

Reserved
(On 01.08.2013)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 21st day of August 2013

Misc. Application No. 3525/12 and Misc. Application No. 3526/12
In
Original Application No. 1131 of 2005

Hon'ble Mr. Justice S.S. Tiwari, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Rama Shanker Purohit, S/o Sri S.C. Purohit, R/o House No. 741, New Railway Colony, In-front of B – Cabin, Post Office Lalitpur, Lalitpur.

...Applicant

By Adv : Shri K. Saran & Shri S.C. Dubey

V E R S U S

1. Union of India through General Manger, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
3. Divisional Electrical Engineer Operation, Agra.
4. Senior Divisional Electrical Engineer Operation, Agra.

...Respondents

By Adv: Shri B. Tiwari & Sri U.S. Mishra

ORDER

By Hon'ble Ms. Jayati Chandra, AM

The applicant Shri R.S. Purohit has filed the Misc. Application No. 3526 of 2012 (for restoration) alongwith Misc. Application No. 3525 of 2012 (for condonation of delay) through his learned counsel, praying for recall of order dated 15.09.2008 by which all the Misc. Applications filed in the OA No. 1131/05 were rejected for non-prosecution. The applicant has stated that OA No. 1131/05 was filed by him against his termination order dated 03.07.2002 (Annexure A-1) passed by the Disciplinary Authority confirmed by the order dated 10.09.2002 (Annexure A-2) of the Appellate Authority.

J. Chandra

2. However, before this OA could be heard on merit, it was dismissed for non-prosecution by order dated 10.03.2008. Against that order, he had filed Misc. Applications No. 800/08 & 801/08 filed on 22.04.2008. By order dated 15.09.2008 the same were rejected. The grounds for delay in filing the present recall/ restoration application is that as the case was being prosecuted by his counsel and he had full faith and confidence in the sincerity and perseverance of his counsel and relied upon the fact that his counsel would let him know as and when the need arose .

3. However, when he visited Allahabad in July, 2012 he attempted to contact the office of his earlier counsel but could not succeed in finding its new location. Thereafter, he came to Allahabad again in August 2012 and contacted the office of his present counsels Shri D. Saran and Shri S.C. Dubey. The clerk of the counsels located the file and advised him of the dismissal order dated 15.09.2008. Hence, the delay in filing the present Misc. Recall /Restoration Applications.

4. The learned counsel stated that since it is a case of dismissal, lasting damage would be incurred by the applicant if the OA is not restored and the case is not heard on merits. He cited the pronouncement of Hon'ble Allahabad High Court in the case of *Om Prakash Mishra vs. Union of India and others – 2011 (8) ADJ 23 (DB)* which drew upon the various rulings of the Hon'ble Apex Court and held as under:

“9. *Here in this case as we have already noticed that it is not a case where no reason for non appearance was given by the counsel, but it is a case where the specific ground has been taken in the delay condonation application that because of the non marking of the case by the clerk of the counsel, the counsel could not appear before the Court and the case was dismissed for want of prosecution. It is only when the file was inspected the factum of dismissing of the same has came into the notice of the applicant/petitioner and consequently he filed the restoration application.*

10. *Looking into the object of the establishment of the Courts/Tribunals which are meant and known for imparting substantial justice to the parties, we find that the cause shown for non appearance was sufficient to condone the delay in filing the restoration application as well as to recall the order dated 10.3.2008 and the Tribunal in not doing so has failed to consider the very purpose of the establishment of the Court/Tribunal and by passing he impugned order has shut*

J Chandra

down the door of justice on technicalities, therefore, we cannot approval such an order."

5. The learned counsel for the respondents has vehemently opposed the condoning of delay. He has very briefly narrated the history of the case. The OA No. 1131/05 itself was filed on 30.08.2005 after a lapse of about three years from the termination order 03.07.2002 passed by the Disciplinary Authority, the appellate order dated 10.09.2002 and the filing of the Revision application dated 18.11.2002. However, the case was admitted. Counter and Rejoinder Affidavits were exchanged and the case was listed for final hearing. Non-prosecution order dated 10.03.2008 was passed due to non appearance of the counsel for the applicant.

6. Against the dismissal order, Misc. Application (Restoration Application) alongwith Misc. Application (Delay Condonation Application) was filed on 22.04.2008. But again due to non appearance of the learned counsel for the applicant the case was dismissed by the order dated 15.09.2008. Now the applicant has come after almost 04 years without giving anything but a very perfunctory kind of reason for the delay.

7. We have seen the file and have heard the learned counsels for the parties. Section 21 of the A.T. Act, 1985 provides for a fixed period for the counting of limitation to ensure that frivolous cases are not allowed to clog the system of justice. At the same time, it is to be ensured that mere technicalities are not allowed to come into the way of justice. Section 21 (3) of the A.T. Act, 1985 provides enough room for incorporating reasonable / explainable grounds of delay. Section 21 of the A.T. Act, 1985 reads as follows:

"Section 21 of the A.T. Act, 1985

"21.Limitation.- (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made,

J. Chandra

within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

8. The Hon'ble Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy* – (1998) 7 SCC 123 has held as under:

"Condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. In every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation."

It is further stated that:

"However, while condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses."

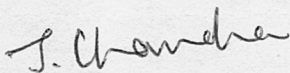
9. The operative principle therefore appears to be the "reasonableness" of the cause of delay and not so much its duration. In this case the applicant has stated that he had relied upon his counsel to follow up the case on his behalf and he did

J. Chandra

not keep in touch. This is a statement difficult to believe looking at the history of the case and the profile of the applicant.

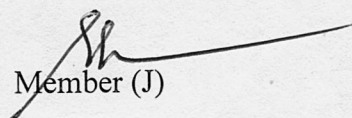
101. The applicant was a man at most in his 30's at the time of filing of the O.A. No. 1131/05, since he entered into service in 1996. He was removed from service in the year 2002, which itself was enough cause to make anyone anxious and on edge. He was supposedly fighting for his reinstatement. In that condition, it is natural that he would follow the case from one date of hearing to another. Even if it is assumed that he was of a very sanguine temperament and did not wish to hound his counsel, he was certainly aware of the first dismissal order dated 10.03.2008 by which his OA was dismissed. It was he who had signed on the Misc. Delay and Misc. Restoration Applications No. 800/08 & 801/08 filed on 22.04.2008 respectively. It appears down right un-believable, knowing that his main case for reinstatement in a sense has been dismissed on a technicality that he would not follow up its fate for nearly four years i.e. from 2008 to 2012. The present Misc. Applications has been filed by the applicant on 05.10.2012.

11. From the discussion made above, we are of the view that the applicant has failed to explain adequately the reason for four years' delay. Hence, the present Misc. Applications No. 3526 of 2012 (for restoration) alongwith Misc. Application No. 3525 of 2012 (for condonation of delay) are dismissed. No costs.



Member (A)

/pc/



Member (J)