

Central Administrative Tribunal
Principal Bench
New Delhi

M.A.No.286/2017 in O.A.No.1995/2016
and
O.A.No.1995/2016

Order Reserved on:11.05.2017
Order pronounced on 11.08.2017

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

S.S.Hans, Age 64/Ex-Superintendent (Sports)
S/o Late Sh. T.D.Hans
Flat No.304, Shiv Shakti Apartment
Plot No.94, Sector-54
Gurgaon-122003 (Haryana) ... Applicant

(By Advocate: Shri R.K.Bhardwaj)

Versus

India Tourism Development Corporation Ltd.
(Ministry of Tourism, Union of India)
Through it's General Manager-HR&Legal
Core-8, 4th Floor, SCOPE Complex
7, Lodhi Road, New Delhi – 110 003. . . Respondent

(By Advocate: Ms. Neha Bhatnagar)

ORDER

M.A.No.286/2017:

The applicant, who was dismissed from service vide Order dated 15.12.2008, while he was working as AM (A/C), ATT in pursuance of a disciplinary inquiry by way of imposing a major penalty, filed the OA

No.1995/2016 questioning an Order dated 05.04.2013, whereunder his request for payment of terminal benefits such as Gratuity, arrears of salary as per the 6th Central Pay Commission, w.e.f. 01.01.2006 to 30.06.2007, leave encashment, employers'/respondents' share of provident fund and Incentive/Welfare Fund from 2003-2004 to 2006-2007, has been rejected.

2. The applicant filed the instant MA along with the OA, seeking condonation of delay of 362 days in filing the OA.
3. It is submitted that in view of his dismissal from service, the applicant was depressed and was under treatment, and hence, he could not question the impugned order dated 05.04.2013 in time. The applicant also filed certain medical records in support of his case. Accordingly, he prayed for condonation of the delay.
4. On the other hand, it is submitted on behalf of the respondent that in connection with his dismissal from service, the applicant was agitating before this Tribunal and also before the Hon'ble High Court of Delhi and hence, his contention that due to depression and ill-health, he could not file the instant OA in time, is untenable. It is further submitted that the delay is not properly calculated.
5. Heard Shri R.K.Bhardwaj, the learned counsel for the applicant and Ms. Neha Bhatnagar, the learned counsel for the respondent, and perused the pleadings on record.

6. 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 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.

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."

7. The applicant, during the period in which he was contended to be depressed and not able to approach this Tribunal, admittedly, pursuing his other cases before other Courts. Hence, the applicant failed to make out a case for condonation of delay.

8. In the circumstances and for the reasons mentioned above, the MA is dismissed, and consequently the OA also stands dismissed. No costs.

(V. Ajay Kumar)
Member (J)

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