

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

Original Application No.260/2006

^{23rd}
This the 23rd Day of March 2007

HON'BLE MR. A.K. SINGH, MEMBER (A).

HON'BLE MR. M. KANTHAIAH, MEMBER (J).

Abadur Rehman aged about 40 years S/o Zia-ur-Rehman House
No.1, Subash Nagar, Gonda.

...Applicant.

By Advocate: Shri A. Moin.

Versus.

Union of India through

1. General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Ashok Marg,
Lucknow.
3. Senior Divisional Commercial Manager, North Eastern Railway,
Ashok Marg, Lucknow.
4. Divisional Commercial Manager, North Eastern Railway, Ashok
Marg, Lucknow.

...Respondents.

By Advocate: Shri Saurabh Lawania.

ORDER (Oral)


BY HON'BLE MR. M. KANTHAIAH, MEMBER (J).

The applicant who has filed this Original application against the
Order Dt. 19.02.2004 (Annexure-A-6) passed by Respondent No.4,
wherein he has been (put off duty) suspended. Along with the original

application, he filed the petition for condonation of delay in filing Original application and the same is coming for orders.

2. In support of the application, the applicant filed his Affidavit stating that immediately after passing of the impugned order Dt. 11.09.2004, he submitted a detailed reply on 15.07.2004 followed by repeated reminders as well as the additional points of appeal on 05.01.2006, but of no avail. No substance allowance was being given to him and being no other income he was unable to approach the court for conduct of his case. Further, in view of pending appeal before the department, he was hopeful that it would be decided and justice would be done to him. Thus there was delay in filing the O.A., which was bonafide and inadvertent and thus claimed the relief to condone delay in filing OA.

3. The respondents have filed their objections stating that the applicant was working as voluntary Ticket Collector (VTC) prior to the impugned order under challenge Dt 19.02.2004. He further states that VTC are not the employees of Railway and service rules are not applicable on VTC and in such circumstances the contention of pendency of department appeal have no force and thus application for condonation of delay based on such alleged appeal ground is liable to be dismissed. He further states that VTC is not entitled to any allowance except for Rs. 8.00 per day as packet allowance that too for the work performed on particular day. Thus he opposed the petition on the ground that no sufficient grounds exist for condonation of delay.



4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. Admittedly, the impugned order Dt. 19.02.2004 (Annexure-6) which is under challenge has been issued by respondent 4, to put off the duty of the applicant as volunteer Ticket Collector (VTC). Thereafter, he has filed this Original application on 29.05.2006 with condone delay petition, which is the subject matter herein. It is also not in dispute that Voluntary Ticket Collectors (VTC) are not the employees of Railway and service rules are not applicable to them.

7. The short point involved herein is whether the applicant has given sufficient and bonafide grounds for condonation of delay or not

8. The sole ground taken by the applicant is that because of pendency of appeal, there was delay in filing OA. Admittedly, the applicant was paid Rs.8/- per day on which day he worked and he was not an employee of respondents and service rules are not applicable to him. In such circumstances, the applicant getting change for preferring appeal before the department basing on such ground of pending appeal, seeking condonation of delay is neither bonafide nor sufficient.

9. The learned counsel for the applicant relied on the following decisions that the Courts should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to party.

I. 2002 AIR SCW, Page-978-Ram Nath Sao alias Ram Nath Sahu & Others Vs. Gobardhan Sao & Others.



II. 2002 (9) SCC page-492 Gurpreet Singh Vs. Principal, Govt. College of Education & Others.

III. (2001) 9 SCC, 106 Vedabai Alias Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil & Others.

10. In respect of the case of Ran Nath Sao, in the first appeal against the judgment in portion suit, some of the applicants died and because of non taking steps to being L.R's of these deceased, it necessitated to consider the claim for condonation of delay. Further, it was the observation of the Hon'ble Apex Court that the Appellants were rustic villagers and except one of the applicant, all were illiterates. Under those circumstances the parties were allowed stating that the Court accepted the explanation as sufficient. But in the instant case, no such circumstances are there and the reason given for condonation is not all satisfactory. As such the said citation is not helpful to the applicant.

11. In respect of the decision in the case of Gurpreet Singh, no specific finding or discussion was there on condone delay application. In the case of last citation in the case of VEDABAI, the delay was only seven days and caused due to illness and in those circumstances, it was allowed.

12. But in the instant case, the applicants want to explain delay due to filing of appeal. When there was no such occasion or opportunity available to the applicant who worked as VTC, treating such grounds is neither bonafide nor sufficient.

13. The learned counsel for the respondents argued that delay by unproved for memorials not excusable and relied on the following decision, which is clearly supporting his stand.



1. AIR 1973 SC, 1343 Jagadish Narain Maltair Vs. The State of Bihar & Others.
2. 1998 AIR SCW 2177 P.K. Ramchandran Vs. State of Kerala & Others.

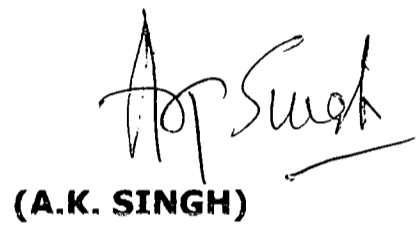
14. Without satisfying the sufficient and bonafide reasons, the applicant is not at all entitle for the relief to condone any delay and as such the application deserves for dismissal.

In the result, the application to condone the delay in filing OA is dismissed. No costs.


(M. KANTHAIAH)

MEMBER (J)

23.3.07


(A.K. SINGH)

MEMBER (A)

/ak/