Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2587/2014
MA No.2205/2014

Reserved on: 18.08.2017
Pronounced on:19.08.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Shri Pritam Singh Rana
s/o late Shri Tara Singh Rana,
R/o H.No. 269, Gali No.12,
Village Saboli, Nand Nagri,
Deli – 110 093.
Post: Technical Assistant (OT)
Last Posting- Swami Dayanand Hospital ...Applicant

(By Advocate: Ms. Megha De for Sh. Anuj Agarwal)

Versus

East Delhi Municipal Corporation
Through its Commissioner,
Udyog Sadan, 2nd Floor,
Plot No.419, Patparganj Industrial Area,
Delhi – 92.

(By Advocate: Sh. K.M. Singh)

O R D E R

At the very outset, leaned counsel for the respondent has raised the preliminary objection of limitation. It is well settled principle of law that when a preliminary objection is taken, it is required to be decided first as has been held by the Hon'ble Apex Court in ***Sh. Arun Kumar Agarwal Vs. Nagreeka Exports Pvt. Ltd. & Anr.*** [2002 (10) SCC 101]. Hence, I have heard the learned counsel for the parties on the issue of limitation first.

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2. The applicant has filed this Misc. Application for condonation of delay in filing the OA stating that his claim for appointment on compassionate ground was rejected by the respondent vide order dated 16.06.2011 impugned in the OA. He has further submitted that despite his best efforts, being unemployed, he could not muster sufficient resources to prefer the accompanying OA immediately after passing of the impugned order though he was in contact with the respondents on regular basis. It is the contention of the applicant that since his claim for compassionate appointment is a continuing wrong, limitation in this case does not attract. He also emphasized that the delay in filing the OA was neither deliberate nor intentional. Rather it was bona fide for the reasons beyond his control, as explained above. Hence, the applicant has prayed for condonation of delay and hearing the OA on merit.

3. The respondents have stoutly opposed this condonation of delay application on the ground that the applicant does not, in any manner, let alone satisfactory manner, explain the delay in filing the OA. They have argued that in a catena of judgments, the Apex Court has held that requirement of limitation is a statutory requirement and must be enforced. They have, in support

of their contention, relied upon a large number of decisions which include ***Sh. Arun Kumar Agarwal Vs. Nagreeka Exports Pvt. Ltd. & Anr.*** [2002 (10) SCC 101]; ***Dhiru Mohan vs. Union of India*** [Full Bench CAT 1989-90 Vol.II page 448]; ***Rattan Chand Samanta Vs. Union of India*** [1994 SCC (L&S) 182]; ***S.S. Rathore Vs. Union of India & Ors.*** [AIR 1990 (SC) 10]; ***Jai Dev Gupta vs. State Himachal Pradesh and Anr.*** [1999(1) AISLJ SC 110], to mentioned a few.

4. Perusal of the record reveals that the present OA has been filed on 28th July, 2014 i.e. after more than three years of passing of the impugned order, to be precise after 1152 days delay, as admitted by the applicant in the MA. Perusal of MA further reveals that except facing financial hardship, the applicant has not taken any other ground, let alone cogent, in this regard, which, in my view, is not sufficient and satisfactory to condone the delay. One would have to bear in mind Section 21 (3) of the Administrative Tribunals Act, 1985 which provides as under:-

> "*21(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.*"

Therefore, seeing from whatever angle, the sole plea of the applicant for explaining the delay is clearly unacceptable being vague as he has not explained the delay in terms of the time taken by him in approaching the Tribunal. It is undisputed that the law requires that each day's delay in filing the OA needs to be explained, which the applicant has failed to do.

5. Section 21 of the Administrative Tribunals Act, 1985 provides that the Tribunal shall not admit an application, in case where a final order such as mentioned in clause (a) of sub section (ii) 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. Further, the scope of Section 3 of the Limitation Act, 1963, *inter alia,* is fully applicable in the instant case. Section 3 of the Limitation Act postulates that subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, appeal preferred and application made, after the prescribed period, shall be dismissed, although the limitation has not been set up as a defence.

6. Applying these legal provisions, it is mandatory that the Tribunal is satisfied to the effect that the applicant has offered sufficient and reasonable explanation for not

making the application within the stipulated period of one year. In my clear view, the explanation offered by the applicant in this MA is completely unsatisfactory.

7. It is now well settled proposition of law that the condonation of delay is not a mere formality but a statutory bar. Such prayers have to be considered as contemplated in Section 5 of the Limitation Act and Section 21 of the AT Act and not otherwise. Each days delay has to be explained by the applicant, in a reasonable manner. While stating so, I have also been guided by the judgments in ***Bhoop Singh vs. Union of India etc.*** (1992) 3 SCC 136, wherein it was ruled as under:-

> *"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."*

8. It is also an established law that limitation has to be counted from the date of original cause of action and belated claims should not be entertained as has been held by the Apex Court in the case of ***Union of India & Ors. Vs.***

M.K. Sarkar [2009 AIR (SCW) 761]. Relevant part of the decision is being extracted hereunder:-

> *"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115:*
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> > *"The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."*
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> *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.*
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> *16. A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue.*

> *If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."*

The same view has been reiterated by the Apex Court in the case of ***D.C.S. Negi vs. Union of India & Ors.*** [SLP (Civil) No.7956 of 2011 CC No.3709/2011 decided on 11.03.2011], which reads as under:-

> "*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)."*

9. In another case of ***Bharat Sanchar Nigam Limited vs. Ghanshyam Dass etc.*** [(2011) 4 SCC 374], a three Judge Bench reiterated the principle laid down in the case of ***Jagdish Lal Vs. State of Haryana*** [(1977) 6 SCC 538], that time barred claim should not be entertained by the Tribunal.

10. Given the above discussion, I am of the considered opinion that the explanation offered by the applicant to

condone the delay in filing the OA is not satisfactory and, hence, the MA seeking condonation of delay is dismissed.

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11. In view of the dismissal of the MA seeking condonation of delay, the OA cannot be entertained and the same is accordingly dismissed.

(UDAY KUMAR VARMA)
Member (A)

/Ahuja/