CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

M.A.No.2/10 in O.A.No.5/10
&
O.A.No.5/10

this 24 th day of June, 2010

CORAM:
HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K.NOORJEHAN, ADMINISTRATIVE MEMBER

A.Vijaya Raghavan,
(Formerly Clerk, Vile Parle East Post Office,
Postal Dept., Maharashtra Circle, Mumbai.)
Now residing & permanent address at:-
Areekulangara House,
Valayanad, Kommeri PO.,
Kozhikode Dist. .. Applicant

By Advocate : Sri M.P.Krishnan Nair

vs.

1. Union of India, rep., by
The Secretary, Ministry of Communication &
Information Technology,
Department of Posts, Dak Bhavan,
Parliament Street, New Delhi.

2. The Director General of Post Offices,
Dak Bhavan, Sansad Marg, New Delhi.

3. The Chief Post Master General,
GPO, Maharashtra Circle,
Mumbai-400 001.

4. The Senior Superintendent of Post Offices,
Bombay City North Division, Wadala,
Mumbai-31. .. Respondents

By Advocate: Mr.A.D.Raveendra Prasad, ACGSC

The Application having been heard on 17.06.2010, the Tribunal on 24.06.2010

delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

This is an application for condonation of delay of 38 years to file this Original Application. When the Original Application came up for admission, a notice has been issued to the respondents in the application for condonation of delay in challenging replies of the Department issued to the various representations filed by the applicant. On receipt of the notice in the application for condonation of delay, an objection has been filed for and on behalf of the respondents. On receipt of objection by the respondents, a rejoinder has been filed by the applicant.

2. When the application for condonation of delay came up for consideration, we have heard the learned counsel for the applicant, Mr. M.P.Krishnan Nair and the learned counsel appearing for the respondents Mr A.D.Raveendra Prasad, ACGSC and we have also perused the documents submitted by the parties.

3. The question raised in this M.A. is that whether the reasons stated for condonation of long delay of 38 years in approaching in Tribunal are 'sufficient cause' to condone such delay or not. Before we consider the matter on merits, it is advantageous to note few facts of the case as derived from the averments contained in the Original Application.The applicant after having SSLC examination and while studying for Pre Degree course, was recruited to the post of clerical cadre in the Indian Army on 6th October,1969.After the recruitment, the applicant has joined the Madras Engineer Group & Centre situated at that time at Bangalore for 6 months

basic training and thereafter he has undergone clerical training at Aurangabad for 9 months and thereafter he has joined in the regular service of the Indian Army. While continuing in the Indian Army and after completion of 2 years of service in the said post, he was removed from service as per Appendix-13 of Indian Army Rule on 22nd September, 1971 on the ground that his service is no longer required to the Indian Army . However, the Indian Army recommended his name for appointment as Clerk in the Postal Department during 1972 as per Annexure A3.Thereafter he had been recruited as a 'Learner' in the P&T Department having its office at Bombay in 1973. After having 4 months training as Learner at at Ghatkopar Head Post Office at a stipend of Rs.80/- per month, he was appointed in the Postal Department on a pay scale of Rs. 306/- per month with effect from 22nd September, 1973. However by an order issued under sub rule (1) of Rule 5 of the Central Civil Service(Temporary Service)Rule, 1965 the applicant has been terminated from service as per the memo No. B6/8/2 dated 19.11.11973 issued by the Sr.Supdt. Of Post Offices, Bombay City North Div. It is further stated in the O.A. that from that date onwards, the applicant has been representing against the termination order passed by the Department and he had continued such representations till 2010 to various authorities including the Ministry of Communications & I.T. It is seen from the tabulation made in the O.A. that the applicant had got certain replies from the Department but as he was not given any reasonable reply, he waited till 20.11.2009. On that date, the applicant received a letter from the Senior Record Officer, Record Office, Madras Engineer Group, Pin-900493, C/o 56 APO. Thereafter the applicant filed this Original Application through the learned counsel.

4. As per Section 21 of the Administrative Tribunals Act, 1985, it is stated

that the Tribunal shall not admit an application after having a delay caused, as prescribed therein. We are quoting the relevant Section as follows:-

> "21.Limitation – (1) A Tribunal shall not admit an application,-
> (a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
>
> (b) in a cause where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

A reading of the above Section would clearly show that this Tribunal has no jurisdiction over an application which is belated or beyond the time limit prescribed for that purpose. However sub-section(3) of that Section prescribes that the Tribunal can entertain a belated application ,"if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period". Apart from the above provision of the Administrative Tribunals Act, we have also perused Section 5 of the Limitation Act, 1963, the general law , which prescribes for condonation of law. As per Section 5 of the Limitation Act, 1963 if the Court/Tribunal is satisfied that sufficient cause for condonation of delay in approaching the Tribunal or the Court, the Tribunal/Court has got the power to condone such delay. In the light of the facts narrated in the O.A., we have considered the reasons stated in the application for condonation of delay filed on behalf of the applicant. It is stated in para-7 of the M.A. for condonation of delay, as follows:-

> "7. If there is any delay, the same is not due to any laches or negligence on the part of the applicant, but for reasons which were beyond the control of the applicant. Moreover, as the applicant was out

of employment from 1971, except 8 months in the Postal Department and staying in various places like Mumbai, Delhi, Chennai, Trivandrum, for meeting the various authorities, he was mentally, physically and financially broken and there was nobody to support him. He could not even properly manage and maintain his family including wife and two young daughters who are at marriageable age. Therefore, the applicant's case has to be considered under the Limitation Act, Sec.5 and 14 of the same, for condoning delay in filing the above OA. If there is any delay, the same may kindly be condoned considering the submissions made in this MA as well as in the OA, as otherwise, the applicant and his family will be put to suffer irreparable loss, injury and hardship. All the averments in the OA and Annexures to the OA may be considered as a part and parcel of this M.A."

In the light of the factual position as we have analysed, we are of the view that the applicant has not well explained the delay and laches caused on his part to approach this Tribunal or another court in time. We have already noted that even though the termination order has been passed by the respondent Department on 19.11.1973 under sub-section (1) of Rule 5 of Central Civil Service (Temporary Service) Rules, 1965, the applicant has not filed any appeal or representation in time. Even if he has filed any representation, it is the duty of the applicant to pursue the matter by taking the issue before the appropriate forum. In stead of that, he had continued to represent the matter by filing representations after representations and lastly he approached the Council for Social Justice, an Organization formed for legal and financial help to the needy people so as to enable him to file the present O.A. We have also noted that he had sent several representations to different authorities and in spite of the reply which he had received from different offices, the applicant was not care enough to take up the matter before the appropriate authority or appropriate forum to mitigate his grievances. We are of the view that the law is not for a sleeping man. No Rip van Winkle can be alerted. Moreover, from the pleadings it is seen that he has already crossed 62 years.

5. We have considered the provision contained in Section 21 of the Administrative Tribunals Act that this Tribunal is though empowered to condone the delay in filing any applications before this Tribunal by satisfying the Tribunal with sufficient cause. In this context we have to see the judgments of the Apex Court as well as the High Courts. In this context our attention is called to the judgment of the Apex Court reported in (1996)3 SCC 132 in State of Haryana vs. Chandra Mani and others. In the aforesaid judgment, the Apex Court considered Section 5 of the Limitation Act to find out what could be the sufficient cause for condonation of delay and such cause shall be considered with pragmatism in justice oriented manner. Para-11 of the said judgment reads as follows:-

> "11. It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State – are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/ agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the cause is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be

> laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses,if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.... ..."

In the present case we have seen that the applicant had waited for more than 38 years to approach this Tribunal and we are also alerted by the pleadings in the reply statement by the respondents to the effect that the applicant was terminated from service on 19.11.1973 and there occurred a lapse of more than 38 years and mere making representations will not stall running of time and it is not a sound ground to explain the delay. Apart from that it is that in the reply statement filed by the respondents that the service records relating to the disciplinary and appeal proceedings can only be retained for a period of 25 years. Hence the respondents have stated that it is not even possible to find that none of the records relating to the case of the applicant with the Department. It is a reasonable stand taken by the Department filing such objections in the matter. Apart from this, our attention is invited to the judgment reported in 2000(1)KLT 762 in State of Kerala v. Varghese, where the Hon'ble High Court of Kerala had categorically stated in paragraph 6 of the judgment, as follows:-

> "it is now well settled principle of law that while no period of limitation is fixed, but in the normal course of events, the period a party is required to file a civil proceeding ought to the guiding factor. While it is true that the extraordinary jurisdiction under Art. 226 of the Constitution of India is available to mitigate the sufferings of the people in general, but it is not out of place to mention that this extraordinary jurisdiction

has been conferred on to the law Courts on a very sound equitable principle. Hence, equitable doctrine, namely, delay defeats equity has its fullest application in the matter of grant of relief under Art. 226 of the Constitution. Discretionary relief can be had provided one has not, by his act or omission, given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant. This position has been highlighted by Apex Court in M.C.Ahmednagar v. Shah Hyder Beiq(2000 (1)SCALE 124). Above being the basic tenet of law, employee was required to show reason for his delayed approach. Except taking oft-repeated plea of having made representation, nothing further was placed on record. Making representations does not stall running of time and is not a sound ground to explain delay."

6. In the light of the discussions made above, and under the facts and circumstances of the case in hand, we are not inclined to condone the delay occurred in filing the Original Application. Hence the M.A. stands dismissed. Consequently the O.A. also fails. Ordered accordingly. No order as to costs.

(K.NOORJEHAN)
MEMBER(A)

(JUSTICE K.THANKAPPAN)
MEMBER(J)

/njj/