

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.1490/2017 in O.A.No.1350/2017

Order Reserved on: 27.10.2017
Order pronounced on 30.10.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Lokesh Kapoor, Aged about 44 years[Group C]
S/o Sh. Purshottam Kapoor
Ex-UDC, Indian Council of Agricultural Research
Krishi Bhawan
New Delhi
R/o B-4, 1st Floor, East Uttam Nagar
New Delhi – 110 059. ... Applicant

(By Advocate: Sh. V.S.R.Krishna with Sh. Subodh Kaushik)

Versus

Secretary
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi – 110 001. ... Respondent

(By Advocate: Sh. Subhash Mishra)

O R D E R

By V. Ajay Kumar, Member (J):

The OA has been filed questioning the Annexure A1 Order dated 13.02.2015 of the sole respondent-Indian Council of Agricultural

Research (in short, ICAR), whereunder, the resignation of the applicant was converted into voluntary retirement w.e.f. 10.03.2014.

M.A.No.1490/2017:

2. The applicant filed the instant MA No.1490/2017 seeking condonation of delay of 405 days in filing the OA.
3. Heard Shri V.S.R.Krishna with Shri Subodh Kaushik, the learned counsel for the applicant and Shri Subhash Mishra, the learned counsel for the respondents, and perused the pleadings on record.
4. It is submitted that while the applicant was working as UDC, since diagnosed bipolar effective disorder – current episodic manic with psychotic symptoms and as advised by his family members, the applicant submitted resignation letter dated 06.03.2014 to the respondents and the same was accepted by the respondent vide Order dated 10.03.2014 and accordingly he was relieved on the same day.
5. It is further submitted that the applicant and his family members made several representations thereafter requesting to treat his resignation as null and void and to reinstate him into service. In pursuance of the said representations, the respondents approved conversion of his resignation into voluntary retirement w.e.f. 10.03.2014 under Rule 48A of CCS (Pension) Rules, 1972.
6. It is also submitted that in view of the prolonged mental depression of the applicant, he was taking treatment in VIMHANS and Sufdarjung Hospitals during 2011 to 2014 and due to the same, ill

health, the applicant could not approach the Tribunal in time and unless the delay is condoned, he will be put to great loss.

7. Per contra, the respondents submit that the treatment was only upto 2014 and hence, the delay occurred from the date of the impugned order dated 13.02.2015 to the date of filing of the instant OA was not explained properly and hence, the delay cannot be condoned.

8. The learned counsel for the respondents placed reliance on the following decisions:

- a) **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others**, (2013) 12 SCC 649.
- b) **Brijesh Kumar and Others v. State of Haryana and Others**, (2014) 11 SCC 351.

9. In **Esha Bhattacharjee** (supra), the Hon'ble Apex court observed, as under:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

- (i). There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- (ii). The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
- (iii). Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- (iv). No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v). Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi). It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii). The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii). There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix). The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x). If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi). It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii). The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii). The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and

collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

10. In **Brijesh Kumar** (supra), which is a case pertaining to the acquisition of lands, and condonation of delay of 10 years 2 months and 29 days, the Hon'ble Apex Court, noticing that similarly placed persons who filed objections under Section 18 of the Land Acquisition Act for enhancement of the compensation along with the appellants therein, approached the Court in time, but the appellants had not chosen to file the appeals for a period of more than 10 years, refused to condone the said delay, in the facts and circumstances of the said case.

11. In the instant OA, admittedly, the applicant was diagnosed with bipolar affective disorder – current episodic manic with psychotic symptoms and suffered with the same for long time. In these circumstances and in view of the various decisions of the Hon'ble Apex Court, we deem it fit to condone the delay in filing the OA.

12. Accordingly, the delay in filing the OA is condoned and the MA is allowed.

O.A.No.1350/2017:

13. Issue notice to the respondents, and list the OA on 01.12.2017. In the meanwhile, the respondents may file their reply.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)