

Central Administrative Tribunal
Principal Bench: New Delhi

**OA No.1685/2016
MA No.166/2015**

Reserved on: 17.08.2017
Pronounced on: 19.08.2017

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

Ajay Maniram Yadav
S/o late Sh. Maniram Yadav,
R/o H.No. 747, Veljibhai Kuva,
Motera, Sabarmati,
Ahmedabad-5, Gujarat

At Present:
WZ-90, Dasghara Village,
Near Holi Chowk, New Delhi.

...Applicant

(By Advocate: Sh. Brijender Singh)

Versus

1. Bharat Sanchar Nigam Limited through
Chairman & Managing Director,
Bharat Sanchar Bhawan, Janpath,
New Delhi.
2. The Dy. General Manager,
Welfare Department,
Ahmedabad Telecom District
Gulbai Tekra Exchange Building,
Ahmedabad – 380 006.
3. The Dy. General Manager,
Establishment, BSNL,
Gujarat Mandal,
Telephone Bhawan, C.G. Road,
Ahmedabad-380006. ...Respondents

(By Advocate: Sh. Sameer Aggarwal)

O R D E R

MA No.166/2016

The main contention of the applicant while filing this
MA seeking condonation of delay in filing the OA is that the
impugned order dated 17.05.2010 was received by him on

03.06.2010, vide which the respondents no.2 & 3 had rejected his representation dated 13.12.2007 for appointment on compassionate grounds. It is further contended that the applicant again submitted a representation dated 03.06.2013 through former Governor Sh. Romesh Bhandari before the Information & Broadcasting Ministry, New Delhi for consideration keeping in mind the distressful condition of the applicant. The applicant has argued that the said representation has yet not been decided by the respondents.

2. The applicant has further stated that as he was facing financial hardship, therefore, some time had elapsed before approaching this Tribunal. An added ground mentioned by the applicant is that his elder brother was suffering from some diseases and was also operated upon, and on this count also the applicant was under immense mental pressure as well as monetary hardship. All these have led to delay in approaching this Tribunal.

3. The respondents in their reply have strongly opposed the Misc. Application filed by the applicant seeking condonation of delay. They have stated that the applicant has challenged the impugned order dated 17.05.2010, which was admittedly received by him on 03.06.2010. The present OA has been preferred only on 17.12.2015 i.e. after

a lapse of more than 5½ years without giving any cogent reasons in the accompanied MA for condonation of delay.

4. The issue before me is whether the applicant has been able to satisfactorily explain the delay in filing the OA. It is an admitted fact that the impugned order was passed on 17.05.2010 and it was received by the applicant on 03.06.2010. It is also on record that the OA has been filed on 17.12.2015.

5. I have carefully considered the grounds taken by the applicant in the MA for this long delay of 5½ years. A significant part of this delay the applicant has tried to explain, is attributable to his pending representation before the Ministry of Information & Broadcasting which was referred to by the former Governor Sh. Romesh Bhandari. This reference by Sh. Romesh Bhandari made on 03.06.2013, which is a good three years after the applicant had learnt about the impugned order, can by no stretch of imagination be treated as a formal representation. But even if one were to take a lenient view in the matter, 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, this plea of the applicant for explaining the delay is clearly unacceptable. His other plea that the delay had taken place on account of his elder brother's illness, his mental stress and financial hardship can also not be accepted. Firstly they are vague and, secondly they have not been explained in terms of the time taken by the applicant in dealing with these problems. 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.

6. 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.

7. 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.

8. 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."

9. Likewise, in the case of **Union of India & Ors. Vs. M.K. Sarkar** [2009 AIR (SCW) 761], it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

"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:

"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."

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.

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 'stale' 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."

10. 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], Apex Court held 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)."

11. Again in the 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.

12. 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.

OA No.1685/2016

13. Since the MA No.166/2016 seeking condonation of delay has been dismissed, the instant OA also stands dismissed.

(UDAY KUMAR VARMA)
Member (A)

/Ahuja/