


Central Administrative Tribunal
Principal Bench: New Delhi

MA No. 2005/2013

MA No. 1193/2014

In

OA No.2640/2001

Reserved on: 09.07.2015
Pronounced on:01.09.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)

Shri Harish K. Dogra

...Applicant

Versus

Union of India & Ors.

...Respondents

Presence: Applicant in person.


Sh. H.K. Gangwani, counsel for respondents.

O R D E R

By Dr. B.K. Sinha, Member (A)

MA No.2005/2013 has been filed for execution of the Tribunal's order dated 30.07.2002 passed in OA No. 2640/2001. For sake of greater clarity and consideration, the relevant portion of the aforesaid order is extracted hereunder:-

"12. We have considered the relevant instructions with regard to holding of review DPCs in the light of the provisions reproduced in paragraph 7 above. A careful perusal of the aforesaid rule would show that the instances in which review DPCs would be held as listed in the aforesaid paragraph are only illustrative and by no means exhaustive. Review DPCs can, therefore, be held for justifiable reasons other





than the reasons listed from (a) to (c) in the aforesaid paragraph. In the present case, the justifiable reason is our conviction that there was a strong likelihood that the proceedings of the DPC were vitiated due to the present of the respondent no.2, for the reasons we have already adverted to in earlier paragraphs. A direction for holding a review DPC could, therefore, be validly given in the peculiar circumstances of the present case.

13. For the reasons recorded in the preceding paragraphs, the recommendations made by the DPC on 31.08.2001 are quashed and set aside insofar as the applicant is concerned, and the respondents are directed to convene a review DPC to consider the claim of the applicant for promotion to the post of IFS Grade-II within a period of two months from the date of receipt of a copy of this order."

2. Admittedly, this MA has been delayed by a period of 717 days. The applicant submits that the respondents had moved a writ petition vide WP(C) No.6610/2002 before the Hon'ble High Court of Delhi along with an application for condonation of delay, which was finally dismissed in default and non-prosecution vide order dated 16.08.2010. During the pendency of the writ petition, the applicant was promoted as Additional Secretary (Grade-II of IFS) and thereafter as Secretary (Grade-I of IFS) vide orders dated 12.04.2004 and 05.08.2005 respectively. The applicant submits that despite dismissal of the afore Writ Petition, the respondents have not implemented the Tribunal's order dated 30.07.2002. He has, hence, filed MA No. 2005/2013



for execution of the Tribunal's order seeking the following relief(s):-

- “(a) Direct the respondents to act promptly and without any further delay in compliance with the judgment/order of the Hon'ble CAT in OA No. 2640/2001.*
- “(b) Pass orders for promotion of the applicant to Grade II of the IFS, with all consequential benefits, from the date the junior of the applicant was promoted, in view of the fact that the respondents have already promoted the applicant to Grade II of the IFS from a later date but have failed to comply with the judgment/order of the Hon'ble CAT in OA 2640/2001 for the last so many years.*
- “(c) Exemplary and punitive damages in favour of the applicant and against the respondent for the inordinate delay of so many years in complying with the judgment/order of the Hon'ble CAT in OA 2640/2001.*
- “(d) Any other order/direction or relief, which the Hon'ble Tribunal deems fit and proper in the interest of justice, may also be passed in favour of the applicant and against the respondents.”*

3. Claim of the applicant has been opposed by the respondents mainly on two grounds, i.e., (i) inordinate delay in filing the MA and, (ii) the Tribunal's order dated 30.07.2002 has already been complied with.

4. The applicant has also filed MA No. 1193//2014 seeking condonation of delay stating that the Hon'ble High Court in WP(C) No. 6610/2002 had stayed the order of this



Tribunal on the very first hearing i.e. on 11.01.2002 following which the applicant had been transferred abroad as a part of his service and subsequently retired in the year 2009. He had, therefore, engaged an Advocate to deal with his case during his absence. It is the case of the applicant that during the course of his transfer, he somehow misplaced the documents relating to his OA and the Writ Petition filed by the respondents. The writ petition finally came to be dismissed by the Hon'ble High Court of Delhi vide order dated 16.08.2010. During the intervening period till the filing of MA No. 2005/2013 for execution, the applicant was engaged in looking after his ailing old mother and also his wife who had been suffering with serious ailments. The applicant has also produced medical certificates in support of both. The applicant submits that it is on these grounds that he was unable to get sufficient time to trace the full particulars and relevant details without which the MA could not be filed. It came to be finally filed on 01.08.2013. Hence, the applicant on the above grounds has filed MA No.1193/2014 seeking condonation of delay.

5. The respondents have filed a counter affidavit opposing the prayer of the applicant seeking condonation of delay stating that the statement regarding loss of



documents relating to the litigation is misplaced as it had also been pleaded before the Hon'ble High Court of Delhi in WP(C) No. 6610/2002 but was not substantiated by any documentary evidence. The respondents have further submitted in respect of para 11 that the applicant has been living separately from his wife since August, 2007 and a letter of his wife is annexed and marked as Annexure A-1. The respondents submit that it is the requirement of law that the delay should be explained down to each date but the applicant has failed to explain the same. The respondents have, therefore, strongly pleaded for rejection of the MA seeking condition of delay.

6. In his rejoinder, the applicant has stated that MA seeking execution of the Tribunal's order is not barred by limitation as the same is prescribed only for filing OA before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 and not for execution of its order. The order of the Tribunal dated 30.07.2002 passed in OA No.2640/2001 attained finality and has been confirmed by the Hon'ble High Court vide order dated 16.08.2010 passed in WP (C) No. 6610/2002. The applicant, therefore, submits that law of limitation would not apply in this case. Moreover, accepting the contention of the respondents qua delay would tantamount to reviving the impugned order in






OA No.2640/2001 which no longer exists as per the orders of the Tribunal as also the judgment of the High Court. The applicant has also denied having concealed any material facts.

7. Coming to the MA for execution, it is the contention of the applicant that despite orders of the Hon'ble High Court in WP(C) No. 6610/2002, the respondents have not complied with the Tribunal's order dated 30.07.2002 passed in OA No. 2640/2001.

8. The respondents have filed counter affidavit stating that the applicant had been considered for empanelment for promotion to Grade-II of IFS (Additional Secretary rank) along with other officers of 1972 batch of IFS, to which the applicant belongs, by the DPC held on 31.08.2001. The DPC assessed the applicant and found him 'Good' against the benchmark of 'Very Good'. Hence, he was not recommended for promotion. In the subsequent DPC held in June, 2002, the applicant was again considered but was not recommended for promotion. In August, 2003, DPC again considered the case of the applicant and having fulfilled the necessary criteria, he was recommended for empanelment for promotion to Grade-II of IFS. The applicant was further considered for promotion to Grade-I





of IFS (Secretary's rank) by DPC in April, 2005 wherein he was recommended and promoted as Secretary where he continued till his retirement in July, 2009. The respondents further submit that contention of the applicant at the time of filing of OA was that one R.S. Kalha (Secretary West) was biased against him. However, the composition of the DPC held in June 2002 was different from the DPC held in August, 2001 and the said R.S. Kalha was no longer member of the DPC held in June, 2002, and, therefore, he could not have been instrumental in influencing the outcome of the DPC, and the issue stood automatically addressed. Moreover, the directives of the Tribunal to the Ministry of External Affairs vide order dated 30.07.2002 in OA No. 2640/2001 stood implemented by holding DPC in June, 2002. Therefore, the learned counsel for the respondents strongly pleaded for dismissal of both the MAs.

9. The applicant has filed a rejoinder in which he has submitted that no review DPC has been held as per the orders of the Tribunal and the respondents are only trying to mislead the Tribunal.

10. We have carefully gone through the pleadings of rival parties and have patiently heard the applicant and the





learned counsel for the respondents on the basis of which the following issues emerge for our consideration:-

- (i) *Whether the MA is barred by limitation?*
- (ii) *In case the answer to the Issue No.(i) is in negative, then whether the order of the Tribunal dated 30.07.2002 passed in OA No. 2640/2001 stands complied with by the respondents?*


11. Insofar as first of the issues is concerned, the admitted position is that the application for execution of Tribunal's order has been filed with inordinate delay of 717 days, which is beyond the prescribed period of one year as has been provided under Section 21 of the A.T. Act, which is reproduced hereunder:-

"21. Limitation -

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

(a) in a case where 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;..."

It is further admitted that this Tribunal vide order dated 30.07.2002 had quashed the recommendation made by the DPC held on 31.08.2001. There are two approaches which are generally followed in computing limitation. The first





approach is that justice is hand maiden of law. Therefore, what is not basic in law does not stand to be implemented. The Hon'ble Supreme Court in a number of decisions held that a strict view needs to be taken of the infringement of law of limitation, the basic principle being that where one is slothful and indolent in pursuing his own case, the law does not come to his rescue. In **Shiv Dass V/s Union of India & Others** [2007 (2) SC (L&S) 395], the Hon'ble Supreme Court has held:

"8. It was stated in the case of State of MP vrs Nandlal Jaiswal (1986)4 SCC566 that High Court in exercise of its jurisdiction does not ordinarily assist the tardy and indolent or the acquiescent and the lethargic. If there is inordinate delay on part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court normally does not permit a belated resort to extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay it may have the effect of inflicting not only hardship and inconvenience but also injustice on the third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."



However, an exception has been made to this by the Hon'ble Supreme Court in **M.R. Gupta versus Union of India** [1995 SC (L&S) 1273] in cases where there is a continuing cause of action relating to pension.

12. There are instances where Courts have disallowed cases and execution applications on ground of delay of only two months on the analogy that where there is in-action on part of the applicant, courts cannot take overly generous view in condoning such delay.

13. In **Union of India vs A Durairaj (Dead)** [AIR 2011 SC 1084], the Hon'ble Supreme Court has held as under:-

"12. Section 21 of the Administrative Tribunals Act, 1985 prescribes the limitation for approaching the Tribunal. In this case the medical examination of the respondent and the non-promotion as ad hoc ASTE were in the year 1976. The respondent accepted the diagnosis that he was colour blind and did not make any grievance in regard to his non-promotion. On the other hand, he attempted to get treatment or correction contact lenses from USA (to aid the colour blind to distinguish colours correctly). On account of the non-challenge, the issue relating to his non-selection in 1976 attained finality and the same issue could not have been reopened in the year 1999-2000, on the ground that medical tests conducted in 1998 and 2000 showed him to be not colour blind."

The other approach is that where law is hand maiden of justice, it must follow justice. In this regard, the Hon'ble



Supreme Court in **Office of the Chief Post Master
General & Ors. versus Living Media India Ltd. & Anr.**

[2012 (3) SCC 563] has observed as under:-

"13. Learned ASG heavily relied on the following principles:-

- "1. Ordinarily a litigant does not stand to 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."

By showing the above principles, learned ASG submitted that there is no warrant for according step-motherly treatment when the "State" is the



applicant. It is relevant to mention that in this case, the delay was only for four days."

In other words, the Hon'ble Supreme Court has held that substantive justice must yield place over the plea of limitation. In **Hukum Raj Khinvsara versus Union of India & Ors.** [AIR 1997 SCC 2100], the facts, which do have bearing on the subject, are that the appellant was initially suspended and charge-sheet was laid against him on April 29, 1974. His order of dismissal was ultimately set aside and thereafter he was reinstated into service by the Tribunal's order dated March 13, 1992 in O. A. No. 261/91. It would appear that while setting aside the order of dismissal the Tribunal had passed the order that the appellant was entitled to all consequential benefits which he could have earned had he been in service. Since in spite of his representations, he was not given consequential benefits, he filed contempt application on December 11, 1992, which was dismissed by the Tribunal on July 29, 1993. Thereafter the appellant filed the present O. A. for a direction to implement the order dated March 13, 1992. The Tribunal dismissed the same by the impugned order dated April 16, 1996 on the ground that the application of the appellant was barred by limitation.



14. In that case also, the sole issue was whether the application seeking implementation of earlier order of the Tribunal was barred by limitation. The relevant part of the decision is being reproduced hereunder:-

"5. The only question is : whether the application seeking implementation of the earlier order of the Tribunal was barred by limitation? S. 27 of the Administrative Tribunals Act, 1985 (for short, 'the Act') envisages thus:

"27. Execution of orders of a Tribunal.- Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any Court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in Clause (a) of sub-section (2) of Section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

6. Relevant part of sub-section (2) of Section 20 of the Act postulate that :

"(2) For the purposes of sub-section (1) of Section 20, 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 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;"

7. Section 21 prescribes limitation in that behalf. Sub-section (1) (a) of Section 21 postulates that



"(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."

8. Thus it could be seen that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Admittedly, the final order was passed on March 13, 1992. Consequently, the appellant was required to file the execution application within one year from the said date unless the order of the Tribunal was suspended by this Court in a special leave petition/appeal which is not the case herein. Admittedly, the application came to be filed by the appellant on December 13, 1994 which is well beyond one year. Under these circumstances, the Tribunal was right in its conclusion that the application was barred by limitation."

Here we are also swayed by the fact that the applicant had pleaded illness of his wife as one of the grounds for waiving the clause of limitation. However, it appears from the counter affidavit filed by the respondents that the applicant had not been living with his wife and produced a letter from his wife addressed to the Pension Cell of the Ministry of External Affairs informing that she was legally separated and had been granted maintenance which the applicant had not been paying to her. She had also requested the Pension Cell that maintenance amount should be reduced



from his pension and paid directly into her account. For the sake of greater clarity, we reproduce the said letter as under:-

"Sub:Request for attachment of maintenance amount from pension of Shri H.K. Dogra.

Dear Sir,

I have been living separately from my husband, Shri Harish Kumar Dogra since August '07. I had filed for maintenance under Sec. 125 Cr.P.C. in the Court of S.J.M. Durgapur, West Bengal.

The decision of the court has reached its final conclusion. The order has been delivered to Shri H.K. Dogra, but unfortunately he has not followed the court's order. He has not paid the amount due to me for my maintenance. Kindly find the attached court order.

It is my humble request to your office that the maintenance awarded to me by the court may be deducted from his pension and paid to me directly in my account at Union Bank of India, Sunder Nagar, New Delhi a/c no. 344902010104443.

I also wish to further clarity that due to the ongoing separation and legal proceedings, I have not signed or taken any family photograph for clearing of my husband's pension funds."

15. We have taken note of the argument of the applicant, who has been a member of the Indian Foreign Service and retired from the post of Secretary after having served abroad including Ambassador. He has already been getting pension in the grade of Secretary. It is unthinkable that a



person of such a high stature, who has represented the country abroad for some onerous assignments, shall plead incorrect facts before the Court. The applicant, a person of such eminence, was duty bound to disclose full facts, which he has not done. We are compelled to take an adverse note of the same.

16. In conclusion, we find that while the discretion rests with the Tribunal to condone delay, we take note of the decision of the Hon'ble Supreme Court in ***Hukum Raj Khinvsara versus Union of India & Ors.*** (supra) which clearly provides that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Therefore, the execution petition should have been filed within one year from the said date. Apparently, the applicant has omitted to do so.

What has dismayed us more is that in his anxiety to get the limitation condoned, he has pleaded incorrect facts before us which certainly does not measure up to his stature. Hence, we do not find any merit whatsoever in the application seeking condonation of delay and in view of the afore facts, we dismiss the same.

MA No. 2005/2013

17. Since the MA is disposed of on the ground of delay, we need not to address on Issue No.2. It is, therefore, left open.



(Dr. B.K. Sinha)
Member (A)

/naresh/



(Syed Rafat Alam)
Chairman