

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

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**Misc. Application No.290/00345/2016  
in  
Original Application No.290/00519/2016**

**This, the 20th day of July, 2018.**

**Order reserved on 18.07.2018**

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**CORAM:**

**HON'BLE SMT. HINA P. SHAH, MEMBER (J)**

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**Raj Kumar S/o Shri Fateh Singh, aged about 59 years, R/o village Deva Muklan, Tehsil & District Hisar (Haryana), presently posted as Pointsman (A), North Western Railway, at Arjansar (AS), Tehsil Loonkaransar, District Bikaner (Raj).**

**...APPLICANT**

**BY ADVOCATE : Mr. Deepak Nehra.**

**VERSUS**

- 1. Union of India through General Manager, HQ Office, North Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17.**
- 2. The Divisional Railway Manger, North Western Railway, Bikaner Division, Bikaner.**
- 3. The Senior Divisional Operations Manager, North Western Railway, Bikaner.**

**RESPONDENTS**

**BY ADVOCATE : Mr. Vinay Chhipa**

**ORDER**

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**The applicant has filed the present OA No.519/2016 challenging the impugned order dated 21.07.2014 on 21.09.2016 and subsequently filed MA No.345/2016 for condonation of delay on 06.12.2016.**

- 2. In the Misc. Application for condonation of delay, the**

**applicant submits that he had earlier filed a Civil Suit before the Court of Civil Judge (Senior Division), Sirsa against the railway authorities as well as Smt. Sona Devi (wife of applicant) seeking permanent and mandatory injunction restraining the railway authorities from taking any disciplinary action against the applicant with respect to the damage rent and restraining them from charging any damage/penal rent from him in respect to the house in question.**

**3. The plea of the applicant is that he has withdrawn the Civil Suit and the same was disposed of on 09.04.2015 with liberty to avail the proper remedy.**

**4. It is his grievance that after passing of the said impugned order dated 21.07.2014, the applicant also approached the respondent authorities for redressal of his grievance but no purpose was served.**

**5. The applicant further submits that since he is an employee in the respondent department and does not get leave immediately, therefore, he could not come to Jodhpur for filing of the present OA within the time specified. Therefore, there was no intention on the part of the applicant to cause any delay, the delay has been caused due to unavoidable circumstances. Thus, he prayed that the delay in filing the OA No.519/2016 may be condoned as the same is bonafide and unintentional.**

**6. The respondents have filed a counter to the said Misc. Application of the applicant, wherein they averred that although the applicant preferred a civil suit before the learned Civil Judge (Junior Division) Sirsa, and the said suit was dismissed as withdrawn and no such liberty whatsoever was given to the applicant to approach the appropriate forum for redressal of his grievance. The respondents has placed copy of order passed by the learned Civil Judge (Junior Division), Sirsa dated 09.04.2015 along with the reply. It has been further averred that the order which is under challenge was passed on 21.07.2014 and thereafter suit itself was dismissed on 09.04.2015 and the present Original Application itself has been filed before this Hon'ble Tribunal on 21.09.2016, therefore, there is more than 2 years delay.**

**7. It has been further averred by the respondents in reply to the Misc. Application that no document was produced by the applicant to show that he was not granted leave to come to Jodhpur for filing the present OA. It has also been averred that the delay cannot be condoned as a matter of right until and unless litigant does not satisfy to the Hon'ble Court with justifiable and valid reasons which prevent to such litigant to approach the Hon'ble Court within stipulated time period. Therefore, the respondents prayed that the Misc. Application filed by the applicant is being devoid of merits and same may be dismissed.**

**8. I have heard Shri Deepak Nehra, learned counsel for the applicant and Shri Vinay Chhipa, learned counsel for the respondents**

on Misc. Application No.345/2016 for condonation of delay. I have also perused the material available on record and considered the arguments of both the parties with respect to seeking relief for condonation of delay.

9. It is an admitted fact that the applicant has challenged the impugned order dated 21.07.2014 by way of filing the present OA on 21.09.2016. It is also an admitted fact that earlier the applicant had approached the learned Civil Judge (Junior Division) Sirsa by way of filing a Civil Suit for redressal of his grievance. The learned Civil Judge (Junior Division), Sirsa vide order dated 09.04.2015 dismissed the said suit as under:-

"Plaintiff appeared and made a statement that he does not want to pursue with the present suit and prayed for dismissed as withdrawn. A separate statement to that effect has been recorded. In view of his statement, present suit is hereby dismissed as withdrawn. File be consigned to record room after due compliance."

10. It is contended by the learned counsel for the applicant that in the separate statement recorded before the learned Civil Judge (Junior Division), Sirsa, the applicant specifically mentioned in his statement that since he has approached the wrong forum for redressal of his grievance, therefore, the present suit may be dismissed as withdrawn with a liberty to him to approach the appropriate forum, and on that statement the said suit was dismissed as withdrawn. I find force in the contention of the learned counsel for the applicant that the said suit has been dismissed with liberty to him to approach the appropriate forum.

11. The delay has been caused bonafidely and unintentionally because the applicant earlier had approached the wrong forum for redressal of his grievance and there is only about 2 years of delay in filing the OA. Therefore, I am satisfied with the explanation given by the applicant for condoning the delay. The Hon'ble Supreme Court has reiterated in catena of judgments that the matter should always be decided on merits rather than technicalities. Therefore, in the interest of justice, the Misc. Application No.345/2016 is allowed and the delay in filing the OA No.519/2016 is condoned.

12 List the OA on 20.08.2018 for final hearing.

**(HINA P. SHAH)**

**MEMBER**

**(J)**

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