RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Misc. Delay Condonation Application No. 330/01844 of 2017

In

Original Application No. 330/01115 of 2017

Dated: This the 05th day of October 2018.

PRESENT:

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

Sugreev Tiwari aged about 51 years, son of Shri Y.D. Tiwari, R/o Village Pipara Tiwari, P.O Sakhwaniya, District Kushi Nagar.

. . . Applicant

By Adv: Shri Sharad/Shri Sunil

V E R S U S

1. Union of India through its Secretary, Department of Post of Telecommunication, Dak Bhawan, Parliament Street, New Delhi.
2. Divisional Engineer (Telecommunication), Padrauna.
3. Assistant General Manager, Door Sanchar (Telecommunication), Deoria.
4. Chief General Manager (Telecommunication), Lucknow.
5. Department Manager (Telecommunication), Mau.

. . .Respondents

By Adv: Shri D.S Shukla

O R D E R

1. The present O.A. has been filed by Sugreev Tiwari averring that he worked as Daily Wager from 3.9.1983 to 2001 and completed 240 days in each calendar year with the respondents department. Despite regularizing his juniors, the respondents did not regularize his services and he filed OA 1403/1999 wherein respondents were directed to dispose of his representation regarding regularization

which was rejected by the respondent No.3 vide order dated 11.5.2004. Applicant has challenged the impugned order dated 11.5.2004 on a number of grounds. Alongside the O.A., applicant has been filed for condoning the delay in filing the O.A.

2. In the application, it has been mentioned that applicant's advocate wrongly filed writ petition in the Hon'ble High Court which was disposed of vide order dated 7.12.2004 wherein applicant was advised to approach the Labour Court for his grievances. It has been further averred in the condonation application that applicant visited the office of his Advocate Shri Ramesh Chandra Dwivedi who informed him that since his file is not traceable, the same would be made available as and when located and finally the file was made available to the applicant in December 2009. Applicant further case is during this time while shifting his rented house, his file got misplaced which he traced out on 26.6.2013 and thereafter due to his financial position, he could not file the case and in January 2017 his Advocate Shri Sharad informed him that his case is highly belated since the case should have been filed in the year 2004 but he can take a chance by way of filing application for condonation of delay. Applicant got the case prepared and filed the same in this Tribunal without any further delay. Therefore, the delay be condoned in filing the O.A.

3. In the objections, respondents have taken the plea that looking to the facts of the case as coming out in the application for condonation of delay, it is clear that there is a great amount of delay in filing the O.A. and the delay has not been satisfactorily explained by sufficient cause by the applicant and, therefore, the delay cannot be condoned and the O.A. is to be dismissed being barred by period of limitation.

4. Argument was raised by the respondents that the O.A. is barred by period of limitation as envisaged by Section 21 of the Act since

the cause of action pertains to the year 2001 or at the most year 7.12.2004 when the writ petition of applicant was dismissed whereas LC for applicant submitted that there is no delay in filing the O.A. and the delay, if any, has been satisfactorily explained in the application.

5. Section 21 of the Administrative Tribunals Act, 1985, deals with the limitation. Section 21 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".

6. I have heard and considered the arguments of applicant and learned counsel for respondents and gone through the material placed on record by both parties.

7. On the question of delay, in Esha Bhattachargee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649, the Hon'ble Apex Court observed that : "The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

8. In Chennai Metropolitan Water Supply and Sewarage Board and Others Vs. T.T. Murali Babu (2014) 4 SCC 108, it was held by the Hon'ble Apex Court as under:-

> *"13. First, we shall deal with the facet of delay. In Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati and others[AIR 1969 SC 329] the Court referred to the principle that has been stated by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, Abram Farewall, and John Kemp[(1874) 5 PC 221], which is as follows:-*
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> *"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be*

regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy."

14. In State of Maharashtra v. Digambar[(1995) 4 SCC 683], while dealing with exercise of power of the High Court under Article 226 of the Constitution, the Court observed that power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.

15. In State of M.P. and others etc. etc. v. Nandlal Jaiswal and others etc. etc.(AIR 1987 SC 251) the Court observed that:

"it is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is

discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic."

It has been further stated therein that: "if there is inordinate delay on the part of the petitioner in filing a petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction."

Emphasis was laid on the principle of delay and laches stating that resort to the extraordinary remedy under the writ jurisdiction at a belated stage is likely to cause confusion and public inconvenience and bring in injustice.

16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not

to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold".

9. It is settled law 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.

10. In the instant case, applicant seeks relief of promotion pertaining to the year 2001 or alternatively year 2004 when his writ petition was dismissed by the Hon'ble High Court. Therefore the cause of action occurred to the applicant in the year 2001 or at the most in 2004 whereas the present *lis* has been filed in the year 2017.

11. Applicant has not given any sufficient reason, let alone a plausible reason to explain the delay in filing the present O.A. from the years 2001/2004 but chosen to say that he was prevented from the reasons aforementioned i n filing the present O.A.

12. The approach of the applicant from the beginning has been lackadaisical and indolent which is responsible for the inordinate delay in approaching this Tribunal. Delay and laches, on part of the applicant to seek remedy is written large on the face of record. To repeat the observations of Hon'ble Apex Court - In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition.

13. 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, by the Hon'ble apex Court 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)".

14. In the light of the aforesaid observation of the Hon'ble Supreme Court, 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 reasons put forth in the condonation application do not make out sufficient cause to condone the delay. The cause of action, if any, had accrued to the applicant in the year 2001 or 2004.

15. Last but not the least, reference may be made to State Of Uttaranchal & Anr vs Shiv Charan Singh Bhandari & Ors on decided on 23 August, 2013 wherein the Hon'ble Apex Court on the question of laches and delay in coming to the court to decide matters of seniority, held that "We are absolutely conscious that in the case at hand the seniority has not been disturbed in the promotional cadre and no promotions may be unsettled. There may not be unsettlement of the settled position but, a pregnant one, the respondents chose to sleep like Rip Van Winkle and got up from their slumber at their own leisure, for some reason which is fathomable to them only. But such fathoming of reasons by oneself is not countenanced in law. Anyone who sleeps over his right is bound to suffer. As I perceive neither the tribunal nor the High Court has appreciated these aspects in proper perspective and proceeded on the base that a junior was promoted and, therefore, the seniors cannot be denied the promotion. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. I may hasten to add that the same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the tribunal and accepted by the High Court. True it is, notional promotional benefits have been granted but the same is likely to affect the State exchequer regard being had to the fixation of pay and the pension. These aspects have not been taken into consideration. What is urged before us by the learned counsel for the respondents is that they should have been equally treated with Madhav Singh Tadagi. But equality has to be

claimed at the right juncture and not after expiry of two decades. Not for nothing, it has been said that everything may stop but not the time, for all are in a way slaves of time. There may not be any provision providing for limitation but a grievance relating to promotion cannot be given a new lease of life at any point of time."

16. In the light of the aforesaid settled principle of law and facts of the case as noted above, I am of the view that the applicant has failed to make out a sufficient cause for not making the original application within the period of limitation as envisaged by Section 21 of the Act. Application for condonation of delay is dismissed. Accordingly the OA, being barred by period of limitation, is dismissed. There shall be no order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

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