

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Miscellaneous Application No.180/00210/2020,
Miscellaneous Application No.180/00211/2020
& Miscellaneous Application No.180/00212/2020
in Original Application No.214/2012**

Thursday, this the 17th day of December 2020

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Miscellaneous Application No.180/00210/2020

R.N.Prabhakaran, Aged 47 years,
S/o.late Narayanan,
Rakkolakalam House, Odanur,
Parli (PO), Palakkad District,
Kerala State – 678 612.

...Misc. Applicant

(By Advocate Mr.Vinar.V)

v e r s u s

1. Union of India represented by Secretary,
Ministry of Railways, North Block,
New Delhi – 110 001.
2. The Assistant Personnel Officer,
Railway Recruitment Cell, Southern Railway No.5,
3rd Floor, Dr.P.V.Cheriyar Crescent Road,
Egmore, Chennai – 600 008.
3. The General Manager,
Headquarters, Southern Railway,
Chennai – 600 003.
4. Sunil Kumar, Pezhumkad House,
Karipose, Palakkad, Kerala.
Reg. No.2732202697.
5. Vinukumar C, Kavalamkode House,
Vadavannur, Palakkad, Kerala.
Reg. No.2732401312.

6. Dileep, Pullaickal House,
Odannur, Parali Post, Palakkad.
Reg. No.2742402225.
7. Santhosh B, Erath House,
Elanthapadam, Karipodu Post, Palakkad.
Reg. No.2732401119.

...Misc. Respondents

(By Advocate Mr.S.Radhakrishnan [R1-3])

Miscellaneous Application No.180/00211/2020

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...Misc. Respondents

(By Advocate Mr.S.Radhakrishnan [R1-3])

Miscellaneous Application No.180/00212/2020

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...Misc. Respondents

(By Advocate Mr.S.Radhakrishnan [R1-3])

These applications having been heard on 9th December 2020, the Tribunal on 17th December 2020 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

M.A.No.180/00210/2020 is to condone the delay of 2674 days in preferring the application to restore back the O.A on file. M.A.No.180/00211/2020 is to restore back the O.A on file. M.A.No.180/00212/2020 is to permit the Misc. Applicant to appear in person and file an application to restore back the O.A.No.214/2012 which was dismissed for default on 12.10.2012.

2. It appears that O.A.No.214/2012 was dismissed on 12.10.2012 for default. When the matter was taken up for consideration, the learned counsel for the applicant was not present and though proxy counsel made a request for adjournment, the same was not granted. The names of the parties were called. They were found absent and hence O.A was dismissed for default. After that, the applicant has appeared only on 11.03.2020 with the above M.As ie. for condonation of delay, for restoration of the O.A and seeking permission to appear in person. He has been represented on last two occasions by Shri.Vinar.V., who has been assigned with this case from Legal Aid Cell. Shri.S.Radhakrishnan appeared for the respondents.

3. It appears that the O.A was filed against alleged omission committed by the respondents in not including the Misc. Applicant in a Group D recruitment as per Notification No.02/2007 of Railway Recruitment Board,

Chennai. The Misc. Applicant claims that he had attended written test and he was selected as eligible candidate for Physical Efficiency Test (PET). However, he was not included in the rank list and not selected for the job. The Misc. Applicant and few others later decided to challenge the rank list of the said recruitment. The Misc. Applicant alleges in his condonation of delay application that the Advocate engaged by him did not represent him properly and it was only later that he came to know that the case was dismissed on 12.10.2012 due to the reason that the counsel and applicant were not present on that date. He submits that during the long period of 8 years since 12.10.2012, no Advocate was ready to take the case. He further submits that as he was a tailor and coming from a poor family he was not able to meet the day to day expenses. He could not press the matter in time for restoration of the O.A. He submits that the grievance against the respondents is still not settled and he is interested to prosecute the case further. He mentions in the application that he will appear on subsequent occasions through himself or through counsel. He submits that opportunity may be given to contest the case on merits. He says that the delay has occurred not due to any willful reason but due to the fact that he was not getting proper representation to file restoration application. He prays for condonation of delay of 2674 days in filing the application and also for restoration of the case.

4. In their response to the M.A for condonation of delay, the Chairman, Railway Recruitment Cell, Southern Railway, Chennai (2nd respondent) has indicated that the applicant is the 4th applicant out of the five applicants in the O.A.No.214/2012. The applicant after qualifying in the PET was called for written examination and the marks secured by the Misc. Applicant in the written examination was only 47.33 as against the cut off marks of 51.33 scored by the last OBC candidate who was subjected to document verification. Hence the question of considering and including the Misc. Applicant in the rank list does not arise at all. The Respondent submits that without securing the cut off marks stipulated for the individual specified category, no candidate can be considered for the further processes of document verification unless the threshold marks is first obtained. The respondents have objected to the M.A for restoration and M.A for condonation of delay of 2674 days (7 years and 3 months approximately) as no valid legal ground has been raised for the same. They submit that unless there are legal and justifiable grounds, no application for condonation can be entertained. It is submitted that no cogent or relevant points are stated for the condonation of the very long delay of over seven years. It is also submitted that this is a case pertaining to 2007 Notification to fill up various vacancies in Group D posts and all the notified vacancies have already been filled up and final panel was published on 01.04.2013. Subsequently the Railway Recruitment Cell, Chennai had also issued notifications during the years 2010, 2012, 2013 and 2018 and the appointments have also been completed. Hence challenging the recruitment conducted in 2007 during

the year 2020 is a baseless exercise. It is submitted that not only the remedy but his right also has already become infructuous. Even if the delay is condoned at this point of time, no benefit can be granted even if it is found that he had a right during 2007. The respondents repeat that even on merits the applicant is not eligible to be appointed to the post as he has failed to attain the cut off marks required for the said category, namely, OBC.

5. We have heard the applicant through his counsel as well as heard learned counsel for the respondents. We are in agreement with the points made by the learned counsel for the respondents. The applicant has not clearly stated on what date he has come to know of the dismissal of the case. When an application for condonation of delay is filed, the applicant has to explain how each day of the delay has occurred and that it was not due to his own laches. The delay of over seven years is far too long and inordinate to be ignored at this distance of time as no proper legal or any other justification is provided. As such, the applicant has not provided sufficient information to satisfy the Tribunal that he had sufficient cause for not making the application within the period of limitation as prescribed under Section 21 (3) of the Administrative Tribunals Act. The applicant himself is 47 years of age and is now beyond all normal age of recruitment for the post. Further, as stated subsequent recruitment notification and appointments have been completed for the years 2010, 2012, 2013 and 2018. Further, all the necessary formalities for the recruitment conducted in 2007 have already been fully completed. It appears that even on merit, the

applicant does not seem to have legs to stand on as he had attained only 47.33 marks as against the cut off marks of 51.33 scored by the last OBC candidate. There do not appear to be any strong legal or other grounds for reopening this matter at this point of time. While there is alleged to be some default committed by the counsel to whom the applicant had entrusted the case earlier in 2012, it is a fact that this cannot be taken as a point for consideration for relief after such a long length of time. It is also to be noted that the records pertaining to the O.A are also no longer available in this Tribunal which has been destroyed as per Rule 10 of CAT Destruction of Records Rules, 1990. Hence, on the basis of excessive delay and lack of merit, we are not in a position to allow the M.As. In the event, the M.As preferred by the Misc. Applicant do not succeed and the same are dismissed. No order as to costs.

(Dated this the 17th day of December 2020)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in M.As in O.A.No.214/2012

Nil
