (1997) 7 SCC 556, the delay was claimed to be condoned which was of 565 days. It was held that no explanation much less a

reasonable or satisfactory explanation has been offered for condonation of delay. The order of the High Court condoning the delay was set aside. It was held that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds.

11. It is in this backdrop that one can revert back to the reasons taken by the applicant in filing the appeal after almost 7 years of the order of dismissal of the Commissioner of Police. The applicant had pleaded that he had no money and he had come across an advertisement in Danik Jagran of 30.5.2000.

12. The reasons so taken by itself is totally unconvincing. The applicant was an Assistant Sub Inspector and it cannot be believed that he was not aware of the provisions and in any case hardly any money was involved because he had to submit on the administrative side an appeal to the Commissioner of Police. For seven years, he waited and allowed the time to lapse. It is too late in the day thus to urge that the delay should have been condoned by the Commissioner of Police. In the present case as already referred to above, the Commissioner of Police held that there was no

good ground to condone the delay of seven years.

13. In that event, it had been urged that the appeal was filed because the applicant was advised to do so and in support of his plea, he relied upon the letter of 26.6.2000 which we have already reproduced above.

14. A perusal of the same does not indicate that the Commissioner of Police had condoned the delay. It only states the procedure that the appeal can be filed and, therefore, on the basis of the same, it cannot be termed that a right has been created in favour of the applicant.

15. Once the appeal filed with the Commissioner of Police after seven years has rightly been dismissed, it must follow that the order so passed does not suffer from any irregularity and illegality to permit a judicial review.

16. As a result of the aforesaid reasons, the application must fail and is dismissed. No costs.

(V.K.Majotra)
Member (A)

(V.S.Aggarwal)
Chairman

/sns/