

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Orders reserved on : 27. 2. 2018

Orders pronounced on : 8. 3. 2018

Hon'ble Mr. Justice Dinesh Gupta, Member(J)

O. A. No. 330/001069/2011

Mukesh Pathak son of Late Sri Paras Nath Pathak, resident of village -Jindpur, Post Office- Janunava, District- Azamgarh.

..... Applicant

By Advocate: Sri H.C. Shukla proxy for Smt. Saraswati Rai
Versus

1. Union Government of India through Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, U.P. Pari Mandal, Lucknow.
3. SSP (Post Office) Azamgarh.
4. Sub- Divisional Inspector, Post Office, Lalganj, Azamgarh.

..... Respondents

By Advocate : Ms. Shikha Dixit

O R D E R

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs: -

- i) To issue the direction /order to the opposite parties. No. 2 and 3 to appoint the applicant as GDSBPM at Mohan Sarain Post Office.
 - ii) To quash the order dated 6. 9. 2006 passed by the opposite party No. 2 as well as order dated 26. 2. 2013 (Annexure 4(A) passed by Opposite Party No. 2
 - iii) To allow the application of the applicant with cost.
2. Since there is delay in filing the O.A., the applicant has also filed delay condonation application No. 2311/2011 in which it is stated that applicant moved an application for appointment for the post of BPM, Sarai Mohan, Azamgarh on the ground that his father has expired during service period and he was sole bread winner. His elder brother is living separately and does not look after his mother. Mother of the applicant has also given consent for appointment of the applicant. The Opposite Party No. 3 has sent application for approval before the Chief Post Master General, Lucknow who rejected the case of the applicant on 9. 6. 2004. The applicant and his mother could not arrange money to approach the Court. Mother of the applicant become paralyze since 2005. In 2008, applicant has moved another application but no reply was received by the applicant. Applicant has again moved reminder on 20. 3. 2011 but again he has not received any reply. It is submitted that no delay was caused intentionally and the O.A. is being filed without any negligence. If any delay is caused, the same be condoned and treat the O.A. within time.
3. Notices were issued to the respondents who in turn filed the objection/ counter reply to the O.A. in which he has taken a stand that applicant has filed this O.A. after a long gap of about 5 years as the case of the applicant for compassionate appointment was taken for consideration before Circle Relaxation Committee (in short CRC) on 9. 6. 2006 and committee found no justification and the same was informed to the respondents vide letter dated 26. 6. 2006 and the same was communicated to the applicant vide letter dated 10. 7. 2006. The applicant should have approached the Tribunal within one year from the date of decision of Chief Post Master General, U.P. Circle, Lucknow but he has failed to approach the Tribunal

within one year. As such the O.A. is highly time barred. It is further submitted that in case the final decision has been taken in 2006, then the matter does not arise to give review application after a long gap on 2.9.2008. The limitation is an important aspect and the applicant was given final reply in 2006 but he approached the Tribunal in 2011 i.e. after a gap of more than five years. As such, O.A. is highly barred by time.

4. Applicant has also filed Rejoinder reply through which he has reiterated the facts as stated by him in the delay condonation application.

5. Respondents also filed Supplementary Counter Affidavit through which he has reiterated the facts as stated in the objection/ counter reply.

6. Heard the learned counsel for applicant Sri H.C. Shukla proxy for Smt. Saraswati Rai and learned counsel for respondents Ms. Shikha Dixit on delay condonation application.

7. The learned counsel for applicant submitted that court should consider the merit of the case and should not go technically on the point of limitation as prescribed by the Act. The applicant submitted that order of rejection was never communicated to the applicant. It was only a communication to the applicant that in the meeting of CRC, his claim was rejected but actually rejection order was never communicated to the applicant.

8. Counsel for respondents submitted that respondents have rejected the claim of applicant in 2006 and O.A. has been filed in 2011, as such the same is time barred and the applicant has failed to demonstrate any sufficient reason to condone the delay. Further, the applicant has not explained day-to-day delay in filing the O.A.

9. The court is unable to accept the contention raised by the learned counsel for applicant.

10. Admittedly, the applicant's case was considered by the CRC in 2006 and the same was rejected. The applicant himself filed copy of the said order. So far as ground for condoning the delay is concerned, the law of limitation is strict.

11. Hon'ble Supreme Court in the case of Ramesh Chandra Sharma v. Udham Singh Kamal reported in 2000(2) SLJ SC 89 observed as under: -

"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 of which such final order has been made;

(b) In a case where an appeal or representation such as is mention 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) xxx

xxx

xxx

(3) Notwithstanding anything contained in sub-section (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."

12. The Hon'ble Apex Court in the case of Bhop Singh Vs. Union of India and others reported in (1992) 3 SCC 136, has been pleased to observe as under: - "Inordinate and unexplained delay or latches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim."

13. The Hon'ble Apex Court in the case of Union of India Vs. Harnam Singh reported in AIR (1993) SCC page 1367, has been pleased to observe that "The law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire."

14. In the light of legal position and observation made by various courts from time to time, now we will consider the ground taken by the applicant in delay condonation application. The first ground taken by the applicant about illness of his mother. In support of this ground, the applicant has filed only a document of report dated 18.1.2010 and also chemical examination of blood dated 18.1.2010. Admittedly, order in question was passed on 9.6.2006 and same was also in the knowledge of the applicant as reflect by the reminder moved by the applicant in 2008. Thus, undoubtedly, the order was in the knowledge of the applicant from the

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date it was passed. Applicant has not disputed this fact also. Except illness of his mother, applicant has not taken any reasonable ground for condoning the delay. Thus, the delay of five years in case of the applicant where the applicant has sought appointment on compassionate ground is fatal and cannot be condoned only on the ground of sympathy. The rules and procedure does not provide any relaxation on the ground of sympathy and the applicant is supposed to satisfy the court by giving a reasonable and sufficient cause for not approaching the Tribunal in time specially when there is a delay of substantial time i.e. for more than five years. Thus, on the basis of above discussion, applicant has failed to demonstrate the sufficient ground and reason for condoning the delay. Accordingly, O.A. is hopelessly barred by time and delay condonation application is liable to be rejected. Accordingly the delay condonation application is rejected and O.A. is also dismissed on the ground of limitation alone. No costs.

(Justice Dinesh Gupta)

Member (J)

HLS/-