

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD**

Orders reserved on : 01.05.2017

Orders pronounced on : 26.05.2017

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Hon'ble Ms. Nita Chowdhury, Member (A)

M.A.No.330/3069/2016 and M.A.No.330/3070/2016

**IN
O. A. No.330/1219/2004**

A.K. Pushkar

..... *Applicant*

(By Advocate : Shri Gulab)

Versus

Union of India and others

..... *Respondents*

(By Advocate : Shri S.K. Anwar)

ORDER

Delivered by Hon'ble Ms. Nita Chowdhury, A. M.:

The applicant has filed Civil Misc. Application No.3070/2016 seeking recalling and restoration of the Order dated 25.10.2013 passed in OA 1219/2014 vide which the MA earlier filed for restoration of the OA which was dismissed in default vide Order dated 22.4.2013, was dismissed in default and for non-prosecution. Along with the present Misc. Application, the applicant has also moved a Civil Misc. Application no.3069/2016 for seeking condonation of delay in filing the MA 3070/2016.

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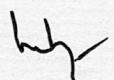
2. Before adjudicating the MA 3070/2016 (restoration/recall application), it is necessary for this Tribunal to decide the MA 3069/2016 vide which the applicant is seeking condonation of delay in filing MA 3070/2016. In MA 3069/2016, it is stated by the applicant that in the year 2013, his advocate Shri Gulab has shifted his chamber from his house no.67, Baluaghata, Allahabad to his new house No.17/1, Govind Nagar, Karbala, Allahabad on 22.10.2013 and during the process of shifting of chamber, the entire records of OA No.1219/2004 unfortunately misplaced somewhere in the lot of other records of the case. The entire records of files of learned counsel for the petitioner could be gradually arranged upto June, 2016 then it was detected from perusal of diary and register of the office of learned counsel that the records of instant OA are not available. On instructions of counsel, his clerk started tracing the records, but he did not find the same as the same were misplaced. Ultimately, the learned counsel for the applicant applied for certified copy of order dated 25.10.2013 on application made on 16.6.2016 and then he arranged the copy of entire records of case and directed to the applicant to file recall/restoration application. After 16.6.2016, the applicant made arrangement of necessary expenses as well as collected other papers and came to his counsel thereafter without any undue delay and got the present recall application prepared and filed.



2.1 It is further submitted that applicant and his counsel have committed no wilful mistake, latches or negligence in conducting the case/pairvi of the case. They have always been vigilant in pursuing the case and it was unfortunately happened because of misplacement of files. It is therefore prayed for condonation of delay in filing the restoration Application.

3. Pursuant to notice issued to the respondents, they have filed their reply to both the aforesaid MA. In the reply to MA seeking condonation of delay in filing MA 3070/2016, the respondents have stated that from the averments made in the MA itself, the inordinate delay in filing the present restoration application cannot be made good. The intentional delay on the part of the applicant is palpable. Further the excuse sought to be offered neither have any basis nor inspires confidence.

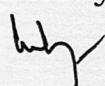
3.1 It is further submitted that it has not been disclosed by the applicant as to why the learned counsel for the applicant did not apply for the certified copy of the Order dated 25.10.2013 earlier when he initially found the record missing. Clearly the applicant was either grossly negligent in pursuing the case or the delay is intentional. Further delay of two months is also wholly unexplained legally and the cause sought to be offered is highly unreliable and without any basis.



3.2 It is also stated that by no stretch of imagination, it can be believed that because of misplacement of file from the chamber of the counsel about 3 years will be required to reconstruct the file in order to file restoration application. The fact of the matter is that the order dated 25.10.2013 dismissing the restoration application itself speaks about the conduct of the applicant. However, the following facts may be noticed in this regard:-

- (i) The O.A. was first time dismissed for want of prosecution vide Order dated 27.05.2005 by this Hon'ble Tribunal;
- (ii) Thereafter on second occasion, it was dismissed for want of prosecution vide Order dated 09.04.2010 and the restoration application filed by the applicant was also dismissed in default on 11.04.2011 against which a restoration application was filed and the case was restored; and
- (iii) Again case was dismissed for want of prosecution by this Hon'ble Tribunal vide Order dated 22.04.2013 and a restoration application was moved by the applicant which has again been dismissed in default vide order dated 25.10.2013.

3.3 It is further submitted that the applicant has made default deliberately, the case is quite one and there is no good reason for condoning the delay and as such the delay condonation application is liable to be dismissed and thereby



the recall/restoration application deserves dismissal with costs.

4. We have heard learned counsel for the parties on both the MAs.

5. Counsel for the applicant has reiterated the averments made in the delay condonation application and submitted that due to mistake of his clerk who did not mention accurately the date of hearing of the case in diary and on account of which the learned counsel could not appear before this Tribunal on 25.10.2013 and as such on which date the earlier restoration application was dismissed in default by this Tribunal. He further submitted that in the interest of justice, delay in filing the recall/restoration application be condoned and MA for recalling/restoration of Order dated 25.10.2013 be heard on its merit.

6. Counsel for the respondents vehemently opposed the delay condonation application and reiterated the aforesaid averments made in the reply to the Delay Condonation Application. Counsel for respondents further submitted that applicant has not explained the delay in true spirit as he has not stated as to why he has not taken action earlier in time to file such type of application and what prevented him to file the same in time as there is about three years delay in filing this application which has not been explained in a reasonable manner. The only ground taken is that files of the case were

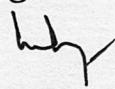
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misplaced due to shifting of chamber of the counsel is not a reasonable excuse. He has neither explained why he has not applied for certified copy of the Order dated 25.10.2013 earlier to 16.6.2016 and further the reason which has been given by the applicant is not satisfactory. He further submitted that in view of the aforesaid facts and circumstances of the case, the present Delay Condonation Application as well as Recall/Restoration Application are liable to be dismissed by this Tribunal.

7. We have given careful consideration to the rival contentions of the parties. The Hon'ble Apex Court in its Judgment in **D.C.S. Negi v. Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, condemned entertaining of the OAs by the Tribunal in disregard of the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. In the said order, following observations were made:

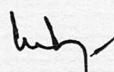
"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21.

Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so



within the prescribed period and an order is passed under section 21 (3)."

8. In view of the above position, we are adjudicating firstly the Delay Condonation Application. It is an admitted position that Recall/Restoration Application No.3070/2016 has been filed belatedly and therefore, the applicant has filed Condonation of Delay Application No.3069/2016 seeking condonation of delay in filing recall/restoration application. Before advertiring upon the grounds taken for seeking condonation of delay, it is necessary to see as to how the case was pursued by the applicant. To ascertain this position, we have perused the Ordersheets of this case and find that this case was filed in the year 2004 and is pending since then. Firstly the OA was dismissed on 27.5.2005 on account of default of counsel for the applicant and thereafter on an application No.2977/2005, which was allowed on 12.9.2005, the order dated 27.5.2005 was recalled and the OA was restored to its original position. Thereafter on 9.4.2010, although the then counsel for the applicant moved his illness application, but the Court was reluctant in granting adjournment in the cases pertaining to the year 2004 and accordingly, the OA was dismissed in default and for want of prosecution. Thereafter again the applicant moved a restoration application No.2724/2010 and 2723/2010 for recalling of order dated 9.4.2010 and the same were dismissed in default on 11.4.2011. Thereafter again MA



No.3265 and 3266/2011 have been filed by the applicant. On 29.3.2012 the said MAs were allowed and Order dated 11.4.2011 was recalled and MA No.2724/2010 and 2723/2010 were restored to its original position. Thereafter on 22.4.2013, the OA was again dismissed in default for non-prosecution. Thereafter again the applicant moved MA No.2237/2013 for restoration of the aforesaid Order dated 22.4.2013. However, on 25.10.2013 the said MA was dismissed by this Tribunal by passing the following Orders:-

“Learned counsel for respondents argued that the present O.A has been dismissed in default on several occasion due to non-prosecution by the applicant. The last date on which the O.A was dismissed in default as 22.04.2013. Thereafter on subsequent dates neither the counsel for the applicant remained present nor reply to the objection filed by the respondents to the Restoration Application has been filed. Today when the Restoration Application was taken up even in the revised call, none present to press this M.A.

In view of the above it is evident that the applicant is not interested in pursuing the matter. Hence the Restoration Application is dismissed in default and for non-prosecution.”

9. Taking into account the history of this case and full sequence of events especially as pointed out in paragraph 8 above, it becomes very clear that this matter has been dismissed a number of times and each time the recall/restoration application has been filed belatedly and with casual reasoning. Despite this, the applicant has been treated very kindly and on a number of occasions, the delay condonation has taken place only to be further dismissed in default for want of prosecution. From the sequence of events, as noted above in paragraph 8 above, this is a fit case to be



decided in the light of the observations of the Hon'ble Apex Court in its judgment in the case of **D.C.S. Negi** (supra) in which the Court has pulled up the Tribunal for entertaining OAs in disregard to the rules governing the limitation. In view of the frequent indulgences given in this matter which has been filed as OA NO.1219/2004 in 2004. The sequence of pursuance of this OA shows dismissal of the same from time to time because of default and lack of prosecution by the applicant. The objections of the respondents to restoration of this case is found to be in order and from the detailed reading of the ordersheets, it becomes apparent that the applicant has not pursued his litigation meticulously and has not been able to explain the frequent and repeated non-prosecution of the same. In fact, the delay in this OA is fully covered by the judgment of **D.C.S. Negi** (supra). We do not find any cause for condoning the latest delay.

10. In view of the above facts and circumstances of the case and for the reasons stated above, the present MA 3069/2016 seeking condonation of delay in filing the recall/restoration application is dismissed. Accordingly, MA 3070/2016 (recall/restoration Application) is also dismissed. There shall be no order as to costs.


(Nita Chowdhury)
Member (A)


(Justice Dinesh Gupta)
Member (J)

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