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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

**Misc. Delay Condonation Application
No. 330/00632/2020**

in

Dy. No.330/03196/2019

Pronounced on 2nd November, 2020

**HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)
HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER (A)**

Jay Govind Yadav son of Kamala Yadav r/o Village –Barayabhir, Post Office- Bigahi, District-Gorakhpur and **65 others** .

..... Applicants

By Adv: Shri Vinod Kumar

V E R S U S

1. Union of India through Secretary, Ministry of Railways, Govt. of India, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur, District-Gorakhpur.
3. Railway Recruitment Cell through its Chairman/Secretary, North Eastern Railway, Gorakhpur, District- Gorakhpur.
4. Deputy Personnel Officer/ Railway Recruitment Cell, North Eastern Railway, Gorakhpur, District- Gorakhpur.
5. Assistant Personal Officer, Railway Recruitment Cell, North Eastern Railway, Gorakhpur, District- Gorakhpur.

..... Respondents

By Adv: Shri P.K. Rai

ORDER

By HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER (J)

**MA No.632/2020
(Delay Condonation Application)**

The instant M.A. is a Delay condonation application, filed in Dy. No. 3196/2019.

2. We have heard the learned counsel for applicants, learned counsel for respondents and have carefully gone through the records.

3. The background facts in brief are that an advertisement was issued in December, 2007 by Railway Recruitment Cell, North Eastern Railway, Gorakhpur by which 5540 posts relating to Group 'D' were advertised. All the applicants applied and were qualified in the examination. The final result

was declared on 23.8.2012, in which the names of the applicants were published as selected candidates. However, the Selection Committee did not issue appointment letters to them due to the reason that the applicants were being treated in the category of 20% extra selected candidates, as per the terms and conditions of the advertisement itself. Out of total 5349 qualified candidates, only 3900 candidates were given appointment. Since the applicants were waiting for their chance to get appointment under 20% remaining vacant posts under the terms and conditions of the advertisement, they made a representation to the respondents authorities in respect of the same, but no response was given to either of them.

4. Being aggrieved, some candidates approached Lucknow Bench of Central Administrative Tribunal, by means of filing O.A. No. 52/2014, which was disposed off at the admission stage on 8.7.2019, with direction to the respondents to consider the grievance of the applicants and to pass a reasoned and speaking order in respect of filling of vacant posts from amongst the extra 20% qualified candidates, within a period of 3 months.

5. According to the applicants, no compliance has been made by the department so far, whereas several other judgments in the identical matters have also been passed.

6. Learned counsel for applicants has contended that Hon'ble Apex Court in **Civil Appeal No. 11360 of 2018** has issued a direction in respect of the same and the applicants are also entitled for the same relief.

7. In so far as the delay is concerned, it has been submitted by Id. Counsel for the applicants that since it is a recurring cause of action, as the authorities themselves have kept the matter pending till today, it can not be said that there is any delay on the part of the applicants in filing the present O.A.

8. It is also contended that as the matter is under consideration and no final decision has been taken by the Selection Committee, there is no delay and even if whatever delay is there, it has occurred due to latches on the

part of the respondents and due to circumstances beyond the control of the applicants.

9. On the aforesaid grounds, it has been prayed that delay if any, be condoned and regular Original Number be allotted to this case.

10. In support, the judgment passed by Lucknow Bench of CAT in **O.A. No. 391/2019**, judgment of Allahabad Bench in **O.A. No. 447/2019** of CAT and judgment of Hon'ble Supreme Court passed in **K.C. Sharma and others Vs. Union of India and others, reported in 1997 (4) Service Law Reporter, page 774**, have been annexed with the delay condonation application.

11. The Learned counsel for respondents has filed objection, wherein the delay condonation application has been opposed on the ground that selection process in pursuance of the advertisement dated 16.12.2007 has already been completed and the validity of select panel issued by the Railway Recruitment Cell (in short RRC) in pursuance of the said advertisement has already expired. Therefore, the claim of the applicants is not sustainable in the eyes of law. Learned counsel for the respondents has vehemently argued that the instant O.A. is highly time barred. The entire process was completed in the year 2014. Since all the applicants had secured less marks than the marks secured by the last selected candidate in their respective category, they were not selected in pursuance of the advertisement in question. Therefore, there was no question of issuing appointment letters to the applicants.

12. It is further contended by the learned counsel for the respondents that no benefit can be extended to the applicants out of the ratio of K.C.Sharma's case(supra) in view of the law laid down by the Hon'ble Apex Court in the case of **State of U.P. and others Vs. Arvind Kumar Srivastava and others, 2015(10 SCC 347**.

The relevant paragraphs 23(1), 23(2) and 23(3) of the aforesaid judgment are reproduced below:-

“23(1) The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of [Article 14](#) of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

23(2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

23(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see [K.C. Sharma & Ors. v. Union of India](#) (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

13. It is further contended that in wake of the clear guideline of Hon’ble Apex Court, as mentioned in para 23(3), wherein the case of K.C. Sharma (supra) has been distinguished, its benefit cannot be extended to the applicants.

14. Our attention has also been drawn to the judgment of Hon’ble Apex Court rendered in the case of **State of Karnataka and others Vs. S.M. Kotrayaya and others** reported in 1996 (Vol.6) SCC 267, wherein Hon’ble Apex Court has held as under: -

“ if an application is filed beyond limitation, satisfactory explanation for delay caused must be explained.”

15. Reliance has also been placed on the case of **DCS Negi Vs. UOI and others, SLP (C) No. 7956 of 2011 with CC No. 3709 of 2011 decided on 7.3.2011**, wherein Hon'ble Apex Court has held that **"Tribunal is duty bound to first consider, whether the O.A. is within limitation and the same may be admitted only, if it is found to have been within limitation and for any justifiable reason for extending the period of limitation. "**

16. In reply to the objection filed by the respondents, applicants have filed Rejoinder Reply in which it is stated that selection process under notification dated 6.12.2007 itself could not be finalized upto the year 2013. Moreover, the department itself had issued a letter dated 6.4.2013 to the applicants giving them assurance to include their names in the final select list under 20% extra quota, whenever need would arise.

17. It is submitted that Hon'ble Apex Court, in the meantime, settled down the dispute with regard to the candidates, who were declared qualified under 20% extra quota under the said advertisement, by means of judgment in **Civil Appeal No. 11360 of 2018**. It has been contended that the benefit of the aforesaid judgment of Hon'ble Apex Court should be extended to all the similarly placed candidates in view of law laid down by the Hon'ble Apex Court in the case of K.C. Sharma (supra).

18. It is lastly contended that as the Tribunal has already decided the identical cases in **O.A. No. 291/2014 (Amar Singh Yadav and others Vs. UOI and others)**, following the ratios of law laid down by the Hon'ble Apex Court in the aforesaid appeal, the applicants are entitled for the same relief and the delay be condoned. With the Rejoinder Reply, the applicants have also annexed the copy of letter dated 6.4.2013 issued by the respondents giving them assurance to include their names in the final select list under 20% extra quota.

19. We have given our thoughtful consideration to the matter, in the light of all the judgments referred to by the parties as cited above.

20. In the delay condonation application, applicants have only explained the delay caused upto the year 2014. However, there is no proper explanation after the year 2014 and the applicants have sought the relief only on the ground that some similarly situated candidates have been granted the same relief by this Tribunal in two OAs cited above.

21. It is noteworthy, that both the judgments delivered by Lucknow Bench and Allahabad bench of this Tribunal, clearly show that both were decided finally at the admission stage itself without going into the merits of the case with a direction to the respondents to decide the representation of the applicants in a time bound manner. In both these judgments, it is clearly mentioned that nothing has been commented on the merit of the case.

22. Moreover, in both these OAs, there was neither any office objection about any delay nor any delay condonation application was filed by the applicants. Hence both these judgments are not applicable in the instant case.

23. The explanation given by Id. Counsel for the applicants that when the applicants came to know that the relief has been granted by Hon'ble Apex court to other similarly situated candidates, they approached the Tribunal, cannot be termed as a satisfactory and sufficient explanation, in wake of Arvind Kumar Srivastava case. (supra)

24. It is noteworthy that the entire process of selection has already been completed in the year 2014, and the applicants have preferred this O.A. in the year 2019, without properly explaining the cause of delay. Hence, it is liable to be rejected on the ground of delay and latches itself.

25. It is also worth mentioning that if, as per the facts mentioned in OA, till December, 2013, applicants were neither called nor were told about the fate of their representations, the applicants should have immediately come to the Tribunal. However, they did not move any representation in time, instead they preferred to sleep over the matter till the year 2019 and have approached this Tribunal with a delay of about 5 years, without even properly explaining the same.

26. Hon'ble Apex Court in the case of **C. Jacob Vs. Directorate of Geology and Mining and another (2008) 10 SCC 115**, has decried the practice of submission of representation on a later date, only with a view to avoid the bar of limitation.

27. Even on merits, the case appears to be without any force. The judgment passed by Hon'ble Apex Court in **Civil Appeal No. 11360/2018, arising out of SLP (Civil) Nos. 29668-29671/2017**, (copy whereof has been annexed as Annexure No.3, at page No. 34 of the O.A,) on the basis of which, the applicants are claiming appointment, shows that in this case, the Hon'ble Apex Court has issued the following directions:-

- i) The benefit of this judgment shall only be available to those appellants who had approached the CAT;
- ii) The appellants shall not be entitled to any back wages;
- iii) The appellants shall, for the purpose of seniority and fixation of pay be placed immediately above the first selected candidates of the selection process which commenced in the year 2012 and immediately below the candidates of the selection list of 2010 in order of seniority;
- iv) The appellants shall be entitled to notional benefits from the date of such deemed appointment only for the purposes of fixation of pay and seniority.

28. Thus, the verdict of Hon'ble Apex Court is very clear that the benefit of their Lordships' judgment, shall only be available to those appellants who had approached the CAT, whereas, in the instant O.A. no where the applicants have stated that they had ever approached CAT earlier at any point of time. Hence, the benefit of the aforesaid judgment passed by Hon'ble Apex Court in Civil Appeal No. 11360/2018, cannot be extended to the applicants of the instant O.A.

29. In view of the above discussion and in absence of any sufficient explanation for the delay of about five years, there does not appear any

good ground to condone the delay. M.A. No. 632/2020 is liable to be rejected.

30. Accordingly, M.A. No. 632/2020 (delay condonation application) is **rejected**.

Consequently, Dy. No. 3196/2019 is also **dismissed**.

31. No order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Mrs.Vijay Lakshmi)
Member (J)

HLS/-