CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

M.A.NO.060/00679/2017 in
O.A.NO.060/00477/2017

Orders pronounced on:31.07.2018
(Orders reserved on: 27.07.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &**
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

V. K. Gautam, age 62 years,

Son of Late Sh. Ram Parkash Gautam,

Resident of 103, Gaurs Palaza,

B-7, Salimar Garden Extension-II,

Sahibabad, District Ghaziabad (U.P),

Group-A, Chief Engineer.

Applicant

By: Mr. S. K. Yadav, Advocate.

Versus

1. RITES LTD through Chairman and Managing Director,
   RITES BHAWAN, 1,
   Sector 29, Gurgaon,
   Haryana.
2. Board of Directors, RITES Ltd.
   through its Chairman,
   RITES Bhawan, 1, Sector 29, Gurgaon,
   Haryana.
3. Railway Board, through its Secretary, Ministry of Railways, Government of India, Rail Bhavan, Raisina Marg, New Delhi-110011.

… Respondents

By : Mr. Rajiv Sharma, Advocate.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, inter-alia, for quashing the order dated 13.6.2011 (Annexure A-23), vide which the penalty of reduction to the lower post was imposed upon him and order dated 2.2.2012 (Annexure A-26) vide which his appeal was dismissed etc. while proceeding under RITES Conduct, Discipline & Appeal Rules, 1980, on the charges that he had failed to personally check the attendance and the number of Security Supervisors and Guards actually deployed by M/s Truguard Security from time-to-time and also not maintained any register at his end to record the shortfall in the manpower as per contracts with the Agency, resulting in increase in number of thefts, table lockers found forcibly opened, articles like mobile phones, calculator etc. he failed to supervise enforcement of the DGR guidelines of deploying minimum 90 percent ex-servicemen as Security Guards and he wrongly verified the monthly bills etc. He has also sought quashing of order/note dated 23.3.2015 (Annexure A-28), vide which his request for review has been declined, as having been a closed affair.

2. Being aware of the fact that the O.A. is barred by the law of limitation, the applicant has moved an M.A.No.060/00679/2016, under section 21(3) of A.T. Act, 1985, read with section 151 CPC, seeking condonation of delay in filing the Original Application. It is claimed that his request for review against impugned orders dated 25.8.2011 and 2.2.2012 has been declined on 15.5.2015. He claims that Managing Director illegally acted as Disciplinary Authority and Chairman too wrongly assumed power of Appellate Authority, as the Managing Director is Appellate Authority and Chairman is Reviewing Authority.

Thus, the remedy of review has been taken away from him, which is illegal. There is statutory remedy of review under rule 33 of Rules, which cannot be denied to him. Under rule 20 of A.T. Act, 1985, it is necessary to avail statutory remedy available to the officers / officials. Thus, applicant kept on pursuing his remedy of review under the rules, causing delay in filing this O.A. He has been requesting from 28.6.2007 (Annexure A-15) itself for separation of D.A, A.A. and R.A. but to no avail. He made several representations during 2013-2014 for review of his case (Annexure A-27- coolly). Ultimately, his case was declined on 15.5.2015, on the plea that since applicant's appeal was considered by Chairman, RITEs, there was no higher authority to consider his Review Petition. He claims that since BOD in its 162th meeting held on 30.11.2007 decided to delete BOD as an Authority for considering D&AR Cases, and in 2014, BOD was again inserted as an authority under the rules, so his case deserved fresh consideration but authorities have declined to review his case. He claims that he is convinced that respondents are bent upon perpetually denying him statutory remedy of review by R.A. to protect illegal orders and as such there are sufficient reasons for not filing the O.A. in time and delay in filing it may be condoned.

3. The respondents have opposed the claim of the applicant for condonation of delay by pleading that appeal of the applicant stood rejected on 2.2.2012 and O.A. has been filed with a delay of 5 years, that too without any proper explanation and as such M.A. and O.A. may be dismissed.

4. The learned counsel for the applicant would argue that since the applicant kept on pursuing his remedy of review, so the delay in filing of the O.A. may be condoned and O.A. be heard on merits, whereas

learned counsel for respondents would urge that the limitation for filing an O.A. is one year, and at the most 18 months, if an appeal is filed, but one cannot be allowed to keep on filing repeated representations and claim that delay in filing a case should be condoned.

5. We have considered the submissions made by both the learned counsel deeply and examined the material on file.

6. The learned counsel for the applicant vehemently argued that rule 33 of the Discipline and Appeal Rules makes a provision for filing a Review and in terms of Section 20 of A.T. Act, 1985, the applicant kept on pursuing his remedy of review but the respondents failed to act upon his repeated pleas, and as such delay in filing the O.A. is liable to be condoned as respondents cannot take benefit of their own wrong in sitting tight over the matter. Rule 33 of the Rules, being relevant is reproduced as under:-

> "Notwithstanding anything contained in these Rules, the reviewing authority as specified in the schedule may call for the record of the case within six months of the date of the final order and after reviewing the case pass such order thereon as it may deem fit"

A bare perusal of aforesaid provision makes it clear that it does not afford any statutory remedy to the applicant to file a review. In fact, it is a provision which affords the Reviewing Authority to review final orders, on its own, rather than filing of any review petition by delinquent official. The further portion of the rules makes it clear that if authority wishes to enhance the penalty, it has to issue a show cause notice in consonance with principles of natural justice and then impose the enhanced penalty. It does not at all, from any angle, states that filing of review is a statutory remedy. Even if, it is held to be so, the applicant could have filed a Review Petition immediately after appellate authority's order. Finding no response for a period of six

months or so, he should have rushed to this Tribunal. But he kept on submitting representations after representations and in that process waited for 5 years, before filing this O.A. It is well settled principle of law that repeated representations do not extend the period of limitation and it is a valid ground to reject a claim.

7. To say the least, the applicant has filed a very vague application. He has not even mentioned as to number of delay for which O.A. is barred by law of limitation. It is a general application, lacking any specific particulars or grounds, much less supported with cogent reasons and cannot be allowed, at all, and deserves to be dismissed out rightly. Now we proceed to examine legal position on the issue.

8. An identical question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

> "Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."

9. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. It was held as under:-

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 "The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15. When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue. If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration'

> without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

10. Again in the case of **D.C.S. NEGI VS. U.O.I. & OTHERs**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011, it has been held as under:

> "A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted 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)."

11. Also, in the case of **BHARAT SANCHAR NIGAM LIMITED VS. GHANSHYAM DASS ETC.** (2011) 4 SCC 374, a three Judge Bench reiterated the principle laid down in the case of **JAGDISH LAL VS. STATE OF HARYANA** (1977) 6 SCC 538, that time barred claim should not be entertained by the Tribunal. Similar view has also been taken in the following decisions:-

(a) AFLATOON & ORS. VS. LT. GOVERNOR, DELHI & OTHERS, AIR 1974 SC 2077
(b) STATE OF MYSORE VS. V.K. KANGAN & OTHERS, AIR 1975 SC 2190
(c) MUNICIPAL COUNCIL, AHMEDNAGAR & ANOTHER V. SHAH HYDER BEIG & OTHERS, AIR 2000 SC 671
(d) INDER JIT GUPTA VS. UNION OF INDIA ETC. (2001) 6 SCC 637
(e) SHIV DASS VS. UNION OF INDIA ETC., AIR 2007 SC 1330
(f) REGIONAL MANAGER, A.P.SRTC VS. N. SATYANARAYANA & OTHERS, (2008) 1 SC 210 and
(g) CITY AND INDUSTRIAL DEVELOPMENT CORPORATION VS. DOSU AARDESHIR BHIWANDIWALA & OTHERS, (2009) 1 SCC 168.

12. Therefore, it is held that since the applicant has miserably failed to plead and prove the ground, much less sufficient and cogent to condone the inordinate delay, and as such M.A. lacks any merit and has to be dismissed.

13. Now we proceed to consider the decisions relied upon by the learned counsel for the applicant in the following cases :-

(a) **B. MADHURI GOUD VS. B. DAMODAR REDDY**, (2012) 12 SCC 693, in which it was held that sufficient cause for delay must be liberally viewed in a pragmatic manner so as to sub serve ends of justice and discretion to condone delay should be based not on length of delay but and sufficient and satisfactory explanation. It has been held that delay should be condoned to secure ends of justice, on case to case basis and not hard and fast rule can be applied across the board.

(b) **VEDABAI ALIAS VAIJAYANATABAI BABURAO PATH VS. SHANTARAM BABURAO PATIL & OTHERS**, (2001) 9 SCC 106. In this case, again similar principle was laid down that delay should be condoned to secure ends of justice, on case to case basis and not hard and fast rule can be applied across the board. The condonation should be done for substantial justice to the party.

© **UNION OF INDIA & OTHERS VS. SHANTIRANJAN SARKAR** (2009) 3 SCC 90. It was held that state should not be allowed to take

defence of limitation, to take advantage of its own wrong.

(d) **DR. K.S. CHANDRAKANT & OTHERS VS. THE UNION OF INDIA**, ILR 2016 KAR 2712. It was held that Tribunal is vested with power of judicial discretion to condone delay and there is no outer limit or period of time provided for condonatioin of delay but one has to show sufficient cause.

14. One cannot have any dispute with the proposition of law laid down in the aforesaid cases but equally, one cannot also lose sight of the fact that one thing which the courts have consistently laid down is that one has to show sufficient cause for not invoking jurisdiction of Court of law in time. In this case, as held above, the applicant has not been able to show any cogent grounds for filing the O.A. with huge delay. The Courts have clearly held that repeated representations do not extend the period of limitation and that being so, the action of the applicant in making repeated pleas, and then inviting a reply in 2015, would not afford him a fresh cause of action in 2015, as it did arose in his favour in 2012 itself, when his appeal had been declined. Secondly, he himself claims that he started making representation in 2007 itself for separation of authorities. So, he was well aware about the fats and cannot be now allowed to turn around and plead that huge delay in filing the O.A. be condoned.

15. Before parting, one can also note that the BOD was deleted as an authority in Discipline matters on 30.11.2007 and was re-inducted in 2014. Case of the applicant stood closed in 2012 itself. Thus, even otherwise, the applicant cannot take benefit of fresh provision which

was made in 2014 and would apply prospective only, and cannot be invoked for considering his case, which was closed in 2012 and authorities have rightly held that his case already stood closed and as such, we do not find any merit in the fervent plea taken by the applicant.

16. In the light of the aforesaid reasons, the application for condonation of delay is dismissed. Resultantly, the OA, shall also stand dismissed being barred by limitation. However, the parties are left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(AJANTA DAYALAYAN)
MEMBER (A)

Place: Chandigarh.
Dated: 31.07.2018

HC*