Central Administrative Tribunal
Principal Bench, New Delhi

OA No.1929/2017
MA No.2110/2017
MA No.2111/2017

Order reserved on : 25.01.2018
Order pronounced on : 06.02.2018

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

Mohit Chauhan (Aged about 27 years),
S/o Sh. Attar Singh,
R/o T-85 Kabul Line, Delhi Cantt.-10.

... Applicant

(By Advocate : Shri S.N. Sharma)

Versus

1. Union of India,
   Through its Secretary,
   Ministry of Defence,
   South Block, New Delhi-1.

2. Engineer-in-Chief,
   Rajaji Marg, Kashmir House,
   New Delhi.

3. Chief Engineer,
   Western Command,
   Pin-908543, C/0 56 APO.

4. CWE(Utility),
   Delhi Cantt.

5. Command Works Engineer (AF),
   (MES) Palam Delhi Cant-10.

... Respondents

(By Advocate : Shri Manish Kumar)

ORDER

Ms. Nita Chowdhury, Member (A) :-

Heard the learned counsel for applicant and Shri Manish Kumar, learned counsel, on receipt of advance notice on behalf of respondents.

2. For the reasons stated therein, the MA No.2110/2017 filed for seeking condonation of delay in re-filing the OA is allowed.

3. This OA has been filed by the applicant along with MA No.2111/2017, seeking condonation of delay. The only reason given for the delay is that initially the applicant challenged the RTI Application dated April 2015 in OA No.1604/2015, which was dismissed by this Hon'ble Tribunal vide its order dated 16.03.2016. Thereafter the applicant filed the WP(C) No.4768/2016 which was also dismissed and lastly applicant filed the SLP No.29736/2016 which was also dismissed on 21.10.2016 but in the abovesaid cases, the applicant has not challenged the present corrigendum dated 2nd Feb. 2015, which has been challenged in the present O.A. Hence there is no delay however, if there is any delay, same may be condoned by seeing the above said facts and circumstances of the case and also in the interest of justice.

4. Further the applicant has filed the instant OA seeking the following reliefs :-

> "(a) Quash the amended corrigendum Notice No.B/20075/LRS/12-13/89/E-1C(1) dt. 2.2.2015.
>
> (b) Direct the respondents to make the selection process of Mate (SSK) as per the notified RRs of July, 2013.
>
> (c) Pass any other order or orders as deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant."

5. On the matter of condonation of delay, the respondent vigorously informs that the Hon'ble Supreme Court has taken up this issue and has held that party seeking condonation of delay is a significant and relevant factor which should be first considered and only then the case should be decided on merits and doctrine of delay and laches should not be lightly brushed aside. He opposes the Application for condonation of delay and the filing of this OA as barred by delay and by *res-judicata*. He also referred to the relevant judgments of the Apex Court with regard to limitation/delay in filing the petitions are as under:-

(i) In ***Esha Bhattachargee 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 Sewarage 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".

6. The learned counsel for respondents informs that this matter has already been adjudicated up to the level of Hon'ble Supreme Court and there is no ground for allowing the present OA, as the matter has already been settled. The applicant in his arguments and in the OA has already admitted that the present OA is in response to the application for the post of Mate (SSK). He submitted that his application for the said post was kept at the Drop Box at the headquarter of the respondents. Later on, he came to know that he is not going to be called by the respondents for the coming examination to be held on 10.05.2015 and thus, he filed the OA No.1604/2015 with connected OA, and as per the Tribunal's interim orders, he was allowed to appear in the said examination. On 16.03.2016, the said OA was dismissed. Thereupon, the applicant filed a Writ Petition No.4768/2016 before the Hon'ble High Court of Delhi, which was also dismissed on 24.05.2016 and the SLP filed by him thereafter was also dismissed. Now, he seeks to draw distinction between the issue raised in the previous OA, WP(C) and SLP and says that the issue in the present OA is slightly different, as the matter pertains to amendment in corrigendum by way of Recruitment Cycle on which the respondents have decided to fill up the vacancies and not in accordance with Recruitment Rules. Further he also informs that there is no new issue which is sought to be raised in this OA. In fact, in the present OA he is seeking the same reliefs which have

already been sought in earlier OA No.1604/2015 with connected matter.

7. Once the OA has been adjudicated with regard to filling up of vacancies and comprehensive arguments and pleadings made at the level of the CAT and in the WP(C), there is no ground for admission of this present OA. In fact, the very point raised in this OA has been raised previously i.e. "Quash the amended corrigendum Notice No.B/20075/LRS/12-13/89/E-1C(1) dated 2nd Feb., 2015", and replied to by the respondents in para 18 as follows :-

> 18. The respondents filed their counter reply on 15.09.2015 and submitted that the Corrigendum to the original Advertisement was issued by the competent authority for bonafide administrative /technical reasons, which were explained as follows:-
>
> "a) The corrigendum to the original advertisement were issued by the competent authority i.e. E-in-C's Branch, for bonafide administrative/technical reasons as enumerated below:-
>
> (i) To correct the typographical error committed by
> Employment News.
>
> (ii) To specify criteria for reservation of vacancies against Physically Handicapped (PH) category.
>
> (iii) Specifying Command wise availability of vacancies.
>
> (iv) Earmarking post wise examination centres.

(v) Specifying the pattern of making for various posts.

b) It is neither against the Recruitment Rules (RRs) nor involved any change in basic recruitment procedure"

8. The same is also comprehensively adjudicated upon in para 22 of the said judgment of CAT in OA No.1604/2015 and connected matter dated 16.03.2016, and the same reads as under :-

"22. After having given anxious consideration to the facts of this case, and to the language of the Corrigendum clarification issued through the Corrigendum, we are clear in our minds that this prescription of pattern of marking did not in any manner impinge upon or amend the minimum essential qualifications, as prescribed in the RRs. Therefore, we cannot accept the submissions of the applicants that this was a case of rules of the game being changed after the process of recruitments had started."

9. In view of the above facts and the detailed judgment given on the same in previous OA No.1604/2015 with connected matter, we find that the present matter is barred by *res judicata*.

10. Therefore, the instant OA, is not at all maintainable on the analogy of principle of *res judicata* under section 11 in general and constructive *res judicata* in particular, as contemplated in Explanations IV and V of Section 11 of CPC. Explanation-IV postulates that "**any matter which might and ought to have been made ground of defence or attack in such former suit, shall be**

deemed to have been a matter directly and substantially in issue in such suit". Explanation-V further posits that "**any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused**". Moreover, the present second OA is hit by principle contained in Order (II) Rule 2 CPC. Relying upon the general doctrine of *res judciata/*constructive *res judicata* and power contained under Order II Rule 2 CPC, which are based on principle of natural justice, the applicant is estopped from filing the instant OA.

11. Moreover, it is now well settled law that a judgment which has decided a similar *lis* between the parties, which has already attained the finality, should not be unsettled. One should stand by the decision and not to disturb what is settled. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The doctrine of *stare decisis* is a well established valuable principle of precedent. It promotes a certainty and consistency in judicial decisions and helps in the development of the law. Not only that, it provides guidelines for individuals as to what would be the consequences, if they choose the legal action, at the same time, it promotes confidence of the people in the system of the judicial administration as well.

12. Thus seen from any angle, we are of the considered opinion that the instant OA, challenging the same very order dated 02.02.2015 passed in OA No.1604/2015 with connected OA (supra), which was upheld by the Hon'ble High Court of Delhi and Hon'ble Supreme Court, is not at all maintainable, as it will amount to sit over as Appellate Court on the previous judgment dated 16.03.2016 of this Tribunal, which is not legally permissible.

13. In the light of the aforesaid reasons, the MA filed for seeking condonation of delay in filing the OA as well as the main OA is dismissed in *limine*.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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