

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 19th day of July 2018.

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Misc. Condonation Application No. 330/01067 of 2017

In

Original Application No. 330/00387 of 2017

Bhagwan Das aged about 31 years, son of late Arjun Singh, resident of Village Manuta, Post Yaqoobpur, Tehsil Hasanpur, District J.P Nagar.

. . . Applicant

By Adv: Shri S.P. Mishra

V E R S U S

1. Union of India through General Manager, Northern Railway, Moradabad Division, Moradabad.
2. Divisional Railway Manager, Northern Railway Moradabad Division, Moradabad.

. . . Respondents

By Adv: Shri Chanchal Kumar Rai

ORDER

1. Heard Shri S.P. Mishra counsel for the applicant and Shri Chanchal Kumar Rai counsel for the respondents on Delay Condonation Application.

2. The applicant has filed this O.A. seeking to quash the impugned order dated 09.10.2015 (Annexure A-1) passed by respondent No. 2 by which applicant's request for appointment on compassionate ground has been rejected on the ground that on verification, one of his educational certificate was found to be forged. He has also prayed to give a direction to the respondents to appoint the applicant on compassionate ground.

3. It is stated by the learned counsel for the applicant that applicant's father died on 9.8.2006 during the service period and mother of the applicant filed application praying to consider the appoint of applicant on compassionate ground. It is further submitted that applicant is very poor person and he is fully dependent upon his father. Applicant was pursuing his case before respondent No.2 within time and respondent No.2 had assured that his case was to be considered. On assurance of respondent No.2, he was waiting but respondent No.2 sent order of rejection on 09.10.2015, which he was not received. However, on information of rejection order, applicant, being poor person, contacted counsel, who suggested to collect all documents and expenses. After arrangement of necessary funds and documents, applicant filed this O.A. Hence, the applicant has not committed deliberate delay in filing original application.

4. In the objection filed on behalf of respondents, it has been submitted that delay in filing the O.A. is not liable to be condoned and the applicant has not annexed any paper to show the valid reason of delay. He further submitted that this O.A has been filed on 7.4.2017 as father of applicant died on 9.8.2006. Hence, original application is delayed for more than 10 years.

5. I have considered the argument advanced by the learned counsels for the parties and I am of the view that in view of Section 21 of Administrative Tribunals Act, the O.A was to be filed within one year from the date of passing the impugned order dated 09.10.2015 and this O.A. has been filed on 7.4.2017. Hence, delay in filing the O.A. is for more than one and half years.

6. It is an admitted fact that the instant OA has been filed belatedly as the claim of applicant for grant of compassionate appointment was rejected 09.10.2015 and the applicant is now seeking direction to the respondents no. 2 to consider the case of applicant for appointment on compassionate ground and the instant OA has been filed on 7.4.2017, i.e., more than one and half years beyond the permissible limit as prescribed under the Administrative Tribunals Act, 1985.

7. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. That Section reads 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 case 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.

(2) Notwithstanding anything contained in subsection (1), where –

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in subsection (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

8. The applicant has filed Misc. Delay Condonation Application.

The applicant has not adduced sufficient cause that prevented

him from filing the Application within the prescribed period of limitation. In a recent decision in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of D.C.S. Negi vs. Union of India & Others, decided on 07.03.2011, it has been held as follows:-

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3)”.

9. In the light of the aforesaid observation of the Hon'ble Supreme Court and having perused the Misc. Delay Condonation Application, I am not satisfied that the applicant had sufficient cause for not making the original application within the period of limitation of one year. The cause of action, if any, had accrued to the applicant either at the time when his claim for grant of compassionate appointment was rejected 09.10.2015 and at best it can be said to have arisen one year thereafter. It is admitted fact that claim of applicant for grant of compassionate appointment was rejected on 9.10.2015.

10. The Apex Court in the case of S.S. Rathore v. State of Madhya Pradesh, (1989) 4 SCC 582, has held thus:-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue."

11. Thus, from the above discussion, it is clear that the Misc. Delay Condonation Application, being devoid of merit, is liable to be rejected and the same is accordingly rejected. Accordingly the OA, being barred by limitation, is dismissed. There shall be no order as to costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-