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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No.260/00704/2014


Cuttack this the 29th day of September, 2014

Sulekha Adhikari Applicant
-Versus-
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

THE HON'BLE MR.R.C.MISRA, MEMBER (ADMN.)

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Sulekha Adhikari aged about 54 years W/o Late Ajay Kumar Adhikari (Ex. Store Khalasi C&W) South Eastern Railway, Khurda Road, At present residing at New Delhi Sahi, P.O. / P.S. Basudevpur, District Bhadrak.

...Applicant

(Advocates: M/s S.B.Mohanty, J.R.Kar, S. Mohapatra)

VERSUS

1. Union Government of India represented through its Secretary, Ministry of Railway, Rail Bhawan, Raisina Road, New Delhi.
2. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, District Khurda.
3. Divisional Railway Manager (Khurda Division) East Coast Railway, At/PO/ District-Khurda.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road.
5. Senior Section Engineer (C&W), East Coast Railway, Khurda Road, At/PO/PS/District-Khurda.

... Respondents

(Advocate: Mr.T.Rath)

ORDER (Oral)

A.K. PATNAIK, MEMBER (JUDICIAL):

The applicant, widow of Late Ajay Kumar Adhkari has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying to quash the order of removal dated 10.09.2000 and to



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direct the Respondents to regularize the service of her husband to sanction medical leave and pay her the family pension etc inter alia stating that her husband was initially appointed as a Storage Issuer under the Railway Police Force and posted at Bilaspur Division in the year 1979. Subsequently he was transferred to Khurda Road in the year 1994 and joined as a Store Khalasi under Senior Section Engineer, Khurda Road. While working as such he suffered from brain epilepsy, admitted to the hospital and ultimately expired on 05.10.2003. Thereafter, she applied for payment of settlement dues of her husband. Since no action was taken on her said request she filed OA No. 223 of 2010 praying for a direction to the Respondents to release all the dues of her husband including family pension which was disposed of on 4.5.2010 with direction to the Railway-authorities to consider and dispose of the representation of the applicant. The Railway authority, vide letter dated 03.08.2010 intimated her that her husband was removed from railway service vide order dated 10.09.2000. Alleging that the compliance is no compliance of the order of this Tribunal she had filed MA No. 71 of 2013 in which Respondents had brought to the notice of this Tribunal a copy of the order dated 10.09.2010 on consideration of which the MA was disposed of on 18.11.2013. Her further case is that thereafter she had sought vide application dated 11.1.2014 all the connected service records under RTI Act and accordingly all were supplied to her by the Assistant Personnel Officer, ECoRly vide letter dated 06.03.2014. It has been stated that after receipt of all the documents she has filed this OA with the aforesaid

[Signature]

prayer. By filing MA No. 677 of 2014, under the above circumstances, she has also prayed for condonation of delay.

2. Copies of OA and MA have been served on Mr.T.Rath, Learned Standing Counsel for Railway. A person who feels that his/her right has been abridged in any manner, must approach the Court within a reasonable period. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years. The impact on the administrative set up is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained. In this connection it is profitable to rely on the decision of the Hon'ble Apex Court in the case of **D.C.S.Negi -Vrs- UOI & Others** (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:

“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 complete disregard of the mandate of Section 21.....”

3. Hence at the first instance, we have heard Mr. S.B.Mohanty, Learned Counsel for the Applicant and Mr.T.Rath, Learned Standing Counsel appearing for the Respondents on the MA. The grounds taken by the applicant in the MA are as under:

“2. That when the applicants (sic) prayer for family pension was consider (sic) as per the order of the tribunal in the OA in the year 2010 it was intimated to her by the DRM, Khurda that your husband is removed from service with effect from 10.9.2000. Hence no family pension is admissible to her. But in the MA No. 71/2013 by the order dated 18.11.2013 this Hon'ble Tribunal has granted liberty to the applicant to file separate OA agitating (sic) her grievance. In response to such order the applicant has received



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the documents under RTI on 6.3.2014 including the removal order. So the present application is being filed after receipt of the documents under RTI dated 6.03.2014 and seeking the liberty granted by this Hon'ble Tribunal.

Hence the delay in filing the application is not intentional rather it being on the direction of this Hon'ble Tribunal."

4. According to Mr.Mohanty after the order dated 10.09.2010 the applicant sought required documents under RTI application on 11.01.2014 which she received only on 06.03.2014 after which she has filed this OA as per the leave granted by this Tribunal vide order dated 10.09.2010 in MA No. 71 of 2013 which is within the period of limitation as she has a right to challenge the order of removal of her husband as held by the Hon'ble High Court of Orissa reported in 2009 (I) OLR 768. The aforesaid argument of Mr.Mohanty was strongly refuted by Mr.Rath by stating that at no stretch of imagination the order passed in the MA can be said to be a liberty and even if it is treated as liberty the applicant cannot re approach at her wish and will. It has also been stated that MA was disposed of on 10.09.2010 whereas the applicant submitted application under RTI Act after nearly about four years i.e. on 11.01.2014 and for this delay no explanation has been offered by her. Hence he has prayed for dismissal of MA and consequently the OA.

5. We have considered the rival submission of parties. According to the Applicant, her husband **died on 5.10.2003** whereas the order of **removal is dated 10.09.2000**. As such, it can safely be presumed that though he was aware of the order of removal he did not take any step during his lifetime against such order of removal. According to the



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learned counsel for the Applicant as liberty was granted by this Tribunal vide order dated 18.11.2013 in MA No. 71 of 2013 this OA is not liable to be dismissed on the ground of limitation. Therefore, it is profitable to quote the full text of the order dated 18.11.2013 passed in MA No. 71 of 2013 which runs thus:

“Heard Mr.H.K.Mohapatra, Ld. Counsel for the applicant and Mr.S.K.Ojha, Ld. Panel counsel appearing for the Respondent-Railways.

MA No. 71/13 has been filed by the applicant praying for compliance of the order dated 04.05.2010 passed by this Tribunal in OA No.223/10 to which Respondents have filed their reply stating therein that the order of this Tribunal has already been complied with.

Perused the MA as well as reply filed by the Respondents.

Ld. Counsel for the Applicant submits that the compliance is no compliance. Be that as it may, **if the applicant is not satisfied with the compliance made by the Respondents he may agitate his grievance in a separate OA, if so advised.**

In view of the above, there remains nothing in this MA. The MA is accordingly disposed of.” (Emphasis added)

6. It is needless to state that strict adherence to the procedure prescribed under the rules is sine qua non in every proceedings. In the case of **Basawaraj & Anr V The Spl. Land Acquisition Officer**, AIR 2014 SC 746 it has been held as under:

“It is a settled legal provision that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other case. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a

wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similar wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (para-8)

“...The applicant must satisfy the court that he was prevented by any sufficient cause from prosecuting his case and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (para-9)

“It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that “inconvenience is not” a decisive factor to be considered while interpreting a statute. (PARAGRAPH 13) The statute of Limitation is founded on public policy its aim being to secure peace in the community to suppress fraud and perjury to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. (para-12)

“The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court

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on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature. (para 15)

Recently, in another case, in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vrs T.T.Murali Babu**, reported in AIR 2014 SC 1141 the Hon'ble Apex have heavily come down on the Courts/Tribunal for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of the observations of the Hon'ble Apex Court are quoted herein below:

“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered ad the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects activity and inaction on the part of a litigant- a litigant who has forgotten the basic norms, namely “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis. In the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unauthorizedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may

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have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with '**Kumbhakarna**' or for that matter '**Rip Van Winkle**'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold." (paragraph -16)

7. The decision relied on by Mr. Mohanty has no application as it cannot be disputed that a legal heir has every right to challenge but such challenge must come within the four corner of the Rules and within the period of limitation statutorily provided under the Act/Rules which is not the issue involved in this OA. The issue involved is to be decided on the question of delay and laches. As discussed above since we do not find any justifiable reason to condone the delay the decision relied on by him is of no help to the Applicant. For the discussions made above we find no merit in the MA which is accordingly dismissed and resultantly, the OA also stands dismissed. No costs.

(R.C. Misra)

Member (Admin.)

(A.K. Patnaik)

Member (Judicial)