

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

**MA No.269/2017 with MA No.270/2017
in
OA No.125/2014**

Dated this the 10th day of August, 2021

Reserved on:23.06.2021

Pronounced on :10.08.2021

CORAM:

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

Hon'ble Shri Dr. A.K. Dubey, Member (A)

Ganshyam Shivnath Pandey, IFS (Retd.),
Aged:74 years (DoB being 14.07.1942),
Son of Late Shri Shivnath Pandey,
Presently residing at No.14, Madhuvan Society,
Behind T.B. Staff Quarters,
Gotri Road,
Vadodara – 390 021.Applicant

(By Advocate :Shri M.S.Rao)

Versus

1. Union of India

(Notice to be served through its Secretary
to the GoI, Ministry of Forests, Environment & Climate Change,
Government of India,
Paryavaran Bhavan,
C.G.O. Complex,
Lodhi Road,
New Delhi 110 003).

2. State of Gujarat,
(Notice to be served through its Secretary to the Govt. of Gujarat,
Forests & Environment Department,
Government of Gujarat,
Block No.14, 8th Floor,
Sachivalaya,
Gandhinagar – 382 010.
3. Shri M.A.Saiyed, IFS (Retd.)
Address For Communication: No.B/9,
Shirali Society,
Behind Seven Seas Mall,
Fatehganj,
Vadodara - 390 002 ...Respondents

(By Advocates Shri Joy Mathew & Ms.R.R.Patel)

ORDER

Per Dr.A.K.Dubey, Member (A)

1. The applicant has moved the MA No.269/2017 seeking amendment in OA No.125/2014 to add a sub paragraph after paragraph 4.1.1. in the original application and also to challenge the order of MoEF&CC dated 15.01.2007. This MA also sought to add one more ground in the main OA namely, ground No.(G) after ground No.(F) in para 5 of the OA. This MA further sought to expand the relief clause of the OA No.125/2014 by adding a sub para, which reads as under:

“(A-I) This Hon’ble Tribunal may be further pleased to quash and set aside the Order bearing No.17013/04/2004-IFS-II, dated 15.01.2007 at Annexure-A/19 hereto in so far as it seeks to grant 1992 as year of allotment to the applicant instead of

granting him the year allotment of 1988 at par with the applicant's junior i.e. the Respondent No.3 herein;"

With these proposed additions to the OA No.125/2014, the MA seeks following reliefs (apart from ones in the OA 125/2014):-

- "(i) Grant this Miscellaneous Application in the interest of justice;*
- (ii) Grant permit the applicant herein to amend the main OA No.125 of 2014 and place on record of the main OA No.125 of 2014 in the manner as set in the paragraphs No.4, 5 & 6 of the present MA;*
- (iii) Grant such other relief/s as may be deemed fit and appropriate in the peculiar facts & circumstances of the present case;*

1.1 Alongwith the MA for amendment, another MA No.270/2017 was also filed seeking condonation of delay. Before we proceed to advert on the merits of the amendment application, we have to consider and decide the M.A. for condonation as the outcome of delay condonation application would guide the fate of the amendment application.

2. The applicant in his application for condonation of delay i.e., MA 270 contended that infact, on receipt of counter reply dated 15.01.2015 filed by the respondent in main OA, he came to know about order dated 15.1.2007. While filing his rejoinder he had duly instructed his erstwhile advocate for taking necessary steps to forthwith amend the main OA for challenging the proprietary, legality and validity of order dated 15.1.2007

passed by the respondent. However, only on receipt of notice from this Tribunal on or about 4.5.2017, applicant came to know that his erstwhile advocate was not appearing in his case before this Tribunal as he had permanently shifted to Bangalore.

The applicant says that on receipt of the case papers from Bangalore, he came to know that his erstwhile advocate had not filed the amendment application as advised by him. Therefore, he engaged the new lawyer and instructed him to take steps for filing the amendment application for challenging the said order dated 15.1.2017 in main OA. Learned counsel appearing for the applicant submits that through inadvertence, the applicant herein did not challenge the order dated 15.1.2007 while filing the OA. He states that the delay occasioned for these reasons, were beyond his control and not deliberate.

3. On receipt of notice, the respondents have filed replies to the MAs opposing the prayers made therein. The contentions raised by the respondents are briefly mentioned below:-

3.1 The applicant was admittedly aware of the order dated 15.01.2007 (Annex.A/19) at least since 2009 as this was one of the documents produced and relied upon by the applicant in his earlier OA No.206/2009. In fact, the order dated 15.01.2007 became the basis for seeking relief in OA 206/2009. Now at this

distance of time, he cannot take the plea that he was unaware of the MoEF&CC order dated 15.01.2007 and came to know about it only on receipt of reply filed by the respondent in the present OA. The reason stated for condonation of delay cannot be said to have been sufficiently explained or any sufficient cause arose for the applicant. Learned counsel for the respondent also contended that the applicant had received all the retiral dues including pension based on order dated 15.01.2007. Even in main OA 125/2014 filed by the applicant herein, there is no challenge to the order dated 15.01.2007. After availing the benefit of retiral dues as well enjoying the pension based on order dated 15.01.2007, now after an inordinate and unjustified delay of approximately 10 years, the applicant cannot be allowed to challenge that order. As such the delay sought to be condoned by way of the present MA lacks merit, hence same should be rejected, the standing counsel argued.

- 3.2 The respondents have argued in their reply that there are no convincing reasons for the delay. It is submitted that in view of various judgments passed by Hon'ble Supreme Court, the applicant must explain the delay while filing MA for its condonation.

3.3 Respondents have also objected the MA No.269/2017 seeking to modify the facts, grounds and also the prayer clauses of OA 125/2014. Respondent department has produced a copy of the order dated 15.01.2007 and submitted that pension of the applicant was fixed on the basis of this order. That being the case, it cannot be claimed that the applicant was not aware of this order.

4. In view of the foregoing submissions and contentions, this Tribunal thought to first adjudicate this very issue before taking up the OA 125/2014. Accordingly, we heard the counsel for both parties.

5. Learned counsel for respondents argued that the OA was filed on 21.01.2014 and after lapse of 3 and ½ years, the MA No.269/2017 was moved seeking addition to the facts, grounds and prayer clause. The proposed paragraph 4.12 flows from the MoEF&CC order dated 15.01.2007 (Annex.A/19). The applicant claims that he had no knowledge of this order when he filed the OA in 2014. He now seeks to impugn this order, after 3 and ½ years of filing the OA.

5.1 Counsel for respondent further submitted that the order of MoEF&CC dated 15.01.2007 was a significant document on the basis of which reliefs in OA 206/2009 were sought. This *prima facie* establishes that the applicant knew about it in 2009 but never impugned it at that time.

Actually he sought and got relief on that basis, as far as OA 206/2009 is concerned.

5.2 The order dated 15.01.2007 clarifies the basis of allotment of seniority. The applicant did not challenge it then or in OA 206/2009, and remained silent for next seven years i.e., until he filed OA 125/2014. Even while filing OA 125/2014, he did not impugn it. Then, after 10 years, he wishes to impugn it. As a matter of fact, this very order was quoted and used (among other grounds too) to seek relief in OA 206/2009 which, this Tribunal eventually granted.

5.3 The learned counsel for the respondents argued that this case was not a fit case for condonation of delay. Relying on the same judgment in *Shiv Dass Case (supra)* he submitted that Hon'ble Apex Court had observed that ordinarily the High Court did not permit a belated resort to the extra ordinarily remedy because it was likely to cause confusion and public inconvenience and bring in its train new injustices. Thereafter, condoning the unreasonable and unjustified delay in this case might inflict not only hardship and inconvenience but also bring in its train injustices and may affect third parties.

6. Learned counsel for the applicant submitted that in *Union of India & Ors. v. Tarsem Singh* in Civil Appeal No.5151-5152 of 2008, Hon'ble Apex Court had observed: where claim of relief was based on a

continuing wrong, it could be granted even if there was a long delay in seeking the remedy. The learned counsel further referred to the judgment of *Shiv Dass v. Union of India* [(2007) 9 SCC 274] in which Hon'ble High Court held:-

"The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is like to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weights with the High Court in deciding whether or not to exercise such jurisdiction."

The learned counsel Mr.M.S.Rao contended that here was a case of continuing wrong and he was not creating any third party interest and hence he was entitled to the relief as prayed for. Minutes of the meeting of the review selection committee clearly mentioned that the applicant's name was considered as per the direction of this Tribunal in OA referred above. The applicant's name was considered for the vacancy reported for the year 1994 to 1995 (Annex. A/15 (Colly)).

7. Heard the counsel for both the parties. We respectfully referred to the case of *Union of India & Ors. v. Tarsem Singh* in Civil Appeal No.5151-5152 of 2008 (*supra*) and we find that in the same judgment, Hon'ble Apex Court has also made observations quoting *Shiv Dass* judgment quoted in para 5 above. In the matter of *P.S. Sadasivaswami v. State of*

Tamil Nadu [(1975) 1 SCC 152: 1975 SCC (L&S) 22], the Hon'ble Apex Court had observed that a period of six months or at the most a year would be reasonable time to approach a court against a denial of promotion. In Gandhi Nagar Motor Transport Society v. Kasbekar [195 3 SCC online Bom 64 : AIR 1954 Bom 202) Hon'ble Bombay High Court had observed that mere repeated filing of representations could not be sufficient explanation for delay in approaching a court for relief. In Union of India v. Bhahadur Singh [(2006) 1 SCC 368: 2006 SCC (L&S) 959], Hon'ble Apex Court had observed that court should not place reliance on decision without discussing as to how factual situation was fitting in with the fact, situation or the decision. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute, and that too taken out of their context.

8. In this particular case, when the applicant got inducted in IFS through the due procedure, and had approached this very Tribunal via OA 206/2009 on the basis of the MoEF&CC order dated 15.01.2007, he cannot claim ignorance of this order after all these years. Now at this distance of time, seeking to modify the prayer clause and to impugn this order is inconsistent with his act of receiving relief or this may bans in OA No.206/2009. Therefore, his main argument that he was not in know of the order dated 15.01.2007 is neither tenable nor acceptable.

9. Further, failure in impugning this letter dated 15.01.2007 before the competent court within a reasonable time and that too after getting the relief from this very Tribunal in OA 206/2009 on the basis of this very order (dated 15.01.2007 Annex.A/19), has indeed afflicted the request for condonation of this inordinate delay. Actually, the sequence of events in getting into IFS, then working up for seniority and then claiming ante date seniority etc. and consequential promotions do not support the belief that the applicant was unaware of all these, particularly the MoEF&CC letter dated 15.01.2007. The applicant has not been able to show a convincing reason for not taking up this letter in the court at appropriate time or within reasonable time after that time or even while filing OA 206/2009. Hon'ble Apex Court's observations cited above constitute the touch stone to test the sufficiency of explanation of delay. Accordingly, if we test it on Hon'ble Apex Court's touch stone, we are not convinced that the applicant has been able to explain the delay or show that the matter was indeed not known to him. We found force in the submission and objection of the respondent as such, the explanation offered by the applicant in his application for condonation of delay is not acceptable in the facts and circumstances stated hereinabove. The judgment relied upon by the counsel for the applicant is also not helpful to him for the reasons discussed above. In a strict sense of letters of law, the applicant deserves

estoppel from claiming ignorance of the letter of MoEF&CC dated 15.01.2007 to plead justification for the delay.

10. Therefore, we are of the opinion that the MA lacks merit and we dismiss MA 270/2017 for CoD. In aforesaid factual background, MA 269/2017 is also dismissed.

(A.K.Dubey)
Administrative Member

(Jayesh V. Bhairavia)
Judicial Member

SKV