

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.268/93

New Delhi this the 1st day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairmn (J).
Hon'ble Shri V.K. Majotra, Member (A).

Prashant Kumar Mukherjee,
D-29, Sector-12,
NOIDA (UP).

... Applicant.

(By Advocate Shri B.S. Mainee)

Versus

Union of India through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Southern Railway,
Madras.
3. The Divisional Railway Manager,
Southern Railway,
Mysore.
4. The Chairman,
Railway Recruitment Board,
29 St. John Church Road,
Bangalore.

... Respondents.

(By Advocate Shri R.L. Dhawan)

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Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This O.A. has been considered afresh in pursuance
of Hon'ble Delhi High Court order dated 29.1.2002.

2. Shri B.S. Mainee, learned counsel for the
applicant and Shri R.L. Dhawan, learned counsel for the
respondents have been heard.

3. The applicant was admittedly selected and
recommended for appointment as Trainee Assistant Station

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Master (ASM) by Railway Recruitment Board by letter dated 22.4.1987. He was offered appointment to this post by respondents' letter dated 10.12.1987 and he accepted the same which includes medical fitness required for that post. He was declared unfit for the post vide letter dated 30.12.1987. After nearly seven and a half months, the applicant submitted his representation on 18.8.1988 which was rejected by the respondents' letter dated 12.9.1988. The applicant submitted another representation dated 18.11.1989 for alternative employment which was also rejected by the respondents vide their letter dated 30.11.1989 in which they have stated that he was not eligible for any alternative appointment as per the extant orders of the Railway Board.

4. The Hon'ble High Court vide order dated 29.1.2002 had observed that the petitioner had filed an application for condonation of delay, wherein he has made an attempt to explain the reasons for not being able to file the said OA within the prescribed period. This has been done along with the O.A. in MP 355/93. As the Tribunal, in which one of us (Mrs. ^{Dr.} Laxmi Swaminathan) was also a Member had inadvertently noted in Para 8 of the order dated 15.9.1999 that there was not even an MA for condonation of delay, the Hon'ble High Court has sent the case back to the Tribunal for being considered afresh. It is relevant to note that in paragraphs 5, 6 and 7, the Tribunal had addressed the question of limitation which was a ground taken by the respondents. Shri B.S. Mainee, learned counsel has again submitted that sufficient reasons have been given in the aforesaid MP 355/93 to condone the delay,

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apart from the fact that the applicant has a very good case on merits which warrants that the delay, if any, should be condoned. He has relied on the judgement of the Hon'ble Supreme Court in State of Bihar & Ors. Vs. Kameshwar Prasad Singh and Ors. (2001 (1) SLJ P-76) and another case referred to in this case, Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji & Ors. (1987 (2) SCC 107) and in Rameshwar Prasad Sinha Vs. Union of India & Ors. (Civil Appeal No.354/1993, dated 25.1.1993, copy placed on record. He has submitted that, as held in Para 11 of the judgement in Kameshwar Prasad's case (supra), the expression "sufficient cause" employed by the legislature in the Limitation Act should be given a liberal interpretation and justice should be done. He has very vehemently contended that the applicant has a very good case for alternative appointment after rejection of his representations and some delay here and there by the applicant, should not come in his way by way of bar of limitation. Learned counsel has submitted that in MP 355/93 after rejection of the applicant's rejection by the Chief Personnel Officer, Southern Railway, Mysore by order dated 30.11.1989, he had submitted an appeal to the Railway Board as also the Railway Minister which were forwarded by Hon'ble Member of Parliament vide his letter dated 9.11.1991, to which no reply has been given till date. He has also submitted that the applicant has been pursuing the matter continuously with the Railway Ministry but his case has not been decided at the Departmental level. Hence, learned counsel has submitted that he had filed O.A. on 1.2.1993 which was disposed of earlier by Tribunal's order dated

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15.9.1999. He has submitted that in the circumstances after so many years, the Tribunal should not have disposed of the application on the ground of limitation.

5. Learned counsel for the respondents has controverted the above submissions. He has relied on the judgement of the Hon'ble Supreme Court in S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10) and has submitted that repeated unsuccessful representations by the applicant will not have the effect of extending the period of limitation. He has submitted that the applicant's representation dated 18.8.1988 for alternative appointment was rejected by the respondents by their letter dated 12.9.1988 and his subsequent representation dated 18.11.1989 by the letter dated 30.11.1989. The applicant cannot, therefore, overcome the bar of limitation which is also a legal plea, as provided in Section 21 of the Administrative Tribunals Act, 1985. He has also very vehemently submitted that a perusal of MP 355/93 will show that while the applicant was making representations through Member of Parliament, he has not approached the Tribunal in time or given any sufficient reasons to condone the delay of nearly three years. He has also relied on the judgement of the Supreme Court in Ratnam Chandra Sammanta & Ors. Vs. Union of India & Ors. (JT 1993 (3) SC 418) and has submitted that the ground of limitation cannot be ignored by the Tribunal. He has, therefore, prayed that the O.A. may be dismissed.

6. We have carefully considered the submissions made by the learned counsel for the parties and the relevant records, including MP 355/1993 filed by the applicant praying for condonation of delay. In the Miscellaneous

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Petition, it is stated that he has filed the O.A. for directions to the respondents to give him an alternative job because he was declared medically unfit to the post of ASM. He had appeared for selection to this post in pursuance of Employment Notice No.1 of 1985. Although he had been declared successful for selection to the post of ASM and his name was recommended by the Railway Recruitment Board vide their letter dated 22.4.1987, he was declared unfit by the Railway Board for the post vide letter dated 30.12.1987. According to him, the medical examination in respect of other categories of posts is not as severe as that for the post of ASM, for example, clerical cadre. It is seen from the annexure given by the applicant himself to O.A. that his representation dated 8.11.1989 requesting for alternative appointment has been rejected by the Chief Personnel Officer, Headquarters Office, Madras by his letter dated 30.11.1989. The main relief prayed for by the applicant in this O.A. is for a direction to the respondents to consider his case for appointment to a suitable post of Accounts Clerk/Office Clerk for which he is found medically fit as an alternative to the post of ASM for which he has been declared medically unfit. It is clear from the letters annexed by the applicant himself that he was fully aware by the end of November, 1989 that the respondents have not found him eligible for alternative appointment and, therefore, the cause of action has arisen on that date. However, it appears from MP 355/93 that the applicant filed appeal to the Railway Board only through Member of Parliament which was forwarded to the then Hon'ble Railway Minister on 9.11.1991 which was nearly two years after the rejection letter in November, 1989. The applicant has filed this O.A. on 1.2.1993. The main question,

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therefore, is whether in the facts and circumstances of the case, the reasons given by the applicant in MP 355/93 can be considered as sufficient reasons for condoning the delay, having regard to the provisions of Section 21 of the Administrative Tribunals Act, 1985.

7. In *State of Karnataka and Ors. Vs. S.M.Kotrayya & Ors.* (1996 SCC (L&S) 1488), the Hon'ble Supreme Court has specifically dealt with the provisions of Section 21 of the Administrative Tribunals Act, 1985. The Supreme Court has held that although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-sections (1) and (2) of Section 21, explanation should be given for the delay which was occasioned after the expiry of the aforesaid respective period applicable to the appropriate case, and the Tribunal should satisfy itself whether the explanation offered was proper. In the facts brought out by the applicant in the Miscellaneous Petition for condonation of delay, it cannot be held that sufficient cause has been shown by the applicant to condone the delay of nearly three years in filing the present application.

8. We have also carefully considered the judgement of the Hon'ble Supreme Court in *Kameshwar Prasad's* case (supra) relied upon by the learned counsel for the applicant. No doubt, mere technical considerations should not come in the way of the cause of substantial justice but in this case the delay has been occasioned by the applicant himself. It is relevant to note that the representation made by the applicant dated 8.11.1989 for being given an alternative appointment, as prayed for in this O.A. has

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been dealt with by the respondents quite promptly and rejected on 30.11.1989. The contention of the learned counsel for the applicant that the applicant's case is most deserving and he is entitled to an alternative appointment on the basis of different medical standards and so on, ~~cannot be~~ ^{cannot be} taken as a ground to give a go-bye to the statutory provisions contained in Section 21 of the Administrative Tribunals Act, 1985. Whether the applicant will be declared medically fit for alternative appointment and so on are still to be considered and it cannot, therefore, be stated that technical considerations have been taken into account against substantial justice. The fact that the applicant had filed appeals to the Railway Board through Member of Parliament is also relevant and we do not consider that the facts disclosed by the applicant in MP 355/93 are sufficient to condone the delay occasioned in this case.

9. We have also seen the judgement of the Hon'ble Supreme Court in Rameshwar Prasad Sinha's case (supra). In that case, it has been observed that the claim of the applicant should have been considered and decided on merits as his application has been entertained and disposed of later. In the present case, on 29.3.1993, it has been noted that the notice has already been issued on MP 353/93 (sic) for condonation of delay. The matter shall, therefore, be heard on 3.5.1993 on limitation and the respondents may file their reply on limitation on MP 355/93 by that date. The O.A. was admitted on 6.10.1993 and it has been noted that the pleadings are complete. Thereafter, the O.A. and MP 355/93 have been listed on some dates but unfortunately when the case was heard on 20.4.1999, 28.4.1999 and 3.5.1999, MP

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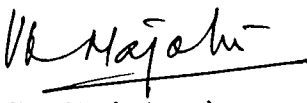
355/93 for condonation of delay was not listed. However, in passing, it may be observed that in the earlier order dated 15.9.1999, the question of limitation along with the cases relied upon by the applicant have been considered, although as mentioned above, a mistake has crept in that no MP for condonation of delay has been filed. To a specific question put by the Bench during the hearing, Shri B.S. Mainee, learned counsel has submitted that he should have filed a review application in the first instance in the Tribunal before filing CWP No.5643/2000. In the facts and circumstances of the case, the judgement of the Hon'ble Supreme Court in Rameshwar Prasad Sinha's case (supra) relied upon by the learned counsel for the applicant would not be applicable as the question of limitation had been left open by the Bench after it was admitted on which the applicant has not filed any review.

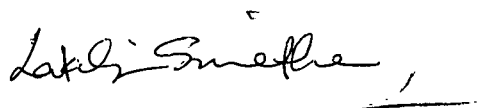
10. Therefore, for the reasons given above, we reject MP 355/93 filed by the applicant for condonation of delay as no sufficient cause has been shown under the provisions of Section 21 of the Administrative Tribunals Act, 1985 to condone the delay in the interest of justice. We are also not impressed by the submissions made by the learned counsel for the applicant that the applicant has a water-tight case on merits as he is a graduate and should have been offered an alternative appointment by the respondents on his being declared medically unfit for the post of ASM which requires higher medical standards. The reply of the respondents on merits to the ground taken by the applicant ~~are~~ relevant as they have ^{also} submitted that he was

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required to submit a separate application with separate postal orders for each of the category for which he wanted to apply.

11. In the result, for the reasons given above, the O.A. fails and is dismissed. No order as to costs.


(V.K. Majotra)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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