

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH; NEW DELHI

OA No. 1979/92 .. Date of decision: 29.07.93

Sh. Sukhbinder Singh .. Applicant

Versus

Union of India .. Respondents

CORAM

Hon`ble Sh. J.P. Sharma, Member (J)

Hon`ble Sh. N.K. Verma, Member (A)

For the applicant .. Sh. P.L. Mimroth, Counsel.

For the respondents .. Sh. Romesh Gautam, Counsel.

JUDGEMENT (Oral)

(Delivered by Hon`ble Sh. J.P. Sharma, Member (J)

The applicant has earlier assailed the grievance of non-condoning his break in service for the period from '01.02.76 to 27.10.80 so as to treat that period as qualifying service for the purpose of pensionary benefits. Earlier OA 782/90 was dismissed vide order dated 20.01.92 on the ground that the applicant did not inspite of the permission granted twice, amend the original application. However, the learned counsel for the applicant Sh. P.L. Mimroth appear after the above order was dictated and he was given liberty to file a fresh O.A. The present original application has been filed on 30.07.92 with an application for condonation of delay.

We have heard the learned counsel for the parties. The respondents have opposed to the admission of the

application taking two preliminary objections. Firstly, that the application is barred by the principle of resjudicata in view of the fact that the relief claimed by the applicant was the same as he has prayed in O.A. 782/90 which was dismissed on 20.01.92. However, going through the order we do not find that the principle of resjudicata is affected in such a case. The priliminary objection, therefore, overruled.

The applicant has superannuated on 30.06.90. He made his representation on Jan. 1989 in which he has requested the respondents that his case may be placed before the Railway Board for approval to condone the break in service for the period from 01.02.76 to 27.10.80. He has also requested refund the settlement dues which he was paid that of his earlier service. It appears that the applicant has made another representation subsequently that was rejected by the impugned order dated 15.12.89 informing the applicant that the request of the applicant cannot be acceded to, in view of the extant rules. It was further stated in the reply that the relaxation in rules do not possible. The applicant has filed an earlier OA 782/92. However, when the application was withdrawn, the applicant was given liberty to file a fresh one. He should have done the same within a reasonable period. The applicant has also filed an application for condonation of ^{is} delay which too ~~has~~ is opposed by the respondents. The applicant has not given any special reason for not filing the application in time. The only averment in the petition that the applicant was out of Delhi to attend to certain urgent domestic work and he returned to Delhi only June 1993. The

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Tribunal opened after summer vacation on 5th July, 1993. The delay caused for filing this application as late on 30th July 1993 is not at all explained. The delay ~~is~~ ^{defeats a} right as well as regal remedy. The limitation gives an advantage to the ~~adversary~~ ^{withdraws} and there should be sufficient and probable causes to ~~explain~~ ^{accrued to} that advantage ~~given by~~ the other parties. The learned counsel has argued that the delay be condoned. Every case becomes precedent for the case to be decided. There must be some averment to justify the delay. When there is no such averment in the application itself then humanitarian approach also be said to be a lip service to the applicant.

In view of the above facts and circumstances, the application is barred by time. The MP for condonation of delay is dismissed along with the original application.

No order as to costs.

N.K. Verma
(N.K. Verma)

Member (A)

J.P. Sharma
(J.P. Sharma)

Member (J)