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O.A. No. 227 of 2006.

DUSASAN MALLIK ... APPLICANT
VERSUS
UNION OF INDIA & ORS. ... RESPONDENTS

1. ORDER DATED: 17.03.2006.

On being mentioned by Mr. Devi Prasad Dhalsamanta, Learned Counsel appearing for the Applicant, this matter is taken up today. A copy of this Original Application has already been served on Mr. P.R.J. Dash, learned Additional Standing Counsel for the Union of India.

Heard. Perused the materials placed on record.

Applicant having faced punishment under Annexure-A/5 dated 31-03-2005 preferred an appeal under Annexure-A/6 dated 17-01-2006.

On increment of the Applicant was directed to be



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withheld for a period of three months without cumulative effect by the Disciplinary Authority. As it appears, the said punishment was also the subject matter of denying the Applicant promotion in time. In the said premises, the Appeal was time barred. The appeal having been rejected, on the ground of delay, under Annexure-A/7 dated 02-02-2006, the Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985.

Heard counsel appearing for both sides. In ~~para~~ 11 of the appeal Memo, the Applicant clearly indicated that his wife was acutely ill and had to undergo a surgery in the Cancer Institute at Cuttack. In para 9 of the appeal memo, he had also prayed for condonation of delay in preferring the appeal. Despite that the appeal was not entertained ^{and was dismissed} on merits on the ground of delay.

On a hypertechnical ground of delay, the appeal ought not to have been dismissed;

especially when the Applicant disclosed about his distress/mental condition for the reason of suffering of his wife in such a perilous disease of cancer. That apart, it appears that the minor punishment that was imposed on the Applicant had a far reaching effect in denying him promotion in time.

The above aspects of the matter ought to have weighed in the mind of the authorities and instead of marching on the hyper-technical ground of delay , the Appellate Authority ought to have entered into the merits of the matter in appeal. Ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. If the delay in filing the appeal is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

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Keeping the above aspect in mind, without expressing any opinion on the merits of the matter, **the rejection order as communicated under Annexure-A/7, dated 02-02-2006 is hereby quashed and the matter is remitted back to the Appellate Authority; who should now consider the matter in appeal, on merit, expeditiously.**

With the aforesaid observations and directions, this Original Application stands disposed of at the stage of admission.

Send copies of this order, along with copies of the Original Application, to the Respondents and free copies of this order be given to learned counsel for both sides.


MEMBER(JUDICIAL)