

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Registration No. 1383 of 1986(T)

(Misc. No. 117 of 1985 u/s 5 LA)

Union of India APPLICANT
(Defendant)

versus

Nawal Kishore Gupta ... RESPONDENT
(Plaintiff)

Hon. Justice S.Zaheer Hasan, Vice Chairman
Hon. A Johri, Member (A)

(Delivered by Hon. S.Zaheer Hasan, V.C.)

This is an application under section 5 of the Limitation Act for condoning the delay in filing the appeal against the judgment of the learned Munsif XI, Moradabad, decreeing suit No. 215 of 1984 on 4.4.1985 under Order VIII, rule 5, C.P.C. It has been transferred to this Tribunal along with the memo of appeal by the District Judge, Moradabad under section 29, Administrative Tribunals Act, 1985.

The plaintiff had filed the suit against the Union of India through General Manager, Northern Railway, Baroda House, New Delhi, for declaration that the order of punishment was illegal. Written statement was not filed for a considerably long time. Numerous adjournments were taken. So the suit was decreed under Order VIII, rule 5, C.P.C.

The present application under section 5 of the Limitation Act along with the memo of appeal was filed on 30.9.1985. The suit was decreed on 4.4.1985. The case of the applicant is that on receipt of the summons in suit no. 215 of 1984 (Nawal Kishore Gupta v. Union of India) the applicant opened a case and nominated Sri S.P.Upadhyा, Advocate, Moradabad, for conducting the case. The Railway Advocate took four adjournments and when 12.2.1985 and 19.2.1985 were fixed in the case, the applicant's office sent the file of papers relating to the case along with para-wise comments to the aforesaid Advocate for drafting written statement and sending the same to the applicant's office for verification and signature of the officer concerned. The Railway Advocate ~~neither~~ drafted the written statement nor sent any reply for months together. For want of information from the said Advocate, the Department deputed Kamal Kumar, a clerk in the Litigation Cell, to contact the said Advocate, who made several attempts to contact the Advocate, but in vain. He was always told that the Advocate was out of station. However, at the end of August, 1985 Kamal Kumar was able to contact Sri Upadhyा who handed over certified copies obtained by him and opined that an appeal should be filed, but he did not give any reason why he slept over the matter for such a long time. After getting the copies the authorities were moved for necessary action, and ultimately the appeal could be drafted and

filed on 30.9.1985. So there was carelessness on the part of the Railway Advocate, for which the Department should not be allowed to suffer.

The plaintiff's case is that each day's delay has not been explained and the application suffers from vagueness and ambiguity in respect of material particulars. It is further alleged that the aforesaid Advocate was available and it has not been explained as to what was done between 19.2.1985 and 4.4.1985. It was further contended that the plaintiff moved the department with photostat copy of the judgment on 9.9.1985, and thereafter the Litigation Cell went into action, and this appeal was filed on 30.9.1985. So this application should be dismissed.

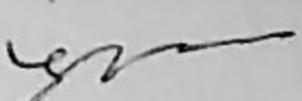
The suit was filed on 24.4.1984.

The Vakalatnama of Sri Upadhyा is dated 9.6.1984. He took five adjournments right from 1984 upto 15.3.1985 but did not file the written statement. On 15.3.1985 the case was adjourned to 4.4.1985 on payment of Rs 80/- as costs. There was inordinate delay in filing the written statement, and so many adjournments were taken in this connection. The application definitely suffers from vagueness and ambiguity in respect of material particulars. If Sri Upadhyा was not available, other lawyers who represent the Railway could be contacted or any other lawyer could be engaged. In any case, Kamal Kumar who tried to meet the Advocate on several occasions could have contacted the

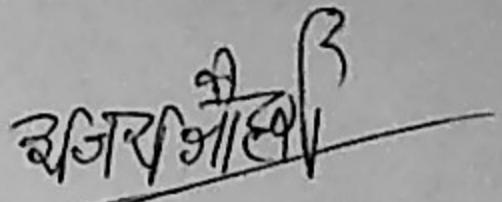
office of the trial court to find out the position. The plaintiff's case that he moved the Department on 9.9.1985 with a copy of the judgment and decree, and thereafter the Department went into action cannot be condemned as without substance. It is not mentioned as to on what dates Kamal Kumar tried to contact the lawyer. If the lawyer had not given any reply for months, someone could have been deputed much earlier.

In view of all the above we hold that the applicant has failed to make out sufficient cause for condoning the delay.

The application under section 5 of the Limitation Act is rejected.



Vice Chairman



Member (A)

D/- February 12¹⁵, 1987.

AAK