

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

M.A No. 19/2004

Jodhpur this the 15th day of February, 2012.

Reserved on 13.02.2013

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Mohd. Hussain S/o Sh. Hassan Bux
R/o Plot No. 50, Gora Nagar,
Udaipur

.....Applicant

(Through Advocate Mr. S.K. Malik)

Versus

1. Union of India through the General Manager
North Western Railway
Jaipur
2. Divisional Railway Manager,
North Western Railway, Ajmer Division
Ajmer
3. Divisional Mechanical Engineer (L)
North Western Railway, Ajmer Division
Ajmer

..... Respondents

(Through Advocate Mr Salil Trivedi)

ORDER

Per Justice Kailash Chandra Joshi, Member (J)

Shri Mohd. Hussain, the applicant had filed an OA No. 26/2004 under Section 19 of the Administrative Tribunals Act, 1985 claiming following relief (s):-

“(a) By an appropriate order, writ or direction, impugned order No. EMA/308/9/84/4(MAJ) dated 23.10.1990 (Annex. A/1) passed by Respondent No. 3 wherein applicant has been removed from service,

be declared illegal and be quashed and set-aside as if it was never passed against the applicant.

(b) By an appropriate order, writ or directions, respondents may be directed to re-instate the applicant in service with all consequential benefits including arrears of pay and allowances along with the interest @ 9% p.a.

(c) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.

(d) Any other relief, which is found just and proper, may be passed in favour of the applicant in the interest of justice by Hon'ble Tribunal."

2. This Tribunal vide order dated 13/11/2006, declined the relief as prayed in paras (a) to (c) of para 8, of OA No. 26/2004 as hit by the law of limitation without going into merits, and further the matter relating to review of the case of the applicant after his acquittal in criminal case was remanded to the competent authority, as per RBE No. 56/2005, with a direction to review the case of the applicant in the light of the judgment relating to the acquittal of the applicant in the criminal case, and further to pass appropriate orders in accordance with law within a period of three months from the date of receipt of copy of the order. Accordingly the OA as well as Misc Application for condonation of delay were disposed off.

3. The respondent Union of India & Ors filed a DBCWP No. 1527/2007 before the Hon'ble Rajasthan High Court and Hon'ble High Court vide order dated 06.08.2012 while allowing the writ petition on the ground of apparent incongruity (in the order of the Tribunal dated 13.11.2006) ordered to restore the entire matter to file afresh. In view of

the order of the Hon'ble Rajasthan High Court we shall decide this case afresh.

4. First of all we will decide the MA for condonation of delay because earlier also this Tribunal came to the conclusion that no sufficient cause is made out by the applicant for condoning the delay in filing the OA. Prayer for condonation of delay has been made in the OA.

6. Counsel for the applicant contended that impugned order imposing the penalty of removal from service [A/1] was passed by the disciplinary authority on 23.10.1990; then the applicant filed an appeal against the penalty of removal on 01.12.1990 and filed subsequent reminders to his appeal on 17.05.1991 and 22.01.1992. In the year 1996 applicant was acquitted in the criminal case by the court of ACJM (Railway), Ajmer which pertained to the same charge as levelled in the disciplinary case and then in October, 1996 he had filed representation to the respondents requesting them for his reinstatement and respondents on 6.03.1998 had asked the applicant to supply details about criminal case and charge sheet alongwith other relevant documents. He further averred in the OA itself that he was out of job for last so many years and facing hardship and as he did not has any source of income sometimes he got labour jobs and most of the time he remained out of job and even during this period he lost his wife and he had to maintain his minor daughter also and due to the

paucity of funds he could not approach the Hon'ble Tribunal for redressal of his grievance. Some how now, he managed typing expenses etc., therefore, a delay has been caused in approaching this Tribunal for redressal of his grievances.

7. Counsel for the applicant contended that in view of the averments made in the application and facts shown, the applicant has been able to show that sufficient cause has been made out for not making the application within the prescribed period of limitation. He contended that as sub-section 3 of Section 21 states that in appropriate cases if the applicant satisfies Tribunal that he has the sufficient cause for not making application within such period the application may be admitted by the Tribunal.

8. The counsel for the applicant contended that different sufficient causes may arise in different applications, and in this particular case the fact that the applicant remained out of job for considerable long period and he could not manage proper fund to approach the Tribunal and further his wife died during that period and he had to maintain his minor daughter in itself is a sufficient cause for not making application within such period. The counsel for the applicant further contended that courts/tribunals must always be inclined to decide the cases on merits rather than dispose them off on technical ground of limitation and poverty or paucity of funds has to be held sufficient and adequate ground for condonation of delay

in filing the OA. The counsel for the applicant in support of his arguments relied upon the following judgments:

- (i) Administrative Total Judgment, Vol I, 2002 Pt (page 310)
- (ii) Service Law Reporter Vol. 1, 1967 (page 228)
- (iii) AIR 1987 Vol. 74 (page 1353)
- (iv) Administrative Total Judgment 2001 (Pt 3) Vol 35 (page 362)
- (v) Administrative Total Judgment 2000 (Pt 2) Vol. 31 (page 614)
- (vi) AIR 1977, Vol. 64 (page 2050)
- (vii) Supreme Court Cases Labour and Service Vol. 2, 1998 (page 1635)

9. Per contra counsel for the respondent vehemently contended that this is not a case of the delay of 1, 2 or 3 years, the applicant has approached this Tribunal after the lapse of 14 years as the applicant has prayed to quash the impugned order dated 23.10.1990 and he further contended that if the applicant was poor and paucity of funds restrained him from approaching this Tribunal up to 2004 than how he got the funds in 2004 and further he fairly submits that it is settled position of law that in reasonable cases the delay must be condoned by the courts/tribunals but courts/tribunals must avoid to decide the cases on technical grounds rather to decide

on merits for doing the substantial justice. But in this regard the applicant has averred some wrong facts also so as to make out the case for condonation of delay. He drew our attention to the fact that applicant has averred in application that he has filed an appeal dated 1.2.90 before the competent authority but no document viz. the copy of the appeal, postal receipts or any other document has been produced in support of this fact. Therefore, the applicant tried to put wrong and misleading facts before the Tribunal so as to make a false sufficient cause for making the application within such prescribed period. He also placed before us the following judgments:

- (i) Western Law Cases, 2005 Vol. I
- (ii) SCC 2013 (1) SCC (page 598)
- (iii) Supreme Court Weekly, 2007 Vol. 2 (page 1331)
- (iv) Judgment Today 2002 (Suppl) Vol. 1 (page 520)

10. We have considered the rival contentions of both the parties and also perused the relevant records. In Administrative Total Judgment, Vol I, 2002 Pt (page 310) P.N. Patel vs UOI & Ors, the applicant has preferred the appeal against the order of penalty dated 24.2.1993 which was challenged by way of an application in 1995 and it has been pleaded in that case that applicant remained bed ridden and did not have money to engage an advocate and file the OA. and the MA was filed in 1995, thus, the delay was of 16 months and

the learned Member of CAT Ahmedabad Bench considered it a sufficient cause for condonation of delay in filing the OA.

11. In Administrative Total Judgment 2000 (Pt 2) Vol. 31 (page 614) Hon'ble Supreme Court has held that technicalities of law cannot be a ground to ignore substantial justice and undo illegalities. Therefore, a delay of 679 days was condoned.

12. In Administrative Total Judgment 2001 (Pt 3) Vol 35 (page 362) CAT Principle Bench, New Delhi the Tribunal quashed the order of the dismissal from the service and modified the punishment as compulsory retirement but on the ground that criminal case remained pending up to 2000. In the present case the criminal proceeding against the applicant ended in 1996 and applicant approached this Tribunal in 2004.

13. In AIR 1987 Vol. 74 (page 1353) in Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and Ors. while dealing with sections of Limitation Act held that courts should adopt liberal approach and further held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides and court must adopt a justice oriented approach.

14. In Service Law Reporter Vol. 1, 1967 (page 228) held that a person cannot be punished in respect of the very offences for which he has been acquitted.

15. In AIR 1977, Vol. 64 (page 2050) Hon'ble Apex Court held that lapse of 2 years in filing review application cannot be said to be an unreasonable delay.

16. In Supreme Court Cases Labour and Service Vol. 2, 1998 (page 1635) Hon'ble Apex Court held that in departmental inquiry the documents relied upon must be supplied.

17. Per contra learned counsel for the respondents relied upon 4 cases averred in para 9. In Western Law Cases, Rajasthan 2005 Page 135 Asgar Ali vs State of Rajasthan & Ors in which petitioner was punished with penalty of removal in 1978 and the appellate authority affirmed the order on dated 03.06.1981 and the petitioner after being acquitted by the competent court challenged the order of the dismissal. In this case the Hon'ble Rajasthan High Court held that although no limitation period is prescribed for filing the petition dismissed the writ petition on the ground of delay and latches. The facts of the present case are more or less similar to this case.

From the perusal of judgments cited by both the parties it emerges that it is the settled position of law that generally

courts or tribunals should be liberal to condone the delay because condonation of delay only advances the cause of substantial justice and it only amounts to deciding the cases on merits.

18. But now we have to see that whether any sufficient cause has been shown by the applicant in filing the OA after a lapse of 14 years. It is settled position of law that criminal proceedings are entirely different than the departmental proceedings though they may have similar facts. Therefore, when the order of removal from service passed by the competent authority, there is no question to await for the judgment of the court. Further the applicant has averred that he preferred an appeal before the competent authority for the punishment of the removal from service but he failed to produce any document by which it can be said that applicant preferred an appeal before the competent authority as neither the copy of the appeal nor any postal receipt has been filed with the OA. In the present circumstances the respondent has contested the application on this ground also that the applicant tried to make out a case of reasonable cause by pleading the wrong facts in the OA.

19. While putting pin-pointed query to the counsel for the applicant, he submitted that the applicant could not keep copy of the appeal as well as postal receipts. In our view when there is a specific denial on the part of the respondents regarding

filings of the appeal by the applicant then it must be proved by substantial documents in which applicant in his application has failed. In our considered view the ground taken in application by the applicant of filing the appeal is a totally unsubstantiated ground with no iota of evidence on record. In addition to it in our view a casual mention of the fact that the applicant could not meet the cost of the litigation, cannot be considered to be a sufficient and reasonable cause for condonation of delay.

20. It is a settled position of the law that courts or tribunals be liberal while considering the applications for condonation of delay but at the same time a sufficient and reasonable cause must be shown to condone the delay and we do not find in this case that good and sufficient cause for condoning the delay with regard to the grant of relief relating to quashing of the order of the disciplinary proceeding including the penalty order is made out. Accordingly, we are not inclined to condone the delay and in this matter we would not enter into the validity of the propriety of the disciplinary proceedings and penalty orders passed therein.

In view of the discussions hereinabove made, the facts of the case cited by the counsel for the applicant are different from the facts of the present case, therefore, no case for condonation of delay is made out. Accordingly, OA filed by the applicant is beyond prescribed limitation period, therefore,

the OA is dismissed on the ground of being barred by limitation.

Meenakshi Hooja
(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

Justice K.C. Joshi
(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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