

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.1770/2017 in O.A.No.1622/2017

Order Reserved on: 10.07.2017
Order pronounced on 11.08.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri Shekhar Agarwal, Member (A)

C. S. Barodia

Aged about 78 years

S/o Late Sh. Ram Swaroop

Retd. Kumbh Mela Officer (Postal)

Group B, Hardwar

Resident of : 100, Maliyana

Transport Nagar,

Meerut (U.P.).

... Petitioner

(By Advocate: Shri Pawan Kumar)

Versus

1. Union of India through

The Secretary

Ministry of Communication and I.T.,

Department of Posts

Dak Bhawan

Sansad Marg

New Delhi – 110 001.

2. The Director General (Posts)

Dak Bhawan, Sansad Marg

New Delhi – 110 001.

3. The Chief Post Master General

U.P.Circle, LUCKNOW (UP).

.. Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER**By V. Ajay Kumar, Member (J):**

The applicant, a retired PSS Group-B Officer, filed the OA on 05.05.2017, seeking quashing of the Charge Memorandum dated 15.03.1999, and the Order dated 28.07.2004 whereunder he was imposed with the penalty of 50% cut in monthly pension, otherwise the same is admissible to him on a permanent basis.

2. The applicant filed the present MA No.1770/2017 in OA No.1622/2017 seeking condonation of delay of 4100 days in filing the OA.

3. The applicant, through the instant MA, has submitted that as he was pursuing the matter in the Department and that he was Senior Citizen and was virtually become handicapped, he could not file the OA in time. A Medical Certificate dated 24.04.2013, certifying that the applicant is a Physically Handicapped person with 70% disability, is also filed at Annexure A8.

4. Heard Shri Pawan Kumar, the learned counsel for the applicant and Shri Gyanendra Singh, the learned counsel for the respondents and perused the pleadings on record.

5. The Hon'ble Apex Court in **Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Others**, (2013)

12 SCC 649, after discussing the entire case law on the issue of condoning of delay in filing the petitions, observed as under:

"15. 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 encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(vii). 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.

16. 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 non-challant manner requires to be curbed, of course, within legal parameters."

6. The delay in filing the OA, is no doubt abnormal. But, in the peculiar circumstances of the case and in view of the fact that the applicant is a Physically Handicapped and also keeping in view the advanced age of the applicant, even as on the date of the impugned order, and in view of the above referred legal position, we are of the view that the delay in the instant case deserves to be condoned.

7. Accordingly, in the circumstances, the delay in filing the OA is condoned and the MA is accordingly allowed.

O.A.No.1622/2017:

8. List the OA under the appropriate caption on 31.08.2017.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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