

CENTRAL ADMINISTRATIVE TRIBUNAL

**O. A. NO. 253/2009 & M.A. 173/2009.
Jodhpur, this the 22nd Day of April, 2010**

**CORAM :
Hon'ble Dr. K.B.Suresh, Member (J)**

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Mool Chand Gaur R/o Jodhpur, Ward of Late Sh. Ramprasad Gaur, Male
Overseer, HPO, Jodhpur.

Applicant

(By Mr. S.K. Malik, for applicant)

-Versus-

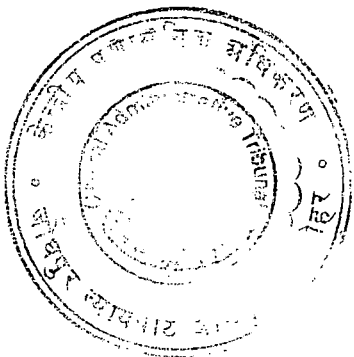
- 1- The Union of India through Secretary, Ministry of Communication, Dak Bhawan, New Delhi.
- 2- The Chief Post Master General, Rajasthan Circle, Jaipur.
- 3- The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur (Raj).

Respondents

(By Advocate : Mr. Mahendra Godara, for Mr. Vineet Kumar Mathur, for the respondents]

**: O R D E R : (Oral)
[BY THE COURT]**

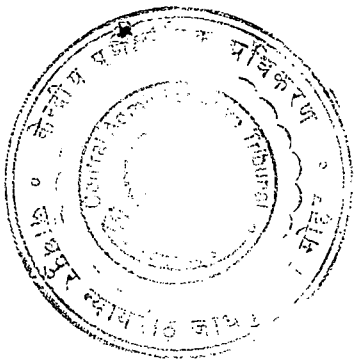
The applicant would submit that his father passed away on 21.7.2002 while serving as Male Overseer under the respondents. He had apparently applied for appointment on compassionate grounds but, vide order dated 4.12.2003 (Annex.A/1), respondent-department had rejected his claim on the ground that economic condition of the family is not considered as indigent. Apparently, this was followed-up by other representations as well and on 1.2.2004 also, his continuous efforts were rejected by the respondents. Thereupon, the applicant seems to have made a further representation which too was dismissed giving the reference of Annex. A/1 order. Thereafter, the applicant moved an application before the Hon'ble Minister of Telecommunication at New Delhi, requesting therein to again consider his claim but, apparently, it was never replied to. On 3.2.2009, there was one more attempt made by the applicant to re-consider, but to no avail. The respondents would



K.B. Suresh

say that this had become a bridge⁻²⁻ to cover the gap of delay despite the fact that his application was rejected in 2003 itself and thus cannot be construed as jurisdictional conferment.

2- The applicant had filed an application to condone the delay in which, he had claimed that acute poverty had prevented him from seeking the expert assistance of a Counsel and his attempt to file representation over representation was not actuated by any other motive but, only to secure the less economically stressful methodology and approach the Court of law which he had contended was beyond his financial condition. The respondents contested this argument by filing a reply and stating that the application filed by the applicant suffers from gross delay and laches. They had also explained the position of merit in paragraph No. 3 of their reply and also pointed-out the reason for rejecting the application was an amount of Rs. 2,60,000/- given to the deceased family as retiral benefits alongwith monthly pension of Rs. 2,067/- per month + DA, which cannot be said to be a petty amount to run a small family as they contend. The respondent-department thus, averred that the ground raised by the applicant in his support, is not sustainable in the eye of law and the O.A. be dismissed with heavy cost in view of the fact that each and every day of delay has not been explained fully.



3- The applicant on the other hand, relies on the judgement of the Hon'ble Supreme Court in **Collector, Land Acquisition Anantnag and Anr. Vs. Mst. Katiji and Ors.** reported in AIR 1987 SC 1353. The Hon'ble Judges, on taking up the issue, found that the issue is not whether to condone or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said

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context is another. In a new angle⁻³⁻ of expression; the Hon'ble Supreme Court postulate the grounds on which the approach of the Courts should be founded. The Hon'ble Supreme Court in its pronouncement has laid down as under :-

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

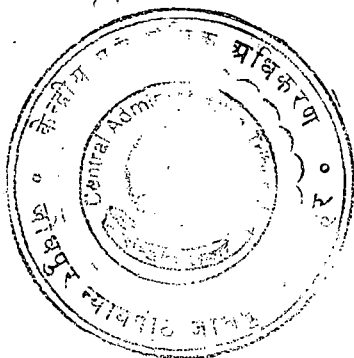
3. Every day's delay must be explained does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. 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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by restoring to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigant, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to informed with the spirit and philosophy of the provision in the course of the interpretation o the expression "sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred is therefore, set aside. Delay is condoned."

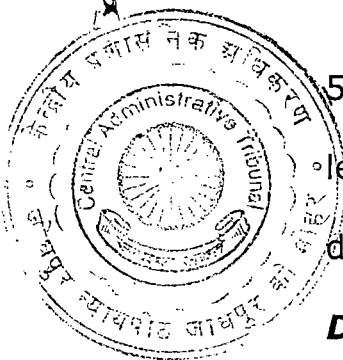


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Thus, Hon'ble Supreme Court has held that personal situation and the condition of the applicant is also to be assessed. I find that family

pension of Rs. 2,067/- per month ^{— 4 —} along with DA, is not a sufficient engagement to any person to manage a litigation. Viewed in this angle, the applicant's anxiety to approach higher ups so as to receive mercy, which I feel, is justified in his circumstances, therefore, I hold that sufficient and justified grounds have been expressed to condone the delay. Accordingly, delay is condoned and the M.A. is, therefore, allowed.

4- After having heard the matter at length, I am of the view that the matter deserves re-consideration by the competent authority. The quantum of Rs. 2,60,000/- towards retiral benefits received by the family of the deceased, may not be a cause sufficient to deny compassion to the needy litigants. It has to be counted in a balanced way with the liabilities and other important aspects viz., whether the individual has a house or owns a property etc. etc. The monthly family pension of Rs. 2,067/- is also not sufficient to deny mercy. It is to be noted that since 5% of the posts are available for compassionate appointments, ofcourse the comparative merit of the candidate would be the criteria.



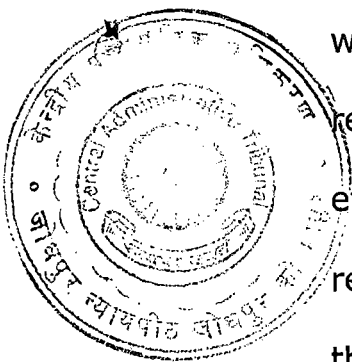
5- Since I proposed to both counsels my view in the matter, the learned Counsel for the respondents Mr. Mahendra Godara, has cited a decision of the Tribunal delivered in **G. Muthusamy Vs. The Divisional Personnel Officer, Southern Railway and Ors.**, reported in 2002 (2) (CAT) 230. This judgement is to the effect that when a prayer is made to the Tribunal that a representation may be directed to be considered so that a fresh cause of action is being made, is not the intent of law, but the Tribunal can entertain an application for adjudication and not for a mere order on representation as sought in

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that matter. Apparently, it canvassed the view that an adjudication has an element of application of mind and authoritative declaration of the result and can be approached only in case of infringement of legal right. It also holds that when there is an alternative remedy, CAT cannot be approached and further, it cannot entertain an application only to issue a mechanical order to dispose of a representation.

6- The cardinal point on which the respondents would rely is that the said judgement covers the view that the Tribunal cannot interfere in a mechanical manner on an issue for reconsideration.

7- I have carefully considered the issues involved in this matter. Hon'ble Supreme Court has conclusively held that quantum of retiral benefits is not to be a deferred stumbling block while dealing with the issue of mercy in compassionate appointment cases. Relating to the point of infringement of legal rights, right to life is a constitutional right which is guaranteed livelihood, therefore, is part of constitutional mandate. This objection of the respondents may not lie at all. Beside the applicant himself had run for one after another remedy and that was due to his poverty and in consequence thereof, he made representations to the higher authorities and the Minister but, without effect. Therefore, having tried to access and exhaust all such alternative remedy, he has approached this Court. The next ground advanced is that the applicant cannot approach this Court to issue an order in a mechanical manner, here, obviously, the applicant had not approached for disposal of his representations alone but, his cry is that he is entitled to compassionate appointment which had not been rejected on proper and accurate grounds.



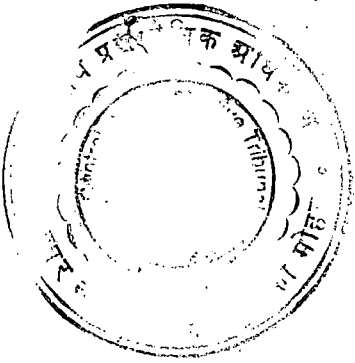
8- I am proposing to send back the matter to the respondents with a view to ensure that others who may be equally situated, may not be unduly prejudiced, therefore, I hold that the objection of the respondents is not valid in the eye of law or in essence of justice and, therefore, the following orders are passed :-

(i) The respondents shall consider the case of the applicant for appointment on the ground of compassion for three consecutive years from the next available opportunity onwards.

(ii) They shall access the comparative merit with a transparent methodology to be adopted by them and such decision shall be intimated to the applicant as well.

(iii) The first of such opportunity shall be made available by the respondents within three months from the date of receipt of a copy of this order.

9- O.A. is thus, allowed to the extent enumerated above. No order as to costs.



(Dr.K.B.Suresh)
JM

दिनांक 12/12/15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 10-2-16
को रात-11 बजे तक निरक्षर ।

उपस्थित जाँचकर्ता
कोन्ही न. 10 प्राथमिक अधिकरण
जोधपुर न्यायाधीश, जोधपुर

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S.K. Malhotra
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