

Date of order: 7th 12.2000

MA Nos.380/2000 and 381/2000 (OA No.544/95)

Davendra Pal Singh s/o Shri Amer Singh r/o Gali No. 4, House No.338-B, Raja Park, Jaipur.

.. Applicant

Versus

1. Union of India through the Chief Engineer, Dashin Kammen Mukhyalaya, Engineering Shakh, Headquarter Sadan Kammen, Engineers Pranh, Pune.
2. Chief Engineer, Jaipur Zone, MES, Bani Park, Jaipur.

.. Respondents

Mr. S.S.Hora, counsel for the applicant

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CORAM:

Hon'ble Mr. A.K.Mishra, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. A.K.Mishra, Judicial Member

The applicant has filed restoration application with the prayer that the OA No.544/95, dismissed in default on 31st May, 1996, be ordered to be restored to its original number. He has also moved an application for condonation of delay in moving the restoration application.

2. We have heard the learned counsel for the applicant and have gone through the case file.

3. From the ordersheets of the OA, it appears that an OA was presented on behalf of the applicant by Shri Virendra Lodha on 4th August, 95. Thereafter through briefholder time was sought on various occasions for admission arguments. On 28th of March, 1996 nobody was present on behalf of the applicant. Again on 31st May,

96 nobody was present on behalf of the applicant. Consequently, on 31st May, 1996 the case was dismissed in default. It is against this order that the restoration application has been moved.

4. The applicant has stated in his application for condonation of delay that his advocate did not inform him about the dismissal of the case. The applicant himself being ignorant of the court procedure only remained in contact with his advocate, who from time to time on contacting by the applicant informed the applicant that the case is progressing well and believing his advocate the applicant remained assured that his interest will be looked after well. It is also stated by the applicant that after a long time, when he felt that nothing substantial is being done in his case, he demanded the file back from his advocate. After getting the file from the advocate, he approached the Tribunal and applied for a copy of the ordersheet on 18.9.2000 and then only he came to know that his case has been dismissed in default on 31.5.1996. It is alleged by the applicant that after handing over the relevant papers to the advocate and paying him fee in full alongwith money for legal expenses, he remained assured but the conduct of the advocate had betrayed him. The applicant had challenged his dismissal from service through the OA and it was question of his bread and butter that he was fighting for. The action/inaction of the advocate and negligence on the part of the advocate has thus put the applicant in such an adverse position as indicated above. He claims that innocent party should not be made to suffer on account of the conduct of the advocate. Therefore, the case should be ordered to be restored condoning the delay. The applicant claims to have moved the present application from the date of knowledge of the order of dismissal of the OA when the copy of the ordersheet was delivered to him on 18th September, 2000.

for

5. The learned counsel for the applicant vehemently argued the case and cited AIR 1972 SUPREME COURT 749, State of West Bengal v. The Administrator, Howrah Municipality and ors. and AIR 1995 Gujrat 29, Municipal Corporation of Ahmedabad v. Voltas Limited and ors. for condonation of delay and 1981 (2) SCC 788, Rafiq and anr. v. Munshi Lal and ors. in support of restoration application.

6. We have considered the arguments, facts mentioned in the application and the rule propounded in these rulings. So far as the rule propounded in the cited rulings are concerned, there cannot be two opinions but the rules propounded in these rulings cannot be made applicable in the instant case because of difference of facts. Application of rule depends on the similarity of facts, which in the instant case, is missing. The applicant has also to be blamed to greater extent. The applicant is a resident of Jaipur. After having filed his OA, he should have been in contact with his advocate. If his advocate was not properly attending the case or was giving him wrong information, he could have as well come to the Tribunal to find out the state of affairs in the case. It is also not clear from the averments made in the application as to on which different dates, the applicant had contacted his advocate during the period of past four years i.e. between the date of dismissal of the OA till 18th September, 2000 when he moved for copy of the ordersheet dated 31.5.1996 and secured the same. In this respect, the application is absolutely devoid of facts and, therefore, it is difficult to believe that applicant came to know of dismissal of his OA only on 18th September, 2000. No doubt, the applicant claims to have complaint against the defaulting advocate in the Bar Council of Rajasthan, Jodhpur but that is not sufficient ground to believe the facts as stated by the applicant in the restoration application. If the advocate of the applicant was negligent in conducting the case, the applicant was also not lesser negligent in

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prosecuting his interest relating to his case.


7. Application for restoration of OA, dismissed in default, is expected to be moved as per CAT Procedure Rule 15, within a period of 30 days only and that too from the date of dismissal. Such application is not allowed to be moved within 30 days from the date of knowledge. There is no such provision. There is also no provision for condonation of delay in this regard in the said Rule. Therefore, the applicant's contention that he came to know^{of} such dismissal of his case only on 18th September, 2000 is of no consequence in relation to the dismissal order dated 31st May, 1996.

8. We are aware of the position of law as propounded by Hon'ble the Supreme Court that innocent client should not be made to suffer on account of negligence of the advocate but that does not mean that such an inordinate delay should be condoned so as to consider the restoration application. The negligent client must also have himself to be blamed for such a situation. In view of this, we are of the view that the delay in moving the restoration application cannot be condoned. Consequently the application for condonation of delay deserves to be dismissed and is hereby dismissed.

9. Consequent to the refusal of condoning the delay, the application for restoration is deserves to be dismissed and is hereby dismissed.


(N.P. NAWANI)

Adm. Member


7/12/2000
(A.K. MISHRA)

Judl. Member