

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(ALLAHABAD THIS THE 5th DAY OF September 2014)

PRESENT:

HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER - J

HON'BLE MR. U.K. BANSAL, MEMBER - A

ORIGINAL APPLICATION NO. 1106 OF 2005

(U/s, 19 Administrative Tribunal Act.1985)

Kishan Lal, son of Late Shri Munni Lal, Resident of Daya Nagar, Harizan Basti, (C-33) Plot No. 58, Chhittupur Sagra, District Varanasi. At the time of removal, posted as Carriage Helper, Safaiwal.

.....Applicant

By Advocate: Shri V.K. Srivastava

Versus

1. Union of India through its General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Senior Divisional Mechanical Engineer, North Eastern Railway, Varanasi.
4. Assistant Mechanical Engineer, North Eastern Railway, Varanasi.

..... Respondents

By Advocate : Shri Avnish Tripathi
Shri P. Mathur

ORDER

BY HON'BLE MR. U.K. BANSAL, MEMBER - A

Original Application No. 1106 of 2005 was filed on behalf of Shri Kishan Lal against his removal from service as Carriage Helper/Safaiwala in the Railway Department. The

order of removal was passed on 20.5.2000 and his appeal and revision petitions were also rejected by the respondents, the last order being the rejection of revision petition issued on 28.8.2002. This O.A. was decided and partly allowed by an order dated 7.5.2009 by a Bench of this Tribunal. The respondents (Department of Railways) filed a writ petition No. 49172 of 2010 before the Allahabad High Court challenging this order, which was allowed on 12.03.2014 and the operative portion of the order passed by the Hon'ble Court is as under:-

“In the result, the writ petition is allowed. The impugned order dated 7.5.2009 is set aside and the matter is remanded back to the Tribunal to reconsider the application for the condonation of delay, after considering the objection raised in the counter affidavit and after deciding the matter relating to the limitation, proceed to decide the original application. The Tribunal is directed to dispose of the matter expeditiously, preferably within a period of 3 months from the date of production of certified copy of this order before the Tribunal by either of the parties, in accordance with law”.

2. On receiving this matter remanded by the Hon'ble High Court, the learned counsel for the applicant (in the O.A) was granted an opportunity to file specific objections to the points raised by the respondents' counsel in his reply to the Delay Condonation Application, which was given with the main counter affidavit. Rejoinder affidavit was received on 24.7.2014 wherein the learned counsel for the applicant has denied the averments made by the respondents. It has been stated that after the rejection of his review petition by the respondents on 28.8.2002, the applicant met a counsel at Allahabad, who advised him to file an Original Application

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before the Central Administrative Tribunal, Allahabad within one year. The applicant thereafter approached the Central Administrative Tribunal, Allahabad in November/December 2003 and handed over the relevant documents to his counsel. According to him, this counsel Shri Ram Chandra Prajapati met the applicant in front of the Central Administrative Tribunal building and the applicant gave him the relevant documents and expenses. Shri Prajapati assured the applicant that he will get an order within six months. Thereafter the applicant came again to Allahabad in May 2004 but could not trace his counsel, hence he returned to Varanasi and came back again to the Tribunal in August 2004. On 20.8.2004, he met his counsel Shri Prajapati who allegedly informed him that the next date of hearing was fixed for 23.11.2004. Thereafter when the applicant again came to Central Administrative Tribunal, Allahabad on 23.11.2004, he could neither locate his counsel nor was his case listed before this Hon'ble Tribunal. The applicant alleges that he met the clerk of his counsel, who informed that the applicant shall be intimated after the case is finally decided.

3. It has also been stated in the rejoinder affidavit that applicant again came to the Tribunal in April 2005 but upon enquiries, he could get no information regarding his Original Application nor was his counsel available in the Tribunal. He made enquiries about Shri Ram Chandra Prajapati from the tea vendor and learnt that there was no counsel by this name in the Tribunal. Since the applicant could not search out his



counsel he could finally file this Original Application only on 8.8.2005.

4. The applicant has further narrated the circumstances accompanying the departmental action against him on the lines of his O.A. in remaining part of the rejoinder affidavit, which is not material to the issue of delay condonation.

5. The Delay Condonation Application filed by the applicant along with the O.A. was also examined which also narrates the circumstances behind the delay on similar lines.

6. The learned counsel for the respondents have included their objections to the Delay Condonation Application in their counter affidavit filed in O.A. NO. 1106/2005. The respondents have questioned the veracity of the story narrated by the applicant in his Delay Condonation Application stating that there is no proof, document or affidavit on behalf of any witness to support this story. It has also been stated that the revisionary order was issued in August 2002 while the O.A has been filed in August 2005 i.e. after a lapse of three years. Hence, the applicant is guilty of deliberate delay in filing this O.A., which is liable to be dismissed on this ground itself.

7. Heard the counsels for the applicant, who reiterated the contents of the Delay Condonation Application and his rejoinder affidavit on the point of delay.



8. Learned counsel for the applicant has placed reliance on the following case laws:-

(a) **Collector, Land Acquisition, Anantnag Vs. Katiji 1987 STPL (LE) 13007 SC,**

In this matter Hon'ble Supreme Court has held that whenever there is sufficient cause for condoning the delay in the institution of an appeal the court should hold a justice oriented approach.

(b) **S.M Nilajkar and others Vs. Telecom District Manager, Karnataka 2003, STPL (LE) 32248 SC.**

This matter relates to retrenchment of workmen engaged in the scheme or project and mentions delay in initiating proceedings between the date of termination and the initiation of proceedings before the Industrial Tribunal cum Labour Court. In this matter, the delay was on account of the employer and the employee could not be blamed for the delay.

Hence, the ratio laid down in this case by the Hon'ble Apex Court is not applicable in the present case.

(c) **Shiv Dass Vs. Union of India LAWS (SC) 2007-1-80.**

In this case, the Hon'ble Apex Court has held that a highly belated writ petition filed under Article 226 should be examined on the point of delay in filing the

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petition and would depend on facts of each case. It has been held that normally in the case of belated approach a writ petition has to be dismissed. The delay or laches is one of the facts borne in mind by the High Courts when they exercise their discretionary power under Article 226 and in appropriate cases, the High Court may refuse to invoke its powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances.

Clearly, this ruling does not assist the applicant in any way.

**(d) Santosh Kumar Vs. Union of India and others
– Writ A No. 55097 of 2008 decided on
31.10.2011.**

In this case, the Hon'ble Allahabad High Court has allowed the writ petition NO. 55097 of 2008 Santosh Kumar Vs. Union of India and others and quashed the order passed by the Tribunal rejecting the O.A on grounds of delay.

However, a reading of this order shows that it is not applicable to the present case as the circumstances are clearly distinguishable.

**(e) R.B Ramlingam Vs. R.B. Bhvaneshwari 2009
STPL (LE) 41327 SC.**



In this case, the Hon'ble Apex Court has held that delay of 568 days in filing the Special Leave Petition on account of pendency of review application before the Madras High Court gave sufficient reasons for delay to be condoned.

However, this ratio laid down by the Hon'ble Apex Court does not find application in the present case.

(f) Pandit Sukhraj Raghunathi Institute of Education Technology Vs. National Council for Teacher Education, Wing-II (2012) 4 UPLBEC 2829.

In this case, Hon'ble Lucknow High Court has held that a departmental appeal of the petitioner was rejected only on the grounds of delay in filing the appeal and that this was incorrect and a pragmatic view should have been taken regarding condonation of delay.

However, the circumstances of the present case are quite distinguishable from the case cited above.

9. The learned counsel for the respondents argued that the grounds for delay condonation are improbable, unbelievable and not supported by any documents or records and hence cannot be taken as authentic.

10. The learned counsel for the respondents has placed reliance on the following case laws:-



(i) ***Raj Kumar Vs. Union of India and Ors.***
decided by this Tribunal on 29.5.2014.

In the aforesaid case, the principle laid down by the Hon'ble Apex Court, which has been relied upon is that on the ground of lack of or absence of reasonable and possible explanation for delay, the case is liable to be dismissed on grounds of delay and laches.


(ii) ***Umesh Chandra Vs. Union of India and Ors.***
decided by this Tribunal on 22.1.2014.

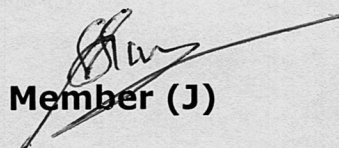
11. After hearing the counsels on both sides, we find that the applicant in this case had been working as Class IV employee with the respondents since June 1980. He had, therefore, been in Government service for almost 20 years at the time when punishment was awarded to him for unauthorized absence. It is difficult to visualize that he could become a victim of a tout as narrated in the delay condonation application. It is also clear that even if the version of the applicant were to be believed for a moment, he apparently approached this tout namely Shri Prajapati sometime in November 2003 though this has not specifically been stated. The applicant continued to be deceived by this so called tout/counsel till April 2005, which is also farfetched since any litigant would normally keep a much closer watch on the progress of his case particularly when he has been removed from service and has been deprived of the salary and benefits of the same. Further the delay condonation



application is not supported by any other documents or affidavits to confirm the story of the applicant. Eventually the O.A. has been filed after a delay of three years and, therefore, comes in the ambit of limitation as given in Section 21 of Administrative Tribunals Act, 1985. The Delay Condonation Application has been filed by the applicant under section 151 of C.P.C and not under the specific provisions available under section 21 of Administrative Tribunals Act, 1985.

12. For the reasons given above, we find that the delay in filing the Original Application has not been explained credibly and satisfactorily. Accordingly, the delay condonation application filed by the applicant is rejected and as such the O.A. is also dismissed on this grounds of delay and laches. No order on costs.


Member (A)


Member (J)

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