

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Orders reserved on : 04.01.2018

Orders pronounced on : 19.01.2018

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

O. A. No.330/1195/2012
&
M.A. No.330/2927/2012

*Mohd. Shahid son of late Mubarak,
(Ex. Monument Attendant)
Resident of-18/113 Malko Gali,
Tajganj, District – Agra.*

..... *Applicant*

(By Advocate : Shri M.S. Solanki)

Versus

1. *Union of India, through Director General,
Archaeological Survey of India, Janpath, New Delhi.*
2. *Director, (Administrative), Archaeological Survey of India,
Janpath, New Delhi.*
3. *Superintendent, Archaeological Survey of India, Agra
Circle, Agra.*
4. *Administrative Officer, Archaeological Survey of India,
Agra Circle, Agra.*

..... *Respondents*

(By Advocate : Shri Jitendra Naik)

ORDER

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

"A) Suitable order or direction may be issued to the respondent No.1 and 2 to take appropriate action

on the letter dated 09.07.2009 sent by the respondent No.3 regarding re-examination of the matter pertaining to the compassionate appointment of the applicant under the relevant rules.

B) To grant any other and further relief, which this Hon'ble Tribunal may deem fit and proper, in the circumstances of the case."

2. Since there is delay in filing the instant OA, the applicant has also filed Civil Misc. Delay Condonation Application (MA NO.2927/2012) in which he has stated that the applicant is seeking direction from this Tribunal to the respondent nos.1 and 2 to take appropriate action on the letter dated 09.07.2009 sent by the respondent No.3 regarding re-examination of the matter pertaining to the compassionate appointment of the applicant under the relevant rules and further stated that the OA should have been filed by 7.5.2009 but due to unavoidable reasons, the OA has been filed after considerable delay of about two and half years over and above the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 as the instant OA has been filed on 30.8.2012.

3. The respondents have also filed their counter affidavit in which besides giving parawise reply to the OA, they have stated that the instant OA is barred by limitation, delay and latches. The applicant has not explained the day-to-day delay in filing the OA as the OA has been filed beyond the limitation prescribed under Section 21 of the AT Act. The

respondents have relied upon the judgments of the Supreme Court in the cases of **S.S. Rathore vs. State of Madhya Pradesh**, 1989 (Supp) SCR 43, and **Umesh Kumar Nagpal vs. State of Haryana and others**, JT 1994 (3) SC 525.

4. Before going into the merits of the case, it is necessary to decide the issue of delay first. As such I have noted the submissions of both the parties on this issue of delay.

5. 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 in the year 2003 and the applicant is now seeking direction to the respondents no.1 and 2 to take appropriate action on the letter dated 9.7.2009 sent by respondent no.3 regarding re-examination of the matter pertaining to compassionate appointment of the applicant and the instant OA has been filed on 30.8.2012, i.e., more than two and half years beyond the permissible limit as prescribed under the AT Act, as if the respondents no.1 and 2 were not taking any decision pursuant to letter dated 9.7.2009 of respondent no.3, the applicant was required to file OA after expiry of six months.

6. 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 sub-section (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 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."

7. 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)".

8. 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 in 2003 or at best it can be said to have arisen in the year 2010 when no action was taken by the respondent no.1 and 2 on the letter dated 9.7.2009 sent by respondent no.3. It is admitted fact that claim of applicant for grant of compassionate appointment was rejected in 2003.

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."

9. 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.

**(Justice Dinesh Gupta)
Member (J)**

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