

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

MA 251 of 2007
MA 252 of 2007
(OA 1335 of 1996)

Present : Hon'ble Mr. K.V.Sachidanandan, Vice-Chairman
Hon'ble Mr. P.K.Chatterjee, Member (A)

KARTICK MONDAL & ORS

VS

UNION OF INDIA & ORS (S.E.RLY.)

For the applicants : Mr. S.Mukherjee, Counsel

For the respondents : Mr. P.K.Arora, Counsel

O R D E R

02.05.08

K.V.Sachidanandan, VC :

M.A. 251 of 2007 is an application for restoration of OA 1335 of 1996 which was dismissed for default on 19.4.05 to its file and number. Since the restoration application has been filed beyond time, a separate application has also been filed being MA 252 of 2007 for condonation of delay in filing the restoration application.

2. We have heard the ld. Counsel for both parties at length.
3. Ld. Counsel for the respondents has opposed the applications mainly on two grounds. The first ground is that the application for restoration is hopelessly barred by limitation inasmuch as the OA was dismissed by the Tribunal for default of appearance of the applicants or their counsel on 19.4.05 whereas the present restoration application has been filed on 25.4.07 i.e. after about two years delay. There is no satisfactory explanation in the condonation application for such inordinate delay and on that ground alone the application is liable to be dismissed. Secondly, the OA was filed jointly by 8 applicants whereas the present restoration application has been filed by only 3 of them and out of them also two have already retired. Apart from that the other 5 applicants of OA have been made proforma respondents in this application which is not permissible because if the OA is to be restored at all, it has to be so restored in its totality and not partly for the

present 3 applicants. Thus, the restoration application in its present form is not at all maintainable.

4. Ld. Counsel for the applicant has argued forcefully that the delay is not attributable to the applicants herein. It is submitted that the ld. Advocate of the applicants in the OA. lost track of the case and also mislaid the papers and therefore he could not appear on the date the case was fixed and on that ground the case was dismissed for default. The dismissal order was communicated to applicant No. 1 i.e. Shri Abir Ghosh, who did not communicate the same to the other applicants. The present applicants came to know about it only in April 2007 and thereafter the present restoration application has filed. Thus, the applicants cannot be said to be at fault and hence the delay may be condoned. He has placed reliance on a decision of the Hon'ble Supreme Court viz. **N.Balakrishnan –vs- M.Krishnamurthy**, SCR.1998 (Supp.) 1 403 and contended that since there was sufficient cause for the delay, length of delay is not relevant.

5. We have given our anxious consideration to the rival contentions and perused the documents perused.

6. In the OA the 8 applicants, who were working as Sr. Section Officer (A) in the office of FA & CAO, Eastern Railway, challenged the selection examination for promotion to the post of AAO against 70% quota. Their grievance was that ineligible persons were called without following the rules and also the post-based reservation roster after the decision in R.K.Shabarwal's case. Their further grievance was that they were also eligible for promotion to such post against 30% limited departmental examination quota but the respondents were not taking steps for holding such examination and for preparation of integrated seniority list. It appears that on similar ground another OA was filed by some other applicants being OA 1112 of 1996 (Sunil Kr. Chakraborty & Ors –vs- UOI & Ors) which was disposed of on 17.10.96 giving certain directions regarding holding of viva voce test. In the OA also there was some interim order initially regarding non-publication of result but subsequently it was modified after the above decision dt. 17.10.96.



7. It further appears from the record that none was appearing for the applicants on several occasions and therefore the OA was dismissed for default observing that the applicants might have lost interest in the case.

8. Now, out of 8 original applicants, only 3 have come up in this restoration application after a considerable delay making the remaining 5 applicants has proforma respondents and there were also other private respondents. The explanation for delay as stated in the application is that the earlier advocate-

“..... Mr. Biswarup Banerjee, who is an elderly gentleman, mislaid the papers of the above case and lost track of the dates of the case. Accordingly on April 19, 2005, when the above case was called on for hearing by this Hon’ble Tribunal none was present on behalf of the applicants and consequently this Hon’ble Tribunal was pleased to dismiss the case for default.

That a copy of the Hon’ble Tribunal aforesaid order dismissing the said original application for default was sent to the proforma respondent No. 1 Abir Ghosh, who was the applicant No. 1 but he did not inform the other applicants including your petitioner that the said original application had been dismissed for default. Hence your petitioners were unaware of such dismissal.

That towards the end of March 2007 your petitioners went to your petitioners’ learned advocate, Mr. Biswarup Mukherjee but he told your petitioner that he had mislaid the papers of the said original application and was not aware of the fate thereof.

That thereafter towards the beginning of April 2007 your petitioner engaged another learned advocate who enquired about the case and came to know for the first time on or about April 20, 2007 that original application No. 1335 of 1996 had been dismissed for default on April 19, 2005.

That thereafter your petitioners’ newly engaged advocate lost no time in preparing the instant application for restoration of the said original application.”

9. Except such bald averment, no document has been produced nor even a statement from the earlier advocate, Mr. Biswarup Mukherjee (not Biswarup Banerjee as stated). It is strange that the applicants have made such a statement and verified the same without any supporting evidence. The OA was filed long back in 1996 and it is the case of the applicants that they were not aware of the development as their advocate lost track of the case and was not appearing. Such a statement is not believable in the absence of at least an affidavit from the earlier advocate on record.

10. In **N. Balakrishnan’s** case (supra) the Hon’ble Apex court has observed regarding the question of delay as follow :-



"It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Some times delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding much less in revisional jurisdiction unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse....."

11. The 1d. Counsel for the applicants has stressed that length of delay is not a matter in this case. However, from the above observation of the Apex Court it is clear that acceptability of explanation for the delay is the main criterion. Applying this principle we are of the definite opinion that the explanation given by the applicants is not acceptable because as stated above except a bald statement there is no document in proof thereof and the entire blame has been shifted to the advocate on record and applicant No.1 of the OA behind their back.

12. Secondly, five co-applicants of OA have been made proforma respondents in this MA. If the OA is restored to its file, these five proforma respondents will be opposite party whereas they were the original applicants and this will change the nature and character of the OA. Therefore, it is not also advisable to restore the OA.

13. Thirdly, the OA having been dismissed for default in May 2005, and the interim order having been vacated automatically, status quo ante cannot be restored now. Therefore, no useful purpose will also be served in restoring the OA at this distant date.

14. So considering all aspects of the matter, we are unable to accept the prayer of the applicants and condone the delay. Accordingly, the condonation application is dismissed. Consequently, the restoration application also stands dismissed. No costs.



MEMBER(A)



VICE CHAIRMAN