

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 07th day of February 2012

Restoration Application No. 3429 of 2011

In

Original Application No.148 of 2007

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

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

Gandhara Singh Pal

... Applicant

By Adv : Sri O.P. Gupta

V E R S U S

Union of India & Ors

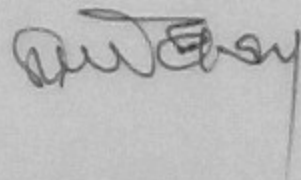
... Respondents

By Adv: Sri S. Srivastava

ORDER

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

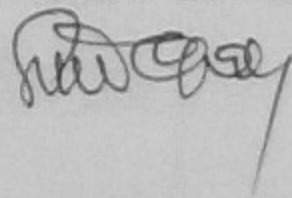
Instant MA has been filed for restoration of OA No. 148 of 2007 dismissed in default of the applicant on 28.01.2009 coupled with MA No. 3528 for condonation of delay. MAs for restoration as well as delay condonation application were moved on 05.12.2011. It has been alleged in the affidavit for condonation of delay that for doing parvi in the case he engaged Sri Ashutosh Tiwari, advocate in the year 2007 and the OA was instituted for challenging the order of dismissal from service dated 02.02.1998. The applicant always conscious for his case and always tried to inquire about the case from his counsel. He was assured by his advocate that he will take all possible care for his case and he should not be worried every time and this case will take 3 to 4 years for final decision. The clerk of the applicant informed that whenever he will required in the case he will be informed. But even then the applicant continued to contact Munsiji (Clerk) of the advocate on mobile after a gap of 03 to 04 months



and ensure about the progress of the case. In the month of October, 2011 the clerk of the applicant informed him that he has left the chamber of Sri Ashutosh Tiwari, advocate 03 months before. Then the applicant contacted the advocate on phone in order to ensure about his case. He could not get any satisfactory reply from his advocate and he advised to come personally. Thereafter, the applicant met his advocate on 20.11.2011 and came to know that no progress report / dates have been mentioned in his case file. His advocate sent his other clerk on the next date in the office of Tribunal to find out correct position of the case. The applicant was shocked very much to know that his case was dismissed in default long back on 28.01.2009. Thereafter, his confidence on his advocate is lost and he engaged another counsel Shri O.P. Gupta who advised him to file Restoration Application alongwith the delay condonation application. Accordingly, application for restoration was moved.

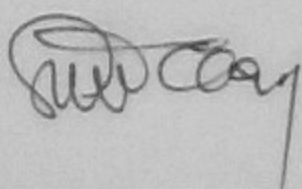
2. It has further been alleged that for the first time i.e. on 21.11.2011 the applicant came to know about dismissal of OA and immediately after knowledge of dismissal of application, application for restoration was moved and from the date of knowledge it is within time. There was no intention or deliberate delay in filing restoration application. Considering the fact of the case it was prayed that the delay may be condoned and the restoration application be allowed and the OA be restored.

3. On behalf of the respondents objections have been filed against the restoration application and emphasis has been laid on contention of para 7 to 9 of the objection by the respondents' counsel. It has been alleged in the objection that while the OA was pending the applicant preferred a Review Petition dated 23.12.2008 addressed to President Of India, President's Secretariat, New Delhi through proper channel. Copy of the



Review Petition has also been annexed. The Review Petition was dismissed by President of India on 24.08.2008 and the order was delivered to the applicant on 08.09.2011. This fact shows that the applicant has not even waited the decision of the Tribunal and moved application for Review before President of India. On the one hand the applicant had been pursuing the Review Petition before President of India and now he is alleging that he has no knowledge about the dismissing of the OA. The person who was so keen to pursue the matter he must be keen to pursue the matter before the Tribunal. There is no sufficient ground to condone the delay the MA for delay condonation application is liable to be dismissed.

4. We have heard Sri O.P. Gupta, advocate for the applicant and Sri P. Srivastava brief holder of Sri S. Srivastava, advocate for the respondents and perused the entire facts of the case. Applicant's counsel depicted the picture showing pitiable position of the applicant so that he may be persuaded to condone the delay. Having considered the pitiable position of the applicant as depicted by the advocate it will be material to state that under challenge in the OA is the order of dismissal of the applicant from service. The person who has been dismissed from service shall be more vigilant in pursuing the matter before Court so that the services may again be given to the applicant and he may be reinstated in service. The OA was filed in the year 2007. It has been alleged by the learned counsel for the applicant that Sri Ashutosh Tiwari, advocate was engaged by the applicant to conduct his case before this Tribunal and his advocate assured him that he need not to worry and he will take care of the case. But even then the applicant showing his sincerity about the progress of the case continued to contact the clerk of advocate on mobile after a gap of 3 or 4 months and lastly it has been alleged that in the month of October, 2010 the applicant contacted the clerk of the advocate

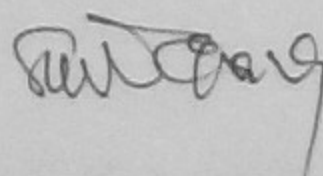


on phone and the clerk informed the applicant that he has already left the chamber of Sri Ashutosh Tiwari, advocate. Thereafter, the applicant in order to enquire about the progress of the case contacted the advocate and when proper reply was not given to him he personally enquired about the progress of the case and, thereafter, he came to know about the progress of the case. Mainly it has been argued by the learned counsel for the applicant that clerk of the advocate continued to inform the applicant about the case. But no reliance can be made on this assertion of the applicant that inspite of the fact that the case was dismissed in default on 28.01.2009 and even then after every 3 or 4 months the applicant continued to enquire about the progress of the case from the clerk and the clerk always assured the applicant that it is going on. The fact is that Sri Ashutosh Tiwari, advocate never appeared in person except on few dates. We have perused the order sheet of the OA and from perusal it is evident that on most of dates the case was adjourned without making any mention regarding the presence of the applicant's counsel. On few dates the presence of the applicant's counsel is mentioned. It is surprising that all of sudden in the month of October, 2010 when the applicant contacted the clerk of the advocate then he was informed that the clerk has already left the chamber of the advocate Shri Ashutosh Tiwari. Thereafter, Sri Ashutosh Tiwari, advocate was contacted by the applicant and, thereafter, on his personal visit came to know about the dismissal of the case and, thereafter, he engaged another counsel Shri O.P. Gupta. Learned counsel for the applicant tried to show to us that earlier to 21.11.2011 the applicant had no knowledge about dismissal of the OA. Application for restoration was moved after a lapse of about more than 2½ years.

5. It is also a fact as argued by learned counsel for the respondents that when the OA was pending in the year 2008 on 23.12..2008 a petition was moved on behalf of the applicant for Review of the order to the

Mit Charya

President of India and the applicant continued to pursue the Review Petition and Review Petition was dismissed by the President of India on 24.08.2008 and intimation was given to the applicant on 08.09.2011. It shows that the applicant adopted both the recourses. On the one hand he challenged the order of dismissal and at the same time he was pursuing the Review Petition before President of India. The person who was so conscious about pursuing the Review Petition he was so negligent that even on 28.01.2009 when the OA was dismissed in default even then the clerk of the advocate continued to inform him that the case will be decided within 3 or 4 years and in no occasion the applicant tried to inquire personally about the position of the case. For deciding the Restoration application or application for condonation of delay it must be shown that the ground mentioned in the application is satisfactory and there was no deliberate and wilful negligence on the part of the applicant. A judgment has also been cited by the applicant's counsel of Hon'ble Apex Court in the case of *State of Bihar and others Vs. Kameshwar Prasad Singh – 2008 (3) ESC 1765 (SC)* and on the strength of this judgment of Hon'ble Supreme Court, learned counsel for the applicant argued that it is in the interest of both the parties that the matter may be decided on merit. He also argued that in view of the judgment of Hon'ble Supreme Court it is not justified to decide the matter on technical ground of delay. But even then we will have to be satisfied that whether the delay has been explained. Learned counsel for the applicant argued that earlier on 21.11.2011 the applicant had no knowledge about the dismissal of the OA and since 21.11.2011 the MA is within 30 days. As per contention of the learned counsel for the applicant there is no delay, but even then in order to met with the objection of the respondents application has been moved for condonation of delay. We are of the opinion that person who has been so negligent regarding progress of the case is not entitled for any leniency. It is a known proverb that "God Help Those Who Help Themselves". The



applicant was so negligent since 2007 that he has not cared to inquire about his case. The story cooked up by the applicant is not reliable. Even the blame has been shifted by the applicant on his advocate and it is not a healthy tradition to shift the blame on the applicant's counsel. We are conscious about this fact that according to the applicant he continued to do the parvi of the case to the best of his capacity, one hand the at the same time OA was dismissed in the month of January, 2009 but at the same time the clerk of the applicant continue to assure the applicant that the OA is still pending and to be decided. No benefit can be given to the applicant on the basis of the judgment of Hon'ble Supreme Court cited by him. In the present case the conduct of the applicant has been highly negligent. Moreover, the case was regarding dismissal from service and the applicant was expected to do the parvi of this case.

6. For the reasons mentioned above we are of the opinion that there is no satisfactory ground for delay. The delay condonation application is liable to be dismissed as the delay was intentional and deliberate.

7. The delay condonation application is accordingly dismissed and as such the restoration application is barred by limitation and the same is also dismissed.

S. Chandra

Member (A)

Member (J)

Member (J)

/pcl/