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CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH.

M.A.No.52/2004 &
O.A.No.116/2002

Decided on : February 23 , 2005

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.G.R.PATWARDHAN, MEMBER (A.)**

Hazari Singh S/o Shri Makhan Singh aged about 43 years, resident of 1201, D.S.Colony, Northern Railway, Jodhpur. The applicant is presently holding the post of Khalasi in the respondent department.

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Applicant

By : Mr. Kuldeep Mathur, Advocate.

Versus

1. Union of India through the General Manager, North-West Railways, Jaipur.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The Chief Administrative Officer, North-West Railway, Jaipur.
4. The Deputy Chief Engineer (C-1), North-West Railway, Jodhpur.

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Respondents

: Mr.Kamal Dave, Advocate.

ORDER (oral)

KULDIP SINGH, VC

M.A.No.52/2004 has been filed by the applicant seeking condonation of delay in filing the Original Application. The applicant has filed this O.A. challenging the validity of the order dated 26.9.2002 (Annexure A-1) whereby the representation dated 29.11.2001 submitted by him against his reversion to Group 'D' post of Khalasi, after his services had been utilised as a Group 'C' for more than 10 years, has been rejected. This order has been passed in compliance to the order dated 19.9.2001 passed by the High Court of Rajasthan, Jodhpur in C.W.P.No.3249/2001.

The applicant had earlier filed an O.A. which was dismissed by orders dated 3.8.2001, against which he had filed a Writ Petition No.3249/2001 before the Hon'ble High Court of Rajasthan, Jodhpur,

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wherein besides assailing the order passed by this Tribunal, the applicant had also taken a new plea which was not urged before the C.A.T and had submitted that three other persons who were placed in the similar circumstances like the applicant had been appointed subsequent to the applicant on the lower posts but their pay had been protected but this benefit was not granted to the applicant and this point had not been adjudicated by the Tribunal ~~and thus~~ ^{but} the High Court did not entertain this plea. However, it permitted the applicant to withdraw the Writ Petition and to make a representation to the authorities in regard to his grievance. He filed a representation which was rejected by the impugned order, Annexure A-1. The applicant being not satisfied with the impugned order, has challenged the same by filing the instant O.A. on 8.4.2004 which is beyond the period of one year from the date of passing of the impugned order, thus, he has filed the M.A for condonation of delay.

 In the M.A. Seeking condonation of delay, the applicant pleads that in this case a very important question of law is involved and an exactly similar application has been allowed by the Principal Bench of C.A.T. New Delhi, therefore, present Original Application also deserves to be allowed by this Tribunal. In view of this the delay in filing the Original Application is required to be condoned as he has come to know of the decision of Principal Bench on the similar claim and that he has a recurring cause of action in his favour.

Learned counsel for the respondents opposed the M.A. And submitted that mere fact that the applicant has filed the instant M.A. / O.A. on coming to know about a decision of Principal Bench of the C.A.T. Wherein similar relief as claimed by the applicant has been allowed, is not a justifiable reason to condone the delay in filing the O.A. Learned counsel for the respondents in support of his plea has referred to a decision of Apex court in the case of State of Karnataka

& Others Vs. S.M. Kotrayya & Others, (1996) 6 SCC, 267, in which it has been held that :-

"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-section (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay".



We have given our anxious thought to the contention of the rival parties. The law cited by the learned counsel for the respondents applies on all fours to the present case on facts as well as on law point. In the said judgment of **S.M. Kotrayya (supra)**, also the applicants had availed LTC in 1981-82 and did not utilize the said benefit but withdrew the amount and used it for some other purpose. Recovery was made in the year 1984-86. Some persons in similar cases challenged the recovery before the Tribunal which allowed their applications in August, 1989. The applicants S.M.Kotrayya & Others on coming to know of such decision filed an O.A. in 1989 before the Tribunal with an application for condonation for delay. The Tribunal condoned the delay and the said order was assailed by the Department before the Apex Court. While allowing the appeal, the Apex Court observed that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, was not a proper explanation to justify condonation of delay. The explanation must relate to failure

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to avail the remedy within the limitation period. It was held that although it is not necessary to give an explanation for the delay which occurred within the prescribed period. Explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In that case the explanation offered was that the applicants came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. It was held that such is not proper explanation. The applicants were under an obligation to explain as to why they could not avail of the remedy of redressal of their grievance before the expiry of the prescribed period. So, following the law as laid down by the Apex Court, we find that ⁱⁿ this case also no explanation has been given by the applicant as to why he could not file the O.A. within the prescribed period of limitation, after rejection of his claim by the impugned order, Annexure A-1. So, the M.A for condonation of delay is dismissed and resultantly the O.A. is also dismissed being barred by time. No costs.


(G.R.PATWARDHAN)AM
MEMBER (A)


(KULDIP SINGH)
VICE CHAIRMAN

February 23,2005.

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