

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**M.A. No.4526/2017 in
O.A No.2334/2017**

**Reserved On:15.02.2018
Pronounced On:20.02.2018**

**Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Ct. Vinod ..Applicant

(By Advocate : Shri R.K. Gupta)

Versus
Govt. of NCT of Delhi and Others ..Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

MA No.4526/2017

This MA has been filed by the applicant praying for condonation of delay in filing the Original Application (OA). In the OA, applicant has impugned order dated 12.02.2011 and has filed the same on 17.02.2017. The OA has been filed seeking the following relief:-

“(a) To quash and set aside the impugned punishment order dated 12.02.2011 and appellate authority order dated 18.01.2012 with direction to the respondents to restore the forfeited service and to give all consequential benefit to the applicant.

(b) To declare the action of the respondents in holding departmental action against the applicant on the basis of false allegations as illegal and unjustified and

direct the respondents to remove the name of the applicant from the list of persons with doubtful integrity and treat the suspension period as spent on duty for all purposes.

(iii) To award exemplary costs in favour of the applicants.

(iv) To pass such other and further orders which their Lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case".

2. The applicant in this MA has stated that he has filed this OA for quashing of orders dated 12.02.2011 and 17.01.2012 passed by the Deputy Commissioner of Police and Appellate Authority, i.e. Special Commissioner of Police. He has not challenged the order at the initial stage as he was assured by the authority concerned that his case would be considered vide correspondence dated 19.12.2016 but nothing has been done so far. Further, he is claiming parity with other persons who had approached this Tribunal earlier in OA No.4097/2011 and connected cases decided on 03.12.2012 and even got relief but he has been denied the same. He has himself stated in this MA that there is delay of 5 years in approaching the Tribunal and same be condoned.

3. We have heard the learned counsel for the parties and perused the record.

4. We may mention that previously applicant had filed MAs No. 2499/2017 and 2500/2017 raising the very same plea as raised in the present MA. However, in the first MA bearing No.2500/2017, he has indicated that there is a delay of 3 months and in the second MA bearing

No.2500/2017 he has indicated that there is delay of 6 months. Thus, applicant has not come to this Tribunal with clean hands and wants that the delay may not be considered and OA be heard. On the point of condonation of delay, Hon'ble Apex Court has held as under:-

(i) In ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649.***

After discussing the entire case law on the point of condonation of delay, the Ho'ble Apex Court has culled out certain principles as under:-

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

21.1. 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.

21.2. 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.

21.3. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. 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.

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

21.6. 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.

21.7. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. 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.

21.9. 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.

21.10. 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.

21.11. 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.

21.12. 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.

21.13. 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: -

22.1. 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.

22.2. 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.

22.3. 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.

22.4. 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”.

(ii) In ***Chennai Metropolitan Water Supply and Sewerage 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: -

“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".

5. A careful perusal of the decisions of the Hon'ble Apex Court in **Esha Bhattarchargee** (supra) and **Chennai Matropolitan Water Supply and Sewarage Board and Others** (supra) wherein it was categorically held that the conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration and the fundamental principles 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 and with the increasing tendency to perceive delay as a non-serious matter, and lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed off and the court is not expected to give indolent persons who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle', wherein such delay does not deserve any

indulgence and on the said ground alone, the courts should have thrown the petition overboard at the very threshold.

6. Similarly, in **Union of India & Others Vs. M.K. Sarkar (2010) 2 SCC 58**, the Hon'ble Apex Court held as under:-

“15. When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. **The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction.** Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches”.

7. In the circumstances and for the aforesaid reasons, we do not find any merit in the MA and dismiss the same. Accordingly, the OA is also dismissed.

(Nita Chowdhury)
Member (A)

(Raj Vir Sharma)
Member (J)

Rakesh