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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 9 DAY OF September, 2010)

**Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)**

Misc. Application No. 1482/10 and Misc. Application No. 1483/10

In

**Original Application No.1453 of 2002
(U/S 19, Administrative Tribunal Act, 1985)**

Sandeep Sharma, Son of Late B.D. Sharma, Resident of house No.E-14, Kharpa Mohal, Cantoment, Kanpur.

..... *Applicant*

Present for Applicant : **Shri S.K. Pandey**

Versus

1. Union of India, through Defence Secretary, Ministry of Defence, New Delhi.
2. General Manager, Ordnance Equipment, Factory, G.T. Road, Kanpur.
3. Additional Director General, Ordnance Equipment Factory, G.T. Road, Kanpur.

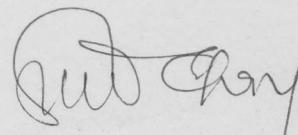
..... *Respondents*

Present for Respondents : **Shri R.K. Srivastava**

ORDER

(Delivered by Hon. Mr. Justice S. C. Sharma, Member-J)

Instant Civil Misc. Application No.1483 of 2010 has been moved for restoration of O.A. No. 1453 of 2002 dismissed in default of the

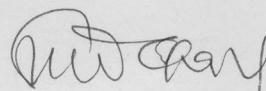


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applicant on 26.07.2007. Civil Misc. Application No.1482 of 2010 has also been moved for condonation of delay.

2. It has been alleged in the application that the O.A. has been kept in *sine die* and provides that it shall be taken up in the Court after the old cases are decided. The applicant believed on this version of the earlier counsel. It has further been stated by the earlier Advocate of the applicant that there is huge pendency of old cases as such the present O.A. was likely to be listed after 2 or 3 years. The application for inspection of the record was moved in the first week of March, 2010 itself and certified copy of the order dated 26.07.2007 was also applied for on the same date but as the file was missing from its place as such it took some time to trace out the same in the Registry. Ultimately, record was inspected on 18th March, 2010 when filed became available. The applicant was absolutely unaware of the facts that his case was dismissed in default. Neither the earlier Advocate informed about the dismissal of the case in non prosecution, nor any information was received from the Registry of this Tribunal as such the application could not be moved for the restoration within time. There is no fault on the part of the applicant. The delay in moving the present application for restoration is not deliberate but it is *bona fide* and in the interest of justice the delay is to be condoned and the restoration application is to be allowed.

3. Objection has been filed by the respondents against the application for restoration. It has been alleged that the O.A. was filed

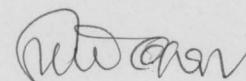




by Sandeep Sharma, Ex-Store Keeper bearing Personal No.055075, who was removed from service vide Disciplinary Authority's order dated 16.12.2001 for his proven misconducts. The instant Misc. Restoration Application and the Delay Condonation Application have been filed by Mr. Sudeep Sharman, who is not the applicant of the O.A. Mr. Sudeep Sharma was not an employee of this factory and due to this reason alone the application for condoning the delay as well as restoration application are liable to be rejected. The application for restoration is highly belated and same is liable to be dismissed and no substantial ground has been mentioned in the application for restoration.

4. We have heard Mr. S.K. Pandey, Advocate, for the applicant and Mr. R.K. Srivastava, Advocate for the respondents and perused the entire facts of the case.

5. Learned counsel for the respondents argued that the application for restoration coupled with the delay condonation application has been moved highly belated and the same is liable to be dismissed on this very ground. The O.A. was dismissed in default on 26.07.2007, whereas the restoration application was moved on 01.04.2010. It has been alleged by the applicant that previous Advocate of the applicant told to him that the case has been kept *sine die* and it will be taken up after disposal of the old cases. The previous Advocate never informed to the applicant that the case was



listed for hearing and as no intimation was received by the applicant prior to the order of dismissal, hence the application was not moved for restoration. Respondents' counsel disputed this assertion of the applicant's counsel and stated that there is a long delay of about three years and the delay has not been properly explained and the application is liable to be dismissed.

6. From the perusal of the order sheet, it is evident that this O.A. was kept in abeyance *sine die* vide order dated 13.04.2005, but on 03.03.2006, an application was moved for expediting the hearing and this application for expediting the hearing was allowed and the application was ordered to be listed for hearing on 18.05.2006. The case was put up before the Registrar on 18.05.2006 and it was ordered to be listed before the Bench on 17.07.2006 and on that date the application of the applicant for recalling of the order dated 29.09.2004 was allowed and the O.A. was restored and as pleadings were complete, hence the case was ordered to be listed on 05.09.2006. On 05.09.2006, the case was listed and on that date the case was adjourned for 31st October, 2006, but on that date due to the election of Municipal Board, the case was adjourned and ordered to be listed on 22nd November, 2006. On 22.11.2006 order was passed for adjournment due to want of time and 30.11.2006 was fixed for hearing. On 30.11.2006 also the case was adjourned and ordered to be listed on 23.01.2007, thereafter it was listed before the Registrar and ordered to be listed on 29.03.2007 but on that date also it was not

W.D. Garg

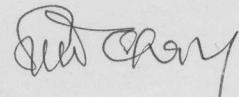
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listed before the Bench and on 06.06.2007 order was passed for adjournment to 26.07.2007 but on 26.07.2007 the case was dismissed in default.

7. From the perusal of the order sheet, it is evident that this O.A. was kept in abeyance *sine die* vide order dated 13.04.2005 and later on the case was expedited vide order dated 03rd March, 2006 and thereafter, it continue to be listed before the Bench till dismissal, hence the contention of the applicant's counsel is wrong that the case was kept in abeyance *sine die*.

8. It was contended on behalf of the applicant that there was no intimation to the applicant of the order of dismissal of 26.07.2007. It has also been stated that neither the previous Advocate of the applicant informed the applicant about the dismissal, nor any intimation was given from the Tribunal about the dismissal. In this connection we called the Register of 2007 to ascertain, whether copy of the order was sent to the applicant after dismissal?

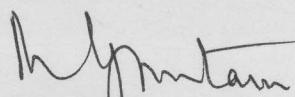
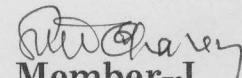
9. We have perused this Register and from the perusal of the Register, it is evident that entry has been made regarding sending the copy of the order of this case (O.A. No.1453 of 2002) vide Dispatch No.1529 dated 18th October, 2007". Hence, this assertion of the application is false that no copy of the order was sent to him by this Tribunal.





10. It is material to mention that the applicant was dismissed from service and under these circumstances it was expected from the applicant to be more vigilant to content his case. It cannot be expected from the ~~dismiss~~ employee that he will remain sitting ~~idle~~ after dismissal of the case for a long period of about 03 years. As there is ~~an~~ordinate delay and the reason given by the applicant on delay is not convincing, hence the application for restoration as well as delay condonation application are liable to be rejected.

11. The application for restoration as well as application for delay condonation application are rejected. No costs.


Member-A
Member-J 9.9.2010
Sushil