

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.148/2020
with
Miscellaneous Application No.170/2020

Date of Decision: 6th March, 2020

CORAM: RAVINDER KAUR, MEMBER (J)

Anant S/o Sanduji Dhage,
 Age:41 years Occ. At present Nil,
 R/o Subhedari Ramji Nagar, Misarwadi,
 Tq & Dist. Aurangabad
 Mob.- 9923973615.

Email – Nil

... *Applicant*

(By Advocate Shri R.M. Jade)

Versus

1. The Union of India,
 Through its Secretary,
 Minstral of Cultural,
 Room No.501, C-Wing,
 Shashtri Bhavan,
 New Delhi – 110 115.
2. The Director General,
 Archaeological Survey of India,
 Janpath, New Delhi – 110 011.
3. The Superintending Archaeologist,
 Archaeological Survey of India,
 Aurangabad Circle Aurangabad
 - 431 004.

... *Respondents*

ORDER (ORAL)

When the case is called out for Admission, I have heard Shri R.M. Jade, learned counsel for the applicant. I have also carefully gone through the material available on record.

2. The present OA has been filed by the applicant under Section 19 of the Administrative

Tribunals Act, 1985 seeking the following reliefs:

*"(A) The Original Application may kindly be allowed,
(B) Record and proceeding be called for,
(c) The Honourable Tribunal may please to issue appropriate order or directions in the like nature, the order dated 11.05.2015 passed by the ld. Respondent No.2. The Director General, Archaeological Survey of India, thereby rejected the claim of the applicant in respect of appointment on compassionate ground may kindly be quashed and set aside Annexure A-1.
(D) The Honourable Tribunal may please to issue appropriate order or directions in the like nature, the order dated 11.05.2015 passed by the ld. Respondent No.2. The Director General, Archaeological Survey of India, thereby rejected the claim of the applicant in respect of appointment on compassionate ground may kindly be quashed and set aside. Annexure -'A-1' and the respondents authorities may be directed to reconsider the claim of the petitioner in respect of compassionate appointment on the place of his father.
(E) Any other suitable and equitable relief may kindly be granted in favour of the Petitioner."*

3. The father of the applicant was working as Mason/Mistry in the Archeology Survey of India under Aurangabad Circle, Aurangabad. Due to paralysis, he could not continue his service and had to retire on 14.02.2001 on invalid pension on medical ground at the age of 51 years after completion of 26 years of service. The Respondent No.1 issued Office Memorandum dated 09.10.1998 (Annex A-3) with the subject 'Scheme for compassionate appointment under the Central Government - Revised consolidated instructions' superseding all the existing instructions on

the subject. The applicant being the only son of the retired employee made representation dated 06.05.2002 (Annex A-4) to Respondent No.2 for compassionate appointment. Thereafter his father also made representation dated 25.10.2004 (Annex A-6) in support of the earlier representation of the applicant. The financial status report (Annex A-7) in respect of the family of the applicant was submitted by respondent No.3 on 14.02.2005. On 02.08.2005, the father of the applicant expired. On 04.05.2006 the applicant received letter from respondent No.3 that his case was forwarded to the Director General of Archeology Survey of India for appointment on compassionate ground to the post of Group 'D' but the committee recommended as 'Not Fit Case'. The applicant made another representation dated 29.07.2006 to respondent No.2. Thereafter, Respondent No.3 submitted with Respondent No.2 on 31.12.2007 all the necessary documents and financial status report of the applicant for reconsideration of his case, followed by a reminder dated 19.02.2013 (Annex A-13 colly). Thereafter the applicant

made several correspondence but did not receive any information about fate of the above noted application. He made further representation dated 18.02.2008 to Respondent No.1 which was forwarded to Director Admin, Archeology survey of India with direction to provide information sought by the applicant. After necessary correspondence within the department, the case of the applicant was heard on 02.09.2011 by the Chief Information Commissioner through video conferencing and applicant was informed that his representation for reconsideration was not received in the office of respondent No.2. Later on it was found that his application was not traceable. It is alleged by the applicant that his application for reconsideration of his case was either not received or intentionally misplaced by the office of respondent No.2 to deprive him of the appointment on compassionate ground. The applicant approached the Hon'ble High Court vide Writ Petition No.2193/2012 which he had withdrawn with liberty to avail the alternate remedy. Thereafter he filed OA

No.424/2013 which was disposed of vide order dated 09.04.2014 and directions were issued to the respondents to reconsider the representation of the applicant for appointment on compassionate ground within eight weeks. The respondents rejected the claim of the applicant for compassionate appointment vide order dated 11.05.2015. It is the said impugned order which is under challenge in the present case.

4. At the outset it is observed that the cause of action accrued in favour of the applicant on 11.05.2015 whereas he has filed the present OA on 10.02.2020 i.e. after lapse of a period of around 3 years and 9 months.

5. Alongwith the OA, he has filed MA No.170/2020 seeking condonation of delay. I have heard the arguments on the said application.

6. Learned counsel for the applicant has argued that the applicant is a poor person. His old mother is continuously ill since the death of his father. The wife of the applicant died during the pendency of the proceedings of appointment on compassionate

ground. He is the only sole earning member of the family. Due to personal difficulty and family tension, he could not file the present petition within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. He also could not arrange the advocate's fee and other expenses resulting in delay. It is stated that the delay in filing the present petition is neither deliberate nor intentional.

7. During the course of arguments, on query, learned counsel for the applicant has drawn my attention to the discharge summary dated 19.01.2017 issued by Government Medical College, Aurangabad in the name of Smt. Venubai Sanduji Dhage. It is submitted that the patient mentioned therein is the mother of the applicant who was admitted in the hospital on 11.01.2017 and was discharged on 22.01.2017. Since thereafter she is confined to bed, therefore the applicant could not approach this Tribunal within the period of limitation. However, bare perusal of this document shows that the mother of the applicant had suffered from

some injury on account of accidental fall in June, 2017 and was thus admitted in the hospital for few days. It further shows that the applicant's mother was diagnosed to have suffered from 'Intertrochanteric Femur Right Side (Minimally Displaced). It is observed that this could not be the reason for not filing the present petition within the period of limitation as the period of one year from the date of cause of action had expired on 10.05.2016 whereas his mother fell sick in January, 2017. There is no other documents placed on record to suggest that even earlier she was confined to bed due to some illness. He has also not placed on record any document about the factum and date of death of his wife. With regard to the claim that he had no money to arrange for the fee of the counsel, it is observed that on query the applicant who is present in court has submitted that he has not paid any fee to the counsel as it is settled between him and the counsel that he would pay the fee only after he gets relief from the Court. In these circumstances, the applicant has not explained the inordinate delay in filing the

present OA. Section 21 of the Administrative Tribunals Act, 1985 is set out herein below:-

"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.

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) of within a period of six months from the said date, whichever period expires later.

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.”

As per Section 21 of the Administrative Tribunals Act, 1985, the period prescribed for filing OA is one year from the date of cause of action. In the present case, the period of one year was over by 10.05.2016. The applicant thereafter as per the settled proposition of law was required to explain the delay of each and every day. However, he has failed to do so. He has not given the detailed reasons with dates on account of which he was prevented from filing the OA within the period of limitation.

8. In the case of B. Madhuri Goud Vs. B. Damodar Reddy, 24 (2012) 12 SCC 693 the Hon'ble Apex Court has culled out broadly the following principles to be taken into consideration while disposing of application for condonation of delay:-

21.1(i)There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2(ii)The terms “sufficient cause” should be

understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3(iii) Substantial justice being paramount and pivotal the technical considerations should not be give undue and uncalled for emphasis.

21.4(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel or litigant is to be taken note of.

21.5(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to

expose the other side unnecessarily to face such a litigation.

21.11(xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12(xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13(xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1(a) *An application for condonation of delay should be drafted with careful concern and not in a half haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2(b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3(c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

22.4(d) *The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

9. As per the principles referred to above, the concept of liberal approach while

handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of short duration or few days calls for a liberal delineation.

10. In the present case, the delay of around 3 years and 9 months beyond the period of limitation can be termed as inordinate delay. Therefore, it was the duty of the applicant to explain the delay of each day, by showing sufficient cause which prevented him from filing the present OA within the period of limitation.

11. In the present case, the applicant was only required to prove that he was prevented by sufficiently reasonable cause to approach the Tribunal within the period of limitation, which he has failed. Hence, the MA No.170/2020 being devoid of merits is dismissed. Consequently, the OA stands dismissed on account of inordinate delay in filing the same. No order as to costs.

(Ravinder Kaur)
Member (J)

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