

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3665/2013

**Reserved On:19.12.2017
Pronounced On: 22.12.2017**

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Jagdev
S/o Shri Kishan Lal
R/o V & P Chariharsaroou,
District Gurgaon, Haryana. Applicant

(By Advocates: Shri Ajesh Luthra)

Versus

Government of NCT of Delhi
Through its Principal Secretary,
Department of Health and Family Welfare,
GNCT of Delhi,
9th Level, A Wing,
Delhi Secretariat,
New Delhi. Respondents

(By Advocate: Mr. Vijay Pandita)

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

The applicant has filed this Original Application (OA) seeking the following reliefs:-

"(i) direct the respondents to immediately grant the applicant the promotion/higher grade to Grade-I with effect the year 2007 with all consequential benefits along with interest @15% p.a.

(ii) direct the respondents to refix his pay, pension and other retiral benefits and release the arrears accordingly.

(iii) award costs of the proceedings and

(iv) pass any other order/direction with this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case".

2. The facts, in brief, are that applicant joined the respondents department, i.e. Government of NCT of Delhi (GNCTD) in the department of Health and Family Welfare as Staff Car Driver since 12.02.1992 and had been serving as such with utmost satisfaction. As there was no promotional scheme for Staff Car Drivers in the respondents-department, Staff Car Drivers Association filed OA No.2957/1991. Thereafter, DOP&T issued OM of 1993 for promotion of the Staff Car Drivers. Thereafter, DOP&T issued some more OMs in the year 1995 and 1998 in this regard.

3. Applicant has further submitted that thereafter some more drivers filed OA No. 2529/1996 titled as Central Government Staff Car Drivers Association which was decided on 05.05.2000 and Bikram Singh Vs. U.O.I.. Thereafter, the Government issued a modified promotion scheme for Staff Car Drivers vide DOP&T OM No.F.43019/54/96-Estt.(D) dated 15.02.2001. Further, vide order dated 15.03.2004 (Annexure A-2), applicant was placed in Grade-II w.e.f. 12.02.2001 in the pay scale of Rs.4000-6000, i.e., w.e.f. the date the said grade was due to him. The said placement was on the basis of recommendation of DPC. Further, upon completion of 6 years regular service in Grade-II or a combined service of 15 years Grade-II in ordinary grade put together, a Grade-II driver is entitled for promotion/placement in Grade-I. Applicant has further averred that he was entitled to Grade-I upon completion of 15 years of combined service in the year 2007, i.e., w.e.f. 1.2.2007 but was considered only in the year 2012. Vide communication dated 05.07.2012, particulars of many drivers, including the applicant, were

called for to be considered by a DPC, but applicant was not given any promotion/placement in the higher Grade-I. Ultimately, he superannuated on 31.08.2013 and came to know that since he had not qualified the test that's why he has not been given promotion in Grade-I. Applicant has also submitted that drivers working in various other departments of GNCTD have been given benefit of promotion scheme but same has been denied to him. He has thus prayed that the OA be allowed and he be given benefit of Grade-I with effect from the year 2007.

4. The respondents have filed their reply and submitted that this OA is time barred and highly belated as the applicant is seeking relief from the year 2007 whereas, in fact, he stood retired on 31.08.2013 as such the same may be dismissed on the basis of the following judgments:-

- (i) **State of Punjab Vs. Gurdev Singh (1991) 4 SCC 1.**
- (ii) **UOI Vs. Ratan Chandra Samanta JT 1993 (3) 418.**
- (iii) **Harish Uppal Vs. UOI JT 1994 (3) 126.**
- (iv) **Ajay Walia Vs. State of Haryana and Others JT 1997 (6) SC 592.**
- (v) **U.O.I. Vs. M.K. Sarkar (2010) 2 SC 59.**

5. The respondents have further submitted that applicant was working as Driver since 12.02.1992 in the Department of Health and Family Welfare, Govt. of NCT of Delhi and posted in Lok Nayak Hospital. He was placed in Grade-II Driver w.e.f. 12.02.2001 vide DPC but after 6 years of regular service in Grade-II and a total of 15 years and he was entitled to promotion to Grade-I in the year 2007 but was denied as he had not qualified the requisite test and was considered in 2012. He was not given promotion in the higher grade. Prior to his superannuation on

31.08.2013, he had requested the respondents for placement in the Grade-I which was denied to him as he had not qualified the test conducted by the respondents. In the said test, the applicant failed to secure 60% minimum marks. The marks to be secured by a candidate should be as follows:-

	Maximum Marks	Minimum passing marks
Theory	40	24
Practical	60	36
Total	100	60

Earlier also he was called for the trade test on 15.12.2009 at DTI, Burari but failed, hence was not considered for promotion. Ultimately, he did not qualify the test held on 16 & 17 August, 2012 (Annexure A-3) . They have thus prayed that the OA is liable to be dismissed.

6. We have heard the learned counsel for the parties, gone through the pleadings and judgments.

7. The short point involved in this case is whether applicant can be granted Grade-I scale of Driver from the year 2007 or not. Since he has not qualified the trade test held by the department and qualified the same in the year 2012 and filed the OA in the year 2013 so limitation will not come in his way. Moreover, on the point of limitation, Hon'ble High Court of Gujarat at Ahmedabad in the case of ***Uttar Gurajart Vij Company Vs. Ghelabai Varvabhai Raval*** in case No.C/CA/11343/2013 decided on 13.12.2013, has dealt in detail and considered various judgments of the Apex Court and held that “**if delay is not condoned, it would result**

into miscarriage of justice". The relevant parts of the said judgment read as under:-

“24 Moreover, at least in AIR 2008 SC 1688 Sinik Security Vs.Sheel Bai, AIR 2009 SC 2170 D.D. Vaishnav Vs.State of M.P. and AIR 2009 SC (Supp.) 195 Commissioner, Nagar Parishad, Bhilwara Vs.Labour Court, Bhilwara, the Apex Court has condoned inordinate delay (769 days, 589 days and 178 days respectively) even by imposing some costs upon the applicant.

25. In Collector, Land Acquisition, Anantnag Vs. Katiji AIR 1987 SC 1353, the Apex Court has held as under

—

Whereas atleast decision in O.P. Kathpalia Vs. Lakhmir Singh (Dead) & Ors. (supra) is by the three Judges bench of the Apex Court **wherein delay of more than 6 years was condoned observing that otherwise it would result into miscarriage of justice.** Therefore, when there is a judgment by the bench of three Judges of the Apex Court that to avoid miscarriage of justice, delay of even 6 years can be condoned and when the judgments referred above are yet not overruled or distinguished in any of the later judgment by the Bench of three Judges, only because the Apex Court has not condoned the delay in some of the cited cases, it cannot be said that delay cannot be condoned in all cases after such judgments even if there is sufficient cause to condone the delay. Thus, in general, if there is sufficient reason to condone the delay, irrespective of the cited cases, delay can be condoned”.

Similarly in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649***

the Hon'ble Apex Court, after discussing the entire case law on the point of condonation of delay, 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".

Thus, to our mind, limitation will not come in the way of the applicant.

8. The counsel for applicant drew attention to the counter affidavit filed by the respondents and emphasised that in their counter-affidavit, the respondents have themselves said in the brief facts of the case that he had secured 28 out of 40 marks in theory

and 38 out of 60 marks in practical thus cleared/met the bench mark in the qualifying trade test for promotion to the next higher grade.

9. Further, the respondents were directed to produce the original record of the qualifying trade test for promotion to the next higher grade to ascertain the real position with regard to the marks obtained by the applicant. They produced the record in the court and from the same it becomes clear that the applicant, in fact, failed to secure the minimum qualifying marks in the trade test and the counter affidavit submitted by them has a clerical mistake due to which the applicant appears to have qualified and passed the said trade test. A perusal of the record showed that the applicant, in fact, secured less than the qualifying marks of 24 out of 40 in the theory paper as prescribed in the schedule for trade test in respect of Drivers as quoted above. In the result reported by the department, it is clear that he did not have the minimum marks in the theory paper as required. Therefore, the authorities have taken their decision as laid down in the Scheme of the Staff Car Drivers. Hence, we do not find any illegality in their action.

10. In the circumstances and for the aforesaid reasons, the OA is dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh