

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 556 OF 2013

Cuttack, this the 19th day of September, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

Sri Prakash Chandra Jena,
aged about 35 years,
S/o. Late Ghanashyam Jena,
At-Machhia,
PO/PS-Basta,
Dist:Balasore

...Applicant

Advocate(s)-Mr. P.K.Satpathy

VERSUS

Union of India represented through

1. Chief Engineer,
Eastern Command,
Fort William
Kolkatta-21
West Bengal
2. Chief Engineer R & Picket
Secunderbad-03
3. G.E.(I) R & D,
Chandipur
Balasore
Orissa

... Respondents

Advocate(s)-Mr.D.K.Behera

ORDER(Oral)

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

Heard Shri P.K.Satpathy, learned counsel for the applicant and Shri D.K.Behera, learned Addl. Central Govt. Standing Counsel, on whom a copy of the O.A. has been served, appearing on behalf of the Respondents and perused the materials on record.



2. The instant O.A. has been filed under Section 19 of the A.T.Act, 1985 for direction to be issued to Respondents to reconsider the grievance of the applicant with regard to his compassionate appointment. It reveals from the record that vide order dated 27.5.2002(Annexure-2) the Respondent-Department had rejected the request of the applicant for appointment on compassionate ground. Thereafter, the applicant by submitting a representation dated 27.12.2002 (Annexure-3) to Respondent No.2 for reconsideration of his compassionate appointment slept over the matter for more than a decade and has now approached this Tribunal in the present O.A. seeking relief as referred to above.

3. The applicant has filed M.A.No.342/2013 seeking condonation of delay. The grounds on which he has sought condonation of delay are as under.

“...Thereafter the applicant was harassed and lost his mental balance. Hence it is difficult on his part to approach the authority to pursue the remedy. The financial condition and health condition of the applicant prevented him to file the original application before this Hon’ble Tribunal with time period. However, the applicant approached the authority for redressal of grievance by filing several representations. But they have not considered till to-day.

The delay caused in filing the original application is neither intentional nor deliberate one. But the circumstances prevented him from filing the original application within time. Hence unless the delay is condoned, the applicant shall suffer irreparable loss and injury”

4. We have considered the submissions made by the learned counsel for both the sides and given our anxious thoughts to the arguments advanced at the Bar.

5. In the above background, it would be profitable to quote the decision of the Hon’ble Apex Court in the case of D.C.S.Negi vs. UOI & Ors.



(Special Leave to Appeal (Civil) No.7956/2011 (CC 3709/2011) – disposed of on 07.03.2011) in which it has been held as under:

- a. "Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the application filed under Section 19 of the Act in
- b. complete disregard of the mandate of Section 21, which reads as under:

"21. Limitation-(1) A Tribunal shall not admit an application –

- (a) In a case where a final order such as is mentioned in clause(a) of sub section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.
- (b) In a case where an appeal or representation such as is mentioned in clause (b) of sub section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months;
- (2) Notwithstanding anything contained in sub section(1), where-
 - (a) the grievance in respect of which an application is made had arisen by reason of any order made any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
 - (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court;

The application shall be entertained by the Tribunal if it is made within the period referred to in clause(a), or , as the case may be, clause(b) of sub section(1) or within a period of six months from the said date, whichever period expires later;

- (3) Notwithstanding anything contained in sub section (1) or sub section(2), an application may be admitted after the period of one year specified in clause(a) or clause(b) of sub section(1) or, as the case may be, the period of six months specified in the sub

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section(2), if the applicant satisfies the tribunal that he had sufficient cause for not making the application within such period”.

A reading of the plain language of the above reproduced section makes it clear that the tribunal cannot admit an application unless the same is made within the time specified in clauses(a) and (b) of Sec. 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Sec. 21(3).

In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant.

A copy of this order be sent to the Registrar of the Principal Bench of the Tribunal, who shall place the same before the Chairman of the Tribunal for appropriate orders”.

6. The above view has again reiterated by the Hon’ble Apex Court in the case of Satish Kumar Gajbhiye, IPS – vs. Union of India & Others (Special Leave to Appeal(Civil) Nos. 16575-16576 of 2011.

7. In the light of the above decisions of the Hon’ble Supreme Court and in conformity with Section 21 of the A.T.Act, 1985, as referred to above, we have considered the case of the applicant herein on the question of admission. Admittedly, the request of the applicant for compassionate appointment has been rejected in the year 2002. Therefore, the applicant should have approached the Tribunal within one year of the date of the impugned order as provided in Section 21(1)(a) whereas he has

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approached the Tribunal in the year 2013, i.e., after about 11 years of the date when cause of action arose.

8. We have also considered M.A.No.342/2013 wherein the applicant has prayed for condonation of delay, the relevant portion of which has been quoted above. The main thrust of the petition for condonation of delay is that the applicant was harassed and lost his mental balance and that the financial condition stood in his way for approaching the Tribunal. The above statements made by the applicant are neither substantiated nor corroborated by any documentary evidence. In the circumstances, we arrive at a conclusion that the applicant has not adduced any convincing reason as to what prevented him from approaching the Tribunal within the period of limitation as prescribed under Section 21 of the AT Act, 1985. This being the situation, we cannot but hold ^{that} the O.A. in its present form is hopelessly barred by limitation.

8. Having regard to what has been discussed above, we are not inclined to admit this O.A. and accordingly, the same is rejected. No costs.


(R.C.MISRA)
MEMBER(A)

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(A.K.PATNAIK)
MEMBER(J)