

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

M.A. No. 3306/2014 In
O.A. No. 3818/2014

Reserved on :13.07.2018
Pronounced on : 19.07.2018

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

Assistant Sub-Inspector Satyabir Singh,
Belt No. 4882-D, PIS No. 28871749

Presently posted at:

Security Lines 'E' Block,
S/o Shri Mahipal Singh,
R/o D-892, Gali No.13,
Ashok Nagar, Shahdara, Delhi

Group 'C', Aged 47 years. .. Applicant

(By Advocate: Shri Sourabh Ahuja)

Versus

1. GNCT of Delhi,
Through Commissioner of Police,
Police Head Quarters,
I.P. Estate, MSO Building,
New Delhi.
2. Deputy Commissioner of Police,
(Headquarters), PHQ,
I.P. Estate, MSO Building,
New Delhi. .. Respondents

(By Advocate: Shri K.M. Singh)

ORDER

By Mr. V. Ajay Kumar, Member (J)

Earlier, the instant OA No.3818/2014 of the applicant was disposed of by this Tribunal on 13.12.2016 after

considering the decision of a Five Member Bench decision of this Tribunal in OA No. 2047/2006 (with connected cases) in **Abdul Nazeer Kunju Vs. Union of India and Others** dated 28.03.2011 and also after noticing the fact of pendency of W.P. (C) No.2414/2012 filed in **Abdul Nazeer Kunju's case** (supra). However, in W.P. (C) 5751/2017 dated 12.07.2017 filed by the respondents against the aforesaid order in the instant OA No.3818/2014, the Hon'ble High Court of Delhi noticing that M.A. No. 3306/2014 filed by the applicant along with OA No.3318/2014 seeking condonation of delay in filing the said OA was not decided by this Tribunal before disposing of the main OA, remanded back the OA No.3818/2014 along with MA No.3306/2014 for fresh disposal. Accordingly, the instant MA has been listed along with the main OA for disposal.

2. Heard Shri Sourab Ahuja, learned counsel for the applicant and Shri K.M. Singh, learned counsel for the respondents and perused the pleadings on record.

3. The applicant filed the instant OA seeking seniority in the rank of Assistant Sub Inspector (Executive) with effect from December, 2007, i.e., in which year he was granted out of turn promotion to the said rank, by questioning the orders of the

respondents dated 19.01.2012. He filed the MA No.3306/2014 seeking condonation of the delay of 648 days, in filing the OA.

4. The learned counsel for the applicant submits that since a Five Member Bench of this Tribunal in **Abdul Nazeer Kunju** (supra) was in his favour, and that since the respondents assured him of changing their decision by granting him seniority with effect from December, 2007, he made repeated representations to them and in that process, the delay had occurred. He further submits that the said delay is due to the said reasons only but neither wilful nor wanton. Accordingly, he prayed for condonation of the same.

5. On the other hand, the learned counsel for the respondents vehemently opposed the prayer for condonation of delay by submitting that repeated representations do not save or extend the limitation and accordingly prayed for dismissal of the MA.

6. 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".

7. In the instant case, it is not in dispute that the 5 Member Bench of this Tribunal in **Abdul Nazeer Kunju** (supra) decided the principle in favour of the applicant's case. It is also not in dispute that the Writ Petition filed by the respondents against the said

decision is still pending on the file of the Hon'ble High Court of Delhi.

8. In the circumstances and in view of the above referred decision on the issue of condonation of delay in filing applications/petitions, and in the interest of justice, the MA is allowed and the delay is condoned, however, subject to payment of cost of Rs.5000/- (Rupees Five Thousand Only) payable to the Delhi Legal Services Authority within 3 weeks from the date of receipt of this order.

9. On payment of the cost, list the OA for final hearing on 24.08.2018 since the pleadings are also complete in the OA before the appropriate court, as per the roster.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)

RKS