CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

MA NO.198/2021 (Condonation of Delay)
in
Original Application no.173/2021

Reserved on : 02.08.2021
Pronounced on : 11.08.2021

CORAM:
HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER(J)
HON'BLE DR. A. K. DUBEY, MEMBER(A)

Kuldip N Sharma (IPS) ... Applicant

By Advocate Shri M S Rao

v/s

State of Gujarat & Ors ...Respondents

By Advocate Ms Manisha L Shah
Ld. Senior Counsel with Shri M J Patel

O R D E R
Per: Jayesh V.Bhairavia, Member (J)

1 By filing the captioned Miscellaneous Application, the applicant seeks to condone the delay of 7 years, 8 months and 27 days, as averred in the memo of this application, which has occurred in impugning the charge memorandum dated 15.9.2012 (Annexure A/1 to the O.A.) issued by respondent no. 3 under Rule 8 of All India Services (Discipline& Appeal) Rules, 1969 (hereinafter referred to as 'the Rules of 1969).

2 In the background, there is an OA filed on 9.6.2021 by the applicant challenging the propriety and legality of the charge memorandum bearing no.ENQ/252012/860/G dated 15.09.2012 on the ground of competency of respondent no.3 to exercise its powers to issue the same. Further challenge is against the order dated 30.07.2020 (Annexure A/2) whereby the Disciplinary Authority has appointed a new Inquiry Authority to hold an inquiry into the charges levelled against the applicant.

2.1 It is pertinent to mention that in 2020, the applicant approached this Tribunal by filing OA 491/2020 to challenge the decision of the Opponent no.4 herein i.e. Inquiry Authority, who refused to accede to the applicant's request for keeping in abeyance the disciplinary enquiry in view of the prevailing pandemic situation due to COVID-19 virus. The said OA 491/2020 came to be disposed of by this Tribunal as per order dated 11.01.2021 at the admission stage itself in view of the assurance given by the respondents that the principles of natural justice would be ensured by the Inquiry Authority. Aggrieved by the said order, the applicant approached the Hon'ble High Court of Gujarat by preferring a Writ Petition being SCA No.1648/2021. Pending hearing of said Writ Petition, the applicant herein filed yet another OA being OA 117/2021 challenging the merits of the Charge Memorandum dated 15.09.2012. The hearing of the said OA could not be taken up due to prevailing COVID 19 pandemic and remained pending at pre-notice stage.

2.2 In the meanwhile, the applicant opted to withdraw the said petition on the ground that a substantial application has been filed by him before this Tribunal. Accordingly the Hon'ble High Court of Gujarat vide order dated 14.06.2021 permitted withdrawal of the said petition.

2.3 However, subsequently having felt that there were several lacunas in the OA such as non-joinder of the Inquiry Authority and the Union of India as party respondents, not filing formal Miscellaneous Application praying for condonation of delay etc., the applicant withdrew the aforesaid OA No.117/2021 on 8.6.2021 with liberty to approach this Tribunal by filing a fresh OA.

2.4 In the meantime, Inquiry authority vide letter dated 20.04.2021 (Annexure A/42) informed the applicant that he intended to proceed with the departmental inquiry and hearing was fixed on 12.05.2021. Against the said communication dated 20.4.2021, the applicant filed a representation dated 11.05.2021 (Annexure A/43) to opponent no.4 requesting him not to proceed further in his proposed desire to move

exparte on 12.05.2021 for the reasons and grounds mentioned in the said representation.

The Opponent no.4, however, vide his communication dated 12.05.2021 (Annexure A/44) informed the applicant that he did not remain present on scheduled date of departmental inquiry and decided to proceed with the *exparte* hearing on next date of hearing i.e. 16.06.2021.

2.5 However, on the next date, i.e. on 13.05.2021 (Annexure A/45), the applicant submitted an RTI application through post to the Public Information Officer concerned in the Home Department, requesting forsupply of certain information, particulars and documents with regard to prior approval of competent authority for issuance of impugned charge memorandum (Annexure A/1) and subsequent order of nomination of inquiry authority (Annexure A/2).

2.6 Thereafter, taking shield of the liberty granted by this Tribunal while permitting withdrawal of the OA No. 117 of 2021, the applicant has filed the present OA being OA No.173/2021 on 9.6.2021 challenging the legality and validity of charge memorandum dated 15.09.2012 on the ground of lack of competency of respondent no.3, in which the delay to the above extent has occurred.

3 In support of prayer for condonation of delay, learned counsel for the applicant Shri Rao submitted that delay of 7 years, 8 months and 27 days in challenging the impugned charge memorandum dated 15.09.2012 was genuine and *bona fide*. The delay is neither wilful, deliberate nor is it actuated by any *malafide* motive or intention on the part of applicant herein.

3.1 It is contended that if the OA is not entertained solely on the ground of delay then it will cause serious prejudice to the applicant as it will result into miscarriage of justice and if the present MA is allowed and the delay is condoned, there will be no prejudice whatsoever to the opponents herein.

3.2 The main thrust while explaining the delay is that it was only sometime in the first week of May 2021 that it came to notice of the

applicant herein that in the case of one Shri R S Yadav, Gujarat cadre IPS Officer, this Tribunal vide its order dated 02.01.2019 in OA No.274/2015 (Annexure A/41) was pleased to quash the charge memorandum solely on the ground that in the case of IPS Officers of the State cadre in Gujarat the Competent authority to verify, approve and issue departmental charge memorandum under Rule 8 of the All India Services (Discipline & Appeal) Rules 1969 was the Hon'ble Chief Minister of the State of Gujarat alone and that no other authority or officer in the State Government of Gujarat was vested with any power or to propose and institute such disciplinary enquiry proceedings against IPS Officers. It is stated that the order passed by this Tribunal was neither available on website nor was reported in any law journal. Therefore, the applicant had sought information under the RTI Act 2005 vide application dated 13th May, 2021 about the details of necessary approval of draft charge memorandum as also sanction of the competent authority under the rules accorded for before issuance of charge memorandum dated 15.09.2012 to the applicant. He had also submitted a representation/application dated 11.05.2021 before the Inquiry Authority/Officer requesting him to desist from proceeding any further in departmental enquiry since he had reason to believe that prior to issue of charge memorandum, the home department did not seek concurrence from the General Administrative Department. Since Inquiry Authority vide his letter dated 12.05.2021 informed the applicant that he has decided to proceed with the exparte hearing with regard to departmental enquiry instituted against him and the next date has been fixed for hearing is 16.06.2021. It is stated by the applicant that after he came to know in May 2021 about the order being passed by this Tribunal in OA No.274/2015 immediately he approached this Tribunal alongwith the present MA for condonation of delay. It is stated that the delay caused due to bonafide belief of the applicant that charge memorandum dated 15.09.2012 must have been issued in accordance with the provisions of service rules 1969.

4 To buttress his argument in support of prayer for condonation of delay, learned counsel Shri M S Rao pressed into service the following judgements:

1 Union of India & Anr. vs Kunisetty Satyanarayana [2006 (12) SCC 28],

2 Order passed by Principal Bench in OA 800 of 2008 dated 05.02.2009 in the case of B V Gopinath v/s Union of India &Ors,

3 Union of India v/s B V Gopinath reported in 2014 (1) SCC 352,

4 (1987) 2 SCC 107, Collector, Land Acquisition and Anantnag v/s. Mst. Katiji & Ors,

5 2005(4) GLR 2863, Mulabhai Chavda v/s UoI

6 Order passed by Apex Court dated 01.07.2019 in Civil Appeal No.5131 of 2019 in the case of Hemlata Verma v/s ICICI Prudential Life &Anr,

7 1961 (0) GLHEL – SC 22543 Raja Harishchandra Raj Singh v/s Deputy Land Acquisition Officer,

8 2020 (0) AIGEL SC 66299 Shakti Bhog Food Industries Ltd v/s Central Bank of India (Para 13, 14 & 21)

9 2012 (11) SCC 565, Secretary Ministry of Defence v/s Prabhat Chandra Mirdha.

4.1 Based on the strength of the aforesaid judgements, the learned counsel for the applicant strongly urged that the explanation offered by the applicant for condonation of delay sufficiently exhibit cogent and plausible reasons to condone the delay as prayed for and therefore the applicant should be allowed to proceed with the OA on its own merits, by allowing the present MA seeking condonation of delay.

5 Opposing the prayer for condonation of delay in the present MA, respondent No 1 to 3 have filed their reply. Learned senior counsel Ms. Manisha L. Shah assisted by learned advocate Mr. M. J. Patel for the respondents submits that after 7 years, 8 months and 27 days (2826 days), a charge memorandum dated 15.09.2012 is sought to be challenged by the applicant herein without any cogent or valid reasons for such inordinate delay. The applicant was a senior IPS officer having retired as Director General, Bureau of Police Research and Development, Ministry of Home Affairs, New Delhi. He must have issued a large number of charge memorandums in his official capacity and must have dealt with numerous such inquiries. Not only this, the applicant has previously appeared before the CAT, Principal Bench, New Delhi, as well as this Tribunal, which clearly indicates that he is well versed with the provisions of Law. Ignorance of procedure or justification for this inordinate delay cannot be condoned. The explanation offered by the

applicant in the present MA for condonation of gross delay is only a camouflage and an endeavour to avoid inquiry proceedings.

5.1 To demonstrate that all reasonable requests of the applicant had been acceded to, it is contended that after service of charge memorandum dated 15.09.2012 and considering the representation of applicant, the disciplinary authority decided to conduct departmental enquiry against the applicant and accordingly appointed one Mr A P Mathur as Inquiry Authority. Since the applicant had strongly objected to the appointment of said Mr Mathur as Inquiry Authority way back in the 2013-2014,the State Government entrusted the inquiry to another officer. At no point of time, the applicant had raised the issue about competency of disciplinary authority.

5.2 It is submitted that it is well within knowledge of the applicant that departmental proceedings were initiated against him under the provisions of Rules of 1969 and also aware about the existence of the State Rules of Business 1990.

5.3 The explanation offered by the applicant for condonation of delay that he came to know only in the month of May, 2021 that approval ought to have been obtained from the Chief Minister for initiating departmental inquiry against the IPS officers, is too weak to be countenance to condone the inordinate delay of more than seven years. Further, the issue of competency appears to be a construed inference which fails to explain the delay until then.

Learned Senior Counsel submitted that the order passed by this Tribunal in R S Yadav case is sub judice before Hon'ble High Court. Even otherwise, as per the provision of All India Services (Discipline &Appeal) Rules 1969, the Member of the service i.e. Applicant herein has due opportunity and right to place his evidence, defence, explanation as also the written note during the departmental enquiry and the representation/note before the disciplinary authority and on consideration of all the above, the disciplinary authority might drop the charges levelled against the applicant. Therefore, it is not correct on the part of applicant to state that continuation of departmental

enquiry is prejudicial to the interest of the delinquent. On the contrary facts stated herein above indicate that this is another attempt being made by the applicant to delay the departmental enquiry. It is submitted that after service of charge memorandum in the year 2012 and initiation of the departmental enquiry, after a gap of more than 7 years, the applicant has come to know about the provision of the Rules/order passed by Hon'ble Apex Court in the year 2013 and on the same ground he intends to get gross delay condoned, which cannot be permitted.

5.4 In support of her argument, learned senior counsel placed reliance on the following judgements:

1 State of Karnataka and others v. S.M.Kotrayya & others, (1996) 6 SCC 267

2 Vedabai alias Vaijayanatabai Baburao Patil v/s Shantaram Baburao Patil & Ors (2001) 9 SCC 106.

3 Singh Enterprises vs. Commissioner of Central Excise, Jamsedpur and others reported in (2008) 3 SCC 70.

4. Balwant Singh (dead) vs. Jagdish Singh and others, (2010) 8 SCC 685.

5. Ravhjibhai Chhotabhai Patel and others vs. The Competent Officer and Deputy Collector & others reported in GLH 2021 (2) 717.

5.5 On the strength of the above referred citations, learned senior counsel concluded her argument by stating that in the present case, after service of the charge memorandum, if aggrieved, the applicant should have approached this Tribunal within one year in terms of section 21 of the Administrative Tribunals Act, 1985. However, he approached this Tribunal after gross delay of 7 years 8 months and 27 days. For condonation of delay of the aforesaid long period, the explanation offered by the applicant in the present MA that he was reeling under the bona fide belief and presumption that the respondents had followed the procedure while issuing the charge memorandum and further that only in the month of May, 2021, he came to know about the order being passed by this Tribunal in case of another IPS officer

to the extent that disciplinary proceedings against the IPS officer could be initiated only with prior approval of Chief Minister, the said explanation cannot be termed as sufficient cause to condone the inordinate delay of seven years. Therefore, the applicant is not entitled to get the relief prayed for in this MA.

6 The applicant has filed rejoinder denying the contentions and averments raised in the reply, reiterating that present MA is required to be allowed to serve the ends of justice. Learned counsel Mr. Rao additionally submitted that judgment relied on by the respondents were as such, helpful to the case of the applicant and rather supported the explanation offered by him for condonation of delay.

7. Heard learned advocate Mr. M. S. Rao for the applicant and Learned Senior Counsel Ms. Manisha L. Shah assisted by Advocate Mr. M. J. Patel for the respondents, at length in this MA for condonation of delay.

8. This Tribunal is not unmindful to the trite principle of law while dealing with the application for condonation of delay, it is well settled that aspect of delay should be construed liberally to subserve the ends of justice and to allow the litigant to agitate his/her case on merits rather than ousting him/her on technical grounds such as condonation of delay. However, at the same time, this Tribunal is required to consider, evaluate and judge the sufficiency of cause put forth by the litigant seeking condonation of delay. It is also a trite principle of law that it is not the length of delay, but the sufficiency of cause which the courts/tribunal would weigh while considering the prayer for condonation of delay. While considering the application for condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the Courts/Tribunals based on the facts situation.

9. In the case at hand, it is noticed that the applicant approached this Tribunal by filing OA No. 491 of 2020 for a direction to restrain the Inquiry Authority from conducting the departmental enquiry on the ground of Covid 19 pandemic. The said OA was disposed of by this Tribunal vide order

dated 11.1.2021 by taking into consideration the assurance given by the respondents that the principles of natural justice would be adhered to as well as precautions and guidelines during Covid 19 pandemic would be ensured and followed while proceeding further in the departmental inquiry. Aggrieved by the said order, the applicant approached the Hon'ble High Court of Gujarat by filing Special Civil Application No. 1648 of 2021, notices were issued by the Hon'ble High Court vide order dated 04.02.2021 kept returnable on 18.02.2021.

During the pendency of the said writ petition, the applicant filed OA 117/2021 on 15.02.2021 challenging merits of charge memorandum dated 15.9.2012 and prayed for quashing and setting aside the said charge memorandum with a further prayer to stay all the proceedings pursuant to the said charge memorandum. The said OA No.117 of 2021 came to be withdrawn on 8.6.2021 by the applicant on the ground that there were lacunas in drafting the said OA and certain pleadings and legal issues were left out from being referred to. The pending Writ Petition i.e. SCA No.1648 of 2021 before Hon'ble High Court of Gujarat also came to be withdrawn on 14.06.2021 by the applicant on the ground that he had filed another substantial OA before this Tribunal. It is pertinent to mention here that till this stage, there was no application for condonation of delay filed by the applicant with regard to challenge to charge memorandum dated 15.09.2012.

9.1 Pausing for a moment here, it is beyond comprehension that the applicant who was a senior IPS officer and who retired as Director General, Bureau of Police Research and Development, Ministry of Home Affairs, New Delhi and who must have issued a large number of charge memorandums in his official capacity and must have dealt with numerous such inquiries, was oblivious about the position of law regarding condonation of delay. Not only this, the applicant has previously appeared before the CAT, Principal Bench, New Delhi, as well as this Tribunal, which clearly indicates that he is well versed with the provisions of Law.

9.2 And now, at the time of third litigation before this Tribunal, the applicant has come up with the present MA seeking condonation of

delay of 7 years, 8 months and 27 days in filing the said third OA, that too without advancing sufficient cause for it. The sole premise on which the applicant seeks to condone the yawning gap of 7 years, 8 months and 27 days is that it is only in the month of May, 2021 that the factum of passing of order dated 02.01.2019 in OA 274/2015 in the case of Mr R S Yadav v/s Union of India &Ors by this Tribunal came to his knowledge, in which case, by taking into consideration the provisions of All India Services (Discipline and Appeal) Rules, 1969 as also the provision of Gujarat Government Rules of Business 1990, this Tribunal quashed the charge memorandum issued to the applicant of said OA solely on the ground that in the case of IPS officers of the state cadre in Gujarat, the competent authority to verify, approve and issue departmental charge memorandum under rule 8 of the All India Services (Discipline and Appeal) Rule 1969 is the Hon'ble Chief Minister of Gujarat alone and that no other authority or officer in the State Government of Gujarat is vested with any power to propose and institute such disciplinary inquiry or proceedings. It is also stated by the applicant that the copy of said order is not on the official website of this Tribunal nor was this order reported in any of the law journal. At the same time, the applicant vehemently relied upon the order passed in B. V. Gopinath's case (supra) which was decided in the year 2013. The submission of learned counsel for applicant is that applicant is not a lawyer and cannot be expected to be aware about the judgment passed by Hon'ble Apex Court in the year 2013. The said submission is not acceptable in the facts and circumstances of the present case as the applicant has admitted in his application that since 2009 till date he has filed various cases before Principal Bench of CAT of this Tribunal, this Tribunal and also before Hon'ble High Court. At this stage, it is also pertinent to note that law laid down by the Apex Court is in public domain and no one could plead ignorance of it, much less the applicant herein.

10. The scope and ambit with regard to adjudication of condonation of delay in preferring the OA, is governed by the provisions of Section 21 of the A.T.

Act, 1985, which explains the Limitation aspect. The section 21 is reproduced herein below,

> ***"21. LIMITATION - (1) A Tribunal shall not admit an application, -***
>
> ***(a) in a case where a final order such as is mentioned in clause 20 has been made in connection with the grievance unless the application is made, 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 become 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 sub-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 they had sufficient cause for not making the application within such period." (emphasis supplied)***

10.1 Reading of the above section would clearly go to show that if the aggrieved employee files an application under the provision of A.T.Act 1985 for redressal of his grievance beyond the prescribed time limit under the provision of section 21(1) and (2), the Tribunal is empowered under section 21(3) to admit the application if it is satisfied that the applicant has sufficient cause for not making the application within the stipulated time limit. In other words, if sufficient cause has been advanced to the satisfaction of the Tribunal, the application of the employee-applicant can be admitted after condoning the delay. Therefore, what is required to be seen by the

Tribunal is whether the applicant has offered sufficient cause or reason in support of delay.

10.2 We may profitably refer to the dictum of the Hon'ble Supreme Court on the subject in the case of **State of Karnataka and others v. S. M. Kotrayya and others, [(1996) 6 SC-C 267]**, wherein the SLP arose from the common order of the Karnataka Administrative Tribunal dated 14.08.1989 whereby the said Tribunal condoned the delay by accepting the plea of applicant therein that the OA was filed after they came to know about order passed in the case of similarly placed employees against the recovery of LTC amount in the year 1984-86. While allowing the appeal filed against the said order by the State of Karnataka the Hon'ble Apex Court had considered the scope and ambit of section 21 of the A T Act 1985 and held as under:

> ***7*** ***A reading of the said section would indicate that sub- section (1) of Section 21 provides for limitation for redressal of the grievances in clauses (a) and (b) and specifies the period of one year. Sub-section (2) amplifies the limitation of one year in respect of grievances covered under clauses (a) and (b) and an outer limit of six months in respect of grievances covered by sub-section (2) is provided. Sub-section (3) postulates that notwithstanding anything contained in sub-section (1) or sub-section (2), if the applicants satisfy the Tribunal that. they had sufficient cause for not making the applications within such period enumerated in sub-sections (1) and (2) from the date of application the Tribunal has been given power to condone the delay, on satisfying itself that the applicants have satisfactorily explained the delay in filing the applications for redressal of their grievances. When sub- section (2) has given power for making applications within one year of the grievances covered under clauses (a) and (b) of sub-section (1) and within the outer limit of six months in respect of the grievances covered under sub-section (2), there is no need for the applicant to give any explanation to the delay having occured during that period. They are entitled, as a matter of right, to invoke the jurisdiction of the Court for redressal of their grievance. If the applications come to be filed beyond that period, then the need to give satisfactory explanation for the delay caused till date of filing of the application must be given and then the question of satisfaction of the Tribunal in that behalf would arise. Sub-section (3) starts with a non obstante clause which rubs out the effect of sub-section (2) of Section 21 and the need thereby arises to give satisfactory explanation for the delay which occasioned after the expiry of the period prescribed in sub-sections (1) and (2) thereof.***
>
> ***8.*** ***……***
>
> ***9*** ***Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which***

> ***occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievance before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay.***

11. On the aspect of due diligence required to be followed while asserting legal rights before the court of law, the Hon'ble Supreme Court in **Balawant Singh (Dead) v. Jagdish Singh &Ors. (2010) 8 SCC 685**, has observed as under,

> *".....**The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention."***

12. It is trite principle of law that power of discretion, to condone the delay, is to be exercised cautiously. In the absence of any valid reason, unexplained delay cannot be condoned. Power of discretion is undoubtedly to be exercised judiciously. Mechanical or routine approach while condoning the delay is opposed to the very spirit of the law of limitation. Law of limitation is a substantive law. Condonation of delay is an exception and such condonations are granted by exercising the power of discretion by the Courts. Thus, discretionary power to condone delay has to be exercised cautiously and only in the event of establishing a genuine reason and sufficient cause to the satisfaction of Court/Tribunal such huge delay can be condoned and unexplained delay cannot be condoned. If such gross delays are condoned in absence of sufficient cause then the very purpose and object of the Limitation Act would be defeated. In normal circumstances, the Courts/Tribunals are expected to follow the statute as the Discretionary powers is to be exercised only to mitigate the hardship in certain circumstances, if any caused or to provide justice to the parties approaching the Court of Law. At this stage, it will suffice to refer to the law laid down by Hon'ble Apex Court in the case of Lanka Venkateshwarlu v/s. State of A.P. reported in (2011) 4 SCC 363 wherein after referring to the judgment

passed in Balwant Singh (supra), the Hon'ble Apex Court with regard to discretionary powers vested with the Courts/Tribunals on the subject of condonation of delay, in para 29 held as follows;

> ***"…..Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers."***

13. Before condoning the delay, the Courts/Tribunals are also required to take into account the conduct of the parties, *bona fide* reasons and whether such delay could easily be avoided by the applicant acting with normal care and caution. In the present case, we have no hesitation to mention that, the delay could have been avoided by the applicant, had he taken the normal care and caution at appropriate time. While observing so, what has weighed with the Tribunal amongst other reasons is that the applicant was a senior IPS officer and retired as Director General of Police. The applicant displayed total negligence in asserting his rights in the matter and hence contributed in defeating the same. It is expected that the government servant would pursue his/her rights and remedies and claim its enforcement before the appropriate forum well in time and would not sleep over it. Delay itself deprives a person from his remedy available in law.

14. The record reveals that the applicant has approached this Tribunal after a long gap of more than seven years while challenging the departmental charge memorandum dated 15.09.2012. The reasons put forth by the applicant is that he came to know only in May 2021 about the Order passed by this Tribunal in the year 2019 in the case of another IPS officer wherein it was held that the for taking disciplinary action against an IPS Officer under All India Service (D&A) Rules 1969, it was necessary on the part of disciplinary authority to follow the said Rules 1969 as also the instructions contained in the State resolutions issued in the year 1998. It is difficult to consider the information received by the applicant in May 2021 as a valid reason to condone the delay from the date of notification instituting the inquiry ie, 2012. This Tribunal is not inclined to exercise its discretionary power to condone the delay. The entire explanation given by the applicant

as noted above depicts the casual approach, unmindful of the law of limitation despite being aware of the position of rules and the resolutions as referred herein above. The said explanation for such a long delay cannot be said to be sufficient cause in light of what is observed herein above. The judgements relied upon by the counsel for the applicant is not applicable to the facts and circumstances of the present case. Therefore, we have no hesitation to conclude that the applicant has miserably failed to furnish sufficient cause for the inordinate delay of more than seven years in challenging the charge memorandum dated 15.9.2012.

15. In view of the above discussion and observation, we do not find any cogent reason/sufficient cause to condone such inordinate delay. Accordingly, MA is rendered meritless. Hence, dismissed. No costs.

16. Before parting, we find it necessary to deprecate the conduct of the applicant, which he exhibited in the present proceedings. The applicant in his rejoinder in para 4.15 (page no.612 of the MA) has made an attempt to show that this Tribunal has passed order dated 14.06.2021 in the present MA by mentioning wrong facts. Even if there is mistake apparent on the face of the order passed by the Tribunal, the applicant has remedy to get it corrected in accordance with law and procedure. The course adopted by the applicant cannot be countenanced for a while and is hereby deprecated with a caution to the applicant that henceforth he shall be careful not to commit such act of carelessness which is tantamount to a contemptuous act. At his stage, learned advocate for the applicant extends unconditional apology. Taking a lenient view, the apology is accepted.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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