

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

O.A.No.3717/2015

M.A.No.3368/2015

with

O.A. No.3719/2015

M.A. No.3366/2015

this the 11th day of October 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

O.A. No.3717/2015

Bharat Bhushan Abbhi (Aged about 63 years)
r/o C-183, Sector 52
Noida, Distt. Gautam Budh Nagar (UP).

..Applicant

(Mr. A K Ojha and Ms. Richa Ojha, Advocates)

Versus

1. Secretary (R)
Cabinet Secretary
Bikaner House Annex
Shahjahan Road, New Delhi – 110 001
Postal Address:
Paryavaran Bhawan, B2 Wing, 10th Floor
Room No.1001, CGO Complex, New Delhi – 23
2. Secretary
Ministry of External Affairs
South Block, New Delhi – 110 011.

..Respondents

(Mr. Hanu Bhasker and Ms. Ramjan Khan, Advocates)

O.A. No.3719/2015

Ashok Kumar Machalla,
R/o B-249, Kendriya Vihar,
Sector 56, Gurgaon, Haryana.

..Applicant

(Mr. A K Ojha and Ms. Richa Ojha, Advocates)

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1. Secretary (R)
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O R D E R (ORAL)

Justice Permod Kohli:

The facts and issues being identical, we propose to dispose of both these OAs by this common order.

M.A. No.2268/2015 in OA No.3717/2015

2. Through the medium of this misc. application, the applicant is seeking condonation of delay in filing the O.A. The claim of the applicant in the O.A. pertains to grant of foreign allowance/local servant allowance component for foreign deputation while he was posted at E/I Kathmandu on special assignment as Attaché for the period 24.08.2004 to 14.11.2007, with interest at the rate of 9% per annum. The applicant is also claiming arrears of allowance amounting to Rs.355705/- as local servant allowance component and Rs.245436/- as interest thereon.

3. It is stated that the applicant was posted in the Embassy of India, Kathmandu, Nepal for the aforesaid period. The said allowance is payable as per Rule 134 (2) of R&AW (RC&S) Rules, 1975 as amended in 2003. The applicant has relied upon paragraph 9.49 of the NGO Hand Book of Administrative Instructions, which, *inter alia*, reads as under:-

“No action should be taken under any circumstances, including recourse to courts of law, that would directly or indirectly result in breach of security and enable outsiders and unauthorized personnel to come to know about the manner in which our officers are deputed abroad.”

4. The applicant further relies upon the instructions, which are as under:

“3. In view of the above, all revertee officers are instructed that no copies of communications issued by the special assignment authorities should be retained in the personal custody of the revertee officials/officers. These should be destroyed at their end and destruction certificate (in the proforma enclosed) to this effect may be sent to the undersigned immediately.”

5. It is stated that the applicant, being prevented by the aforementioned instructions, could not file the petition seeking appropriate relief at an early date. The applicant has placed reliance upon some judgments, which are referred to hereinafter.

6. Another submission of learned counsel for applicant is that similar allowance has been paid to a number of officers and thus he cannot be an exception. It is admitted case of the applicant that he was reverted from the foreign assignment in 2007 itself and thereafter he retired from service on 30.06.2012. Neither on his reversion to the country in the year 2007, nor even after his retirement he approached the Tribunal seeking claim made in the present O.A. The present OA was filed on 29.09.2015.

MA No.3366/2015 in OA No.3719/2015

7. The applicant in this OA was serving in R&AW under the Cabinet Secretariat, and was posted in the Indian Embassy, Nepal on foreign deputation. He served there from 09.05.2003 till 12.01.2007. His claim is also for the foreign allowance/local servant allowance for the period 09.05.2003 to 12.01.2007 amounting to Rs.4,07,475/- with interest at the rate of 9% per annum amounting to Rs.3,17,830/-. The plea of this applicant is similar as in the other OA No.3717/2015. The applicant in this OA on being repatriated in January, 2007, retired from service in December, 2012. This OA has been filed on 29.09.2015. Through MA No.3366/2015, the applicant has sought condonation of delay of eight years and eight months caused in filing the present OA.

8. To buttress his plea, learned counsel for applicant has placed reliance upon the judgment of this Tribunal in O.A. 4412/2013 decided on 15.02.2017 – **Virendra Sahai Bhatnagar v. Secretary (R) & another**. In this case, the applicant was posted on deputation as Senior Field Officer in Ministry of External Affairs and thereafter further sent on a cover assignment from 18.08.2003 to 20.11.2006 on a post which was lower than what he was holding in the headquarters. Similar claim in regard to foreign allowance was made by the applicant therein by filing the O.A. in the year 2013. The Division Bench of this Tribunal, relying upon the judgments in O.A. No.929/2008 decided on 05.03.2009 – **Vinod Kumar Jain v. Union of India** and O.A. No.4518/2013 decided on 23.07.2016 – **Sushanta Bhattacharya v. Secretary (R) & another**, allowed the said O.A. vide order dated 15.02.2017 and respondents were directed to pay the arrears of servant allowance with interest @ 6%. We have the privilege to go through the said judgment.

9. To the contrary, Mr. Hanu Bhasker, learned counsel for respondents has relied upon two judgments of the Hon'ble High Court of Delhi in W.P. (C) No.3486/2016 decided on 27.04.2016 – **Ashwani Kumar Sharma v. Union of India & another** and W.P. (C) No.8784/2016 decided on 30.09.2016 – **Pronabendra Chakraborty v. Union of India & another**.

10. In **Ashwani Kumar Sharma**'s case (supra), under similar circumstances, this Tribunal declined the prayer for condonation of delay. The applicant therein also sought protection under para 9.49 of the NGO Handbook of Administrative Instructions, as is the plea in the present case. The applicant therein, aggrieved of the dismissal of his OA by the Tribunal, approached the Hon'ble High Court of Delhi by filing writ petition WP(C) No.3486/2016. The Hon'ble High Court, on consideration, dismissed the writ petition vide judgment dated 27.04.2016 with following observations:

“4. The Tribunal in the impugned order has noticed and referred to paragraph 9.49 of the NGO Handbook of Administrative Instructions, which stipulates that no action should be taken under any circumstances, including recourse to Courts of law which would directly or indirectly result in breach of security or enable outsiders and unauthorised personnel to come to know about the manner in which officers were deputed abroad. We do not think the aforesaid departmental instructions had prevented and barred the petitioner from raising his claim on or after 23rd March, 2006, when he returned to India. The said claim could have been raised by making appropriate pleadings without breaching and violating paragraph 9.49 of the NGO Handbook of Administrative Instructions. The claim for payment is predicated on the petitioner's posting in Munich, and is not relatable and connected with the fact that the petitioner was a member of Cabinet Secretariat Service. We perceive and believe that the reliance placed on the said paragraph is by way of convenience as the petitioner did not have a valid ground and could not explain the long delay of seven years and nine months. The impugned order passed by the Tribunal has noticed all the relevant facts and has rightly rejected

the application for condonation of delay. We do not see any reason to differ with the view taken by the Tribunal. The writ petition is dismissed."

11. In **Pronabendra Chakraborty** (supra) also, a similar issue came up for consideration before this Tribunal. The OA was dismissed by the Principal Bench and a review thereagainst also failed. In the said case also, the claim was for the servant allowance while the applicant was working as Attache in the Indian High Commission, Dhaka, Bangladesh. Similar plea of impediment while serving was raised. The OA was filed after four years of retirement. The applicant therein relied upon the case of **V. K. Jain v Union of India & others** (OA No.929/2008), which is also relied upon by the present applicants. The Tribunal having not been convinced with the sufficiency of the cause for delay in filing the OA, dismissed the same as barred by time, and a writ petition preferred thereagainst before the Hon'ble High Court of Delhi also came to be dismissed vide judgment dated 30.09.2016. **V. K. Jain's** case was duly considered by the Hon'ble High Court, and holding the same to be judgment not *in rem*, the matter was considered independently and the relief denied. In the present case, the applicants were repatriated to India in the year 2007 and there was no impediment for them to have filed the OAs immediately after their repatriation. The applicant in OA No.3717/2015 retired from service on 30.06.2012 while the applicant

in OA No.3719/2015 retired on 31.12.2012, whereas the respective OAs have been filed on 29.09.2015, i.e., more than three years after retirement of the applicants. We find no genuine reason to condone the delay which is sought simplicitor on account of the alleged impediment of paragraph 9.49 of the NGO Handbook of Administrative Instructions, which has been duly discussed and interpreted by the Hon'ble High Court in case of **Ashwani Kumar** (supra).

12. In view of the above circumstances, the applications for condonation of delay are hereby dismissed, and consequently the OAs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/