

**MA No. 544 of 2020 in OA No. 289 of 2020**

Sri Biswanath Kumar  
vs.  
Union of India& Or

Order reserved on 21.12.2020      Date of Order: 18.01.2021

For applicant: Mr. N. R. Routray, counsel.

For respondents: Mr. M. B. K. Rao, counsel.

**ORDER**

The applicant had filed the OA No. 289 of 2020 challenging the memorandum of charges, order of punishment and subsequent orders passed by the Appellate and Revisional Authority. The applicant was served with a memorandum of article of charges on 16/20.10.2014 and was imposed punishment of reduction by two stages for a period of two years with cumulative effect. The appellate authority vide his order dated 03.03.2016 reduced the punishment to reduction of pay by one stage for a period of two years with postponement of future increments of pay. Revisionary Authority upheld the modified punishment order of the appellate authority dated 03.03.2016. The applicant then submitted a mercy petition on 30.06.2020 to Principal Chief Commercial Manager, ECR, Bhubaneswar against the punishment order but his appeal was declined by Respondent No. 4 by saying that the prescribed channels has already been availed. Hence the OA.

2. It is stated in the MA No. 544/20 that on 28.02.2019 the applicant could have filed the mercy petition in the month of March or April but due to covid-19 pandemic it caused some delay not only in filing the mercy appeal but also the original application. The applicant further submitted that the cause of action is arising in each and every month at the time of receiving salary in a lower rate and the delay in approaching the Tribunal can be condoned by this Tribunal by exercising the power conferred under Section 21 (3) of the AT Act, 1985. The applicant submitted Hon'ble Apex Court in case of **Tukaram Kanha Joshi & others vs Maharashtra Industrial Development Corporation &ors (2013) 1 SCC 353** has laid down the law that where third party interest is not affected then the court can condone the delay and accordingly condoned the delay of 30 years and as the applicant has a *prima facie* case and no third party interest will be affected, then the delay will be condoned.

3. The respondents in their objection *inter alia* averred that the applicant has challenged punishment order dated 25.06.2015, 03.03.2016 and 13.05.2016 by filing this OA on 22.07.2020 after more than four years for which the OA is grossly barred by delay and latches. The respondents further submitted that

in Hon'ble Supreme Court in decision reported in **AIR 2014 SC 1141 (Chennai Metropolitan Water Supply and Sewarage Board and others Vrs. T. T. Murali Babu)** has disapproved entertainment of writ petition challenging punishment order in a disciplinary proceeding after four years and that no valid reason has been assigned or explanation given in MA for filing the OA after four years in as much as the plea of continuing cause of action made in para -4 is untenable. Therefore MA lacks bonafides and the delay in filing the OA is not liable to be condoned and the OA is liable to be dismissed.

4. Applicant in reply to the objection filed by the respondents submitted that objection to MA for condonation of delay has been filed by the respondents is not supported with an affidavit hence the same cannot be taken into consideration while deciding the MA on merit. The applicant submitted that the fact of the case relied upon by the respondents is not similar to the present case. The applicant further submitted that receiving salary in the lower scale than the actual scale is a recurring cause of action and the same arises in each month at the time of receiving of the salary by the applicant which is not specifically denied by the respondents. Hence the delay in approaching this Tribunal may be condoned.

5. Learned counsel for the applicant relied on few citations including the following citations:

- a) (2013) 1 SCC 353 – Tukaram Kanha Joshi & others Vrs. Maharashtra Industrial Development Corporation & Others.
- b) Hon'ble High Court of Orissa in W.P. (C) No. 16851, 16877 & 16879 of 2020.

6. Learned counsel for the respondents relied on few citations including the following citations:

- a) **AIR 2014 SC 1141 (Chennai Metropolitan Water Supply and Sewarage Board and others Vrs. T. T. Murali Babu)**

7. Learned counsel for the applicant and respondents were heard on the matter. We have gone through the pleadings and citations relied upon by learned counsels for both the parties. The citations relied upon by learned counsel for the respondents are not applicable to the facts and circumstances of present case. The appellate authority had reduced the punishment to reduction of pay by one stage for a period of two years, with postponement of future increment of pay as per order dated 03.03.2016. The Revisional Authority had upheld the same modified punishment order as per the order dated 13.05.2016. Thereafter the applicant had filed mercy petition before the

Principal Chief Commercial Manager on 30.06.2020 which was declined by Sr. Divisional Commercial Manager on 03.07.2020. The applicant filed this OA on 27.07.2020. In case the delay is not condoned and the applicant is not given opportunity to challenge the order of punishment imposed upon him, then he will be put to financial hardship. Besides that it will affect his official performance in future. In case the delay is condoned, no other third party interest is going to be affected.

8. In the above circumstances, the delay in filing the OA is condoned, in the interest of justice, in order to give scope and due opportunity to the applicant to challenge the punishment order imposed on him. Accordingly the MA is allowed and the OA be listed on 29.01.2021 for counter.

(ANAND MATHUR)  
MEMBER (A)

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(csk)