

**Central Administrative Tribunal
Principal Bench, New Delhi**

MA No.2237/2015

MA No.2238/2015 in

OA No.2553/2004

With

MA No.1586/2015 in

OA No.2310/2005

Order reserved on: 05.05.2016

Pronounced on: 06.09.2016

Hon'ble Mr. Sudhir Kumar, Member (A)

Hon'ble Mr. Raj Vir Sharma, Member (J)

MA No.2237/2015 & MA No.2238/2015

Balraj

...Miscellaneous Applicant.

(By Advocate: Shri U.Srivastava)

Versus

Govt. of NCT of Delhi & Ors.

...Respondents.

(By Advocate: Shri Anmol Pandita for Shri Vijay Pandita)

MA No.1586/2015

Subhash Chander

...Miscellaneous Applicant.

(By Advocate: Shri U.Srivastava)

Versus

Govt. of NCT of Delhi & Ors.

...Respondents.

(By Advocate: Shri Anmol Pandita for Shri Vijay Pandita)

(2)

ORDER

Per Sudhir Kumar, Member (A):

These two sets of MAs came to be heard together and they are being decided through a common order.

MA No.2237/2015 & MA No.2238/2015

2. This Miscellaneous Application is filed on 28.05.2015, praying for restoration of OA No.2553/2004, which had been dismissed in default and for non-prosecution on 03.08.2011, as follows:

ORDER

“(By Mrs. Meera Chhibber, Member (J)

None for the applicant even in the revised call nor any request for adjournment has been made on his behalf. Sufficient opportunity has already been granted to the applicant to argue the case. On the last date of hearing, it was made clear that no further adjournment would be granted as this matter pertains to the year 2004. In spite of it, neither applicant’s counsel nor any departmental representative is present. Accordingly, this O.A. is dismissed for default and non-prosecution.”

(Dr.A.K.Mishra)
Member (A)

(Mrs.Meera Chhibber)
Member (J)”

3. Along with this, MA No.2238/2015 has been filed praying for condonation of delay in filing the restoration application.

(3)

4. As per the law declared by the Hon'ble Supreme Court in **D.C.S. Negi vs. Union of India & Others**, in CC No.3709/2011 decided on 07.03.2011, before considering any application, in the form of either Miscellaneous Application or an Original Application, this Tribunal has to first consider the aspect of condonation of delay. Therefore, in the MA for restoration of the OA, it has been submitted by the Miscellaneous Applicant that he had first filed an OA, praying for quashing and setting aside the impugned order dated 08.07.2013 passed by the Respondent No.3, and the order dated 21.07.2003 passed by the Respondent No.4, seeking a direction upon the Respondent No.4 to declare the applicant as a candidate selected for the post of Fire Operator, and complete all the selection formalities. That OA was heard and dismissed by this Tribunal on 18.08.2008, through a common order passed in OA No.2310/2005 & MA No.635/2005, MA No.1148/2005 with OA No.2950/2004 & MA No.932/2005, OA No.426/2005.

5. Being aggrieved by that common order passed by this Tribunal, the applicant, along with other applicants in those connected OAs, approached the Hon'ble Delhi High Court in WP(C) No.4700/2007, challenging the said common order passed by this Tribunal. That Writ Petition was allowed on 29.10.2010,

(4)

whereby the impugned common order of this Tribunal dated 18.08.2008, and the subsequent order dated 06.03.2007 passed in the RA No.176/2006, were set aside, and the OA of the applicants was ordered to be restored, with directions to this Tribunal to re-decide the same in respect of all the three issues raised by the applicants, which issues had been flagged by the Hon'ble High Court itself. Thereafter, along with other OAs, the applicant's OA also came to be restored, but the applicant has claimed that he could not keep track of the proceedings before this Tribunal thereafter. In the absence of proper instructions from him, and communication gap, his counsel, who had taken care of the matter earlier, left the restored case unattended, which led to his O.A. being dismissed in default and for non-prosecution on 03.08.2011.

6. The Miscellaneous Applicant had submitted that one of the connected matters, bearing OA No.426/2005, was later on decided by this Tribunal on 28.10.2014, which came to his knowledge on 10.04.2015. Thereafter, he immediately approached his counsel, who declined his request to conduct his case for the reasons best known to him, and therefore, he contacted another counsel, who subsequently inspected the Tribunal's file, and it was then discovered that his case had

(5)

already been dismissed in default and for non-prosecution on 03.08.2011. He has contended that non-appearance in the restored OA, either by him or through his counsel, was neither intentional, nor wilful, nor deliberate, and he has only become the victim of adverse circumstances, and he has, therefore, prayed for recalling the order dated 03.08.2011, so that the O.A. may be disposed off on merits in the interest of justice.

7. In his Miscellaneous Application for condonation of delay also, the applicant had explained the same circumstances, and had, therefore, prayed that the delay of 3 years 9 months and 24 days, i.e. 1242 days, in filing MA No.2237/2015 for restoration of his O.A. may be condoned, in the interest of justice.

8. Notice had been issued on the two MAs on 20.08.2015, and the counter reply to the MA for restoration of the OA, and a separate counter reply to the MA for condonation of delay were filed on 19.11.2015. On 11.12.2015, proxy for the arguing counsel for the Miscellaneous Applicant had sought time to file rejoinder to the same, which was allowed, yet no rejoinder was thereafter filed in spite of four hearings of the case on 22.01.2016, 24.02.2016, 31.03.2016, before the two MAs case came to be heard and reserved for orders on 05.05.2016.

(6)

9. In their counter reply to the MA for restoration of the OA, the respondents submitted that the MA is not maintainable and is liable to be dismissed, in view of the settled principles of law that an aggrieved party has to approach the Court within the statutory period prescribed, and after the expiry of that period, the Court cannot grant the relief, as prayed for, and this view was expounded in the case of **State of Punjab vs. Gurdev Singh** (1991) 4 SCC 1, which was reiterated in the case of **Union of India vs. Ratan Chandra Samanta** JT 1993 (3) 418.

10. It was submitted that in **Ex. Captain Harish Uppal vs. Union of India & Another** JT 1994 (3) 126, the Hon'ble Supreme Court had categorically laid down the law that delay defeats equity and the Court should help those who are vigilant, and not those who are indolent, and that the parties are expected to pursue their rights and remedies promptly, and if they just slumber over their rights, the Court should decline to interfere in the matter. It was further submitted that in the case of **Ajay Walia vs. State of Haryana & Ors.** JT 1997 (6) SC 592, the Hon'ble Supreme Court had held that repeated representations given to various authorities do not furnish a fresh cause of action,

(7)

which finding was reiterated in the case of **Union of India & Others vs. M.K.Sarkar** (2010) 2 SCC 59.

11. The respondents thereafter sought shelter behind the Hon'ble Supreme Court's judgment in **D.C.S. Negi vs. Union of India & Ors.** (supra), in which it was held that the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established, and the fact that an objection of limitation has not been raised by the respondent/non applicant is not at all relevant, and that it is the duty of the Tribunal to first consider whether the application is within limitation or not, and that an application can be admitted by the Tribunal 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) of the A.T. Act, 1985, condoning such delay.

12. Thereafter, the respondents had explained the facts of the case and had submitted that the applicant being lower in merit than the last selected candidate in the unreserved category, he could not be selected, as all the unreserved category posts had been filled up, and no post remained vacant, and even a waiting panel had been maintained for filling up the vacancies arising in

(8)

future, and therefore, there was no merit in the M.A. filed by the applicant, which is liable to be dismissed.

13. In reply to the MA No.2238/2015 praying for condonation of delay, the same case law had been cited once again, and it was submitted that there is no merit in the MA for condonation of delay, and the same may be dismissed.

MA No.1586/2015

14. This MA has been filed in OA No.2310/2005, praying for restoration of the said OA, which had been dismissed in default and for non-prosecution on 11.03.2014, noting as follows:

“The OA had come up for hearing before the Tribunal in the year 2006 and was dismissed in terms of the order dated 18.8.2006.

2. When Hon’ble Delhi High Court passed order dated 29.10.2010 in W.P. [C] No.7553/2007, the Registry started listing the present OA again. Shri Piyush Gaur proxy for Shri Arun Bhardwaj who is present in the connected matter i.e. OA 426/2005 (Manoj Kumar Vs. GNCTD) submitted that he is not representing the applicant in the present OA. He also stated that the applicants in the present OA were never represented by Shri Arun Bhardwaj and earlier he was represented by Mr. U. Srivastava, Advocate. It is seen that that after the order dated 29.10.2010 was passed by the Hon’ble High Court on 13.3.2013, Shri U. Srivastava appeared for the applicants and thereafter on 22.3.2013 Shri M.S. Reen proxy for Shri Arun Bhardwaj represented them. Today, Shri Piyush Gaur proxy for Shri Arun Bhardwaj in OA No.426/2005 categorically submitted that Shri Arun Bhardwaj was never instructed to represent the applicants in OA No.2310/2005 i.e. the present OA.

(9)

3. In view of submission put forth by the proxy counsel it appears that **the applicants herein have not been represented after 22.3.2013 and it was only because the present OA was listed along** with OA No.426/2005, in view of the common order passed in three connects OAs, the presence of Mr. Arun Bhardwaj, **advocate and his proxy counsels could be shown as counsel for the applicants in this OA also.**

4. **In the circumstances, the OA stands dismissed for default and for non-prosecution."**

(Emphasis supplied)

15. In this case also, the Miscellaneous Applicants have prayed for condonation of delay in filing the restoration application.

16. Through MA No.1586/2015, six applicants of the said OA, who were Applicant Nos.2, 5, 6, 11, 12 and 16, in the O.A. **Subhash Chander and Others vs. Govt. of NCT of Delhi & Others**, had prayed for recalling the above reproduced order dated 11.03.2014 passed in OA No.2310/2005. They had again pointed out that the above-said OA No.2310/2005 had been filed by 16 applicants, challenging the validity and propriety of the impugned selection, and the order dated 28.04.2004, by which the Respondent No.2 had rejected the claim of all the applicants for sending their names to the Respondent No.3 for appointment to the post of Fire Operators, in terms of order dated 14.02.2003, with all other consequential benefits, which OA was heard by this

(10)

Tribunal and dismissed through a common order dated 18.06.2006 (supra).

17. Thereafter, the above mentioned Writ Petition had been filed before the Hon'ble High Court, and when the High Court had remitted the matter back to this Tribunal, it was again listed titled as **Subhash Chander and Others vs. Govt. of NCT of Delhi & Others**, the name of Applicant No.1 being shown first, and that these six applicants of this MA could not follow or search their case properly, and even though they were wandering for the sake of their livelihood in absence of any source of income at all, but, in the meanwhile, they could not give proper instructions to their counsel, and in view of the communication gap, the counsel, who had taken care of their matter earlier, left the case unattended, which led to the case being dismissed in default and for non-prosecution on 11.03.2014 (supra).

18. Thereafter, since another connected matter being OA No.426/2005, which had also been remanded back by the Hon'ble High Court, came to be heard and decided on merits on 28.10.2014, the six applicants of this MA had submitted that it came to their knowledge only on 10.04.2015, and they immediately approached their counsel, who inspected the

(11)

Tribunal's file, and found that their case had already been dismissed in default and for non-prosecution on 11.03.2014, while the facts remain that their non-appearance, and also non-appearance of their counsel was neither intentional, nor wilful, nor deliberate, and that they have only become victims of adverse circumstances. In the result, it was prayed this Tribunal may be pleased to allow the present MA for recalling the order dated 11.03.2014, and for listing the matter for its hearing in its earlier position, and disposal of the case on merits, in the interests of justice.

19. In the MA praying for condonation of delay also, the same circumstances had been explained once again as discussed above, and it was prayed that this Tribunal may condone the delay of 412 days in filing the accompanying the Miscellaneous Application for restoration of the aforesaid OA, in the interests of justice.

20. In the counter reply to the MA No.1586/2015 filed on 01.12.2015, the respondents had more or less reiterated the pleadings, as stated in reply to the MA No.2237/2015 & MA No.2238/2015 in the other OA. It was further submitted that the case of the present Miscellaneous Applicants had been dismissed

(12)

in default and for non-prosecution on 11.03.2014, by a speaking order, and the applicants of this MA are not entitled to any reliefs, as per the judgments of **D.C.S. Negi vs. Union of India & Others** (supra) and **Union of India & Others vs. M.K. Sarkar** (supra).

21. Heard. We have considered all these Miscellaneous Applications very carefully. In regard to the MA No.1586/2015, it is clearly seen that the Bench had passed the order dated 11.03.2014 (supra), and had specifically noted therein that after the judgment of the Hon'ble High Court dated 29.10.2010 in WP(C) No. 7553/2007, on 13.03.2013 learned counsel Shri U. Srivastava had appeared for the Miscellaneous Applicants, and, thereafter, on 22.03.2013, Shri M.S. Reen had stood proxy for Shri Arun Bhardwaj as having represented them. But, when Shri Piyush Gaur, proxy counsel for Shri Arun Bhardwaj had clearly submitted that he was instructed to represent only the applicants in OA No.426/2005, and he was never instructed to represent for the applicants in OA No.2310/2005, it was, therefore, noted by the Bench that the applicants of O.A. No. 2310/2005 had never been represented after 22.03.2013, and it was only because that case had been tagged with OA No.426/2005, in view of the common order passed in the connected OAs, that the presence of

(13)

Shri Arun Bhardwaj and his proxy counsels could be shown as counsel for the applicants in this OA also. In the circumstances, the OA No.2310/2005 had been dismissed in default and for non-prosecution.

22. The law, as settled by the Hon'ble Apex Court in **D.C.S. Negi vs. Union of India & Others** (supra), is very clear, apart from other case laws cited by the respondents. After the OA 2553/2004 had been restored through the order passed by the Hon'ble Delhi High Court on 29.10.2010 in WP (C) No.4700/2007, the applicant did not make any effort whatsoever to pursue his case, and, as was noted by the Bench on 03.08.2011, sufficient opportunity had already been granted to the applicant to argue the case, and it had been made clear that no further adjournment would be granted, as this matter pertains to the year 2004, and in spite of that, the applicant had failed to put forth his case, because of which, the OA had been dismissed in default and for non-prosecution. It has been admitted by the applicant in his MA No.2238/2015 that he woke up after more than three years, only after OA No.426/2005 had been decided on 28.02.2014, and also another six months thereafter, when he claims to have come to know on 10.04.2015 regarding that OA had been decided.

(14)

23. MA No.2238/2015 for condonation of delay had been filed after 3 years, 9 months and 24 days, which delay has not been sufficiently explained by the Miscellaneous Applicant in his two MAs, and the action of the Miscellaneous Applicant before us is fully hit by the observations of the Hon'ble Supreme Court in the case of **Ex. Captain Harish Uppal vs. Union of India & Another** (supra) and other cited cases. Similar is the case in the second case also, as already discussed above.

24. Therefore, MA No.2238/2015 in OA No.2553/2004, praying for condonation of delay in filing the MA No.2237/2015 praying for restoration of the OA, and the MA No.1586/2015 praying for condonation of delay in filing the MA in OA No.2310/2005 and also praying for restoration of the OA, are both rejected. Since the MA No.2238/2015 and MA No.1586/2015 praying for condonation of delay are rejected, consequently both the MAs praying for restoration of the OAs are also rejected. But there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/