

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

MA No.3641/2017 in
OA No.3426/2017

Order reserved on:10.07.2018
Order pronounced on:23.07.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

Ms. Purna Sharma, ID No. 19801212
W/o Sh. R.K. Sharma
Retd. TGT (Natural Science), Age 61 years
SKV, G.T.B. Nagar, Delhi-110009
R/o 210, SFS Flats, Mukherjee Nagar,
Delhi-110009

-Applicant

(By Advocate: Shri B.K. Berera)

Versus

1. The Govt. of NCT of Delhi
Through the Chief Secretary,
Delhi Secretariat, Players Building,
New Delhi.
2. The Secretary,
Directorate of Education, Old Sectt.
Govt. of NCT of Delhi
Delhi-110054.
3. The Dy. Director of Education,
Distt. North West-A, BL Block, Shalimar Bagh,
Delhi-110088

4. The Principal,
Sarvodaya Kanya Vidyalaya,
G.T.B. Nagar, Delhi-110009

-Respondents

(By Advocate: None)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

Heard Shri B.K. Berera, learned counsel for the applicant and perused the pleadings on record. None appeared on behalf of the respondents. In spite of granting substantial time, they have not even filed any counter in the MA.

2. The applicant, a retired TGT (Natural Science), filed the OA seeking a direction to grant the 2nd and 3rd up-gradations under the MACP Scheme.

3. The applicant also filed MA No.3641/2017 seeking condonation of the delay in filing the OA.

4. In ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649***, after discussing the entire case law on the point of condonation of delay, the Ho'ble Apex Court 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".

5. The delay in filing the OA was abnormal. However, the applicant explained the same by stating that since her below bench mark ACRs were not communicated to her, she was not in a position to question the same in time, and the respondents showing the gradings in her ACRs, denied her the financial upgradations.

6. Further, the cause of action is pertaining to non-fixation of the correct pay scale. The Hon'ble Apex Court in ***M.R. Gupta Vs. Union of India (1995) 5 SCC 628*** held that wrong fixation/non-fixation of a pay scale is a continuous cause of action.

7. In the circumstances and for the aforesaid reasons, the MA is allowed and the delay is condoned, however, subject to payment of cost of Rs.3000/- (Rupees Three Thousand Only) payable to the Delhi Legal Services Authority within 3 weeks from the date of receipt of this order.

8. On payment of the cost, list the OA on 24.08.2018 for filing reply in the main OA by the respondents.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS