CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. M.A. 835 OF 2017
M.A. 836 OF 2017
O.A. 1095 OF 2000

Date of order: 30. 10. 2017

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Krisha Chandra Sarma,
Son of R.C. Sharma,
Aged about 78 years,
Ex. ATO,
Special Bureau,
Hathikanda, West Bengal,
Since retired on superannuation on 30.11.1997,
Residing at House No. 3565, Sector 37-D,
Chandigarh, Pin - 160037,
Presently residing at 92, Santinagar,
House of Mr. Bhowmick, Kolkata - 700 040.

.. Applicants

Vs.

1. Union of India,
Service through the Secretary,
Cabinet Secretariat, Room No. 7,
Bikaner House (Annex), Shahjahan Road,
Delhi - 110 011.

2. The Secretary,
Cabinet Secretariat, Room No. 7,
Bikaner House (Annex), Shahjahan Road,
Delhi - 110 011.

3. Director of Accounts,
Cabinet Secretariat, (Special Wing),
East Block - IX Level - V,
R.K. Puram,
New Delhi - 110 066.

4. Dy. Director of Accounts,
Cabinet Secretariat (Special Wing),
East Block - IX Level - V,
R.K. Puram,
New Delhi - 110 066.

5. Sr. Section Officer,
Office of the Director of Accounts (Special Wing),
East Block - IX Level - V,
R.K. Puram,
New Delhi - 110 066.

6. **The Estate Manager, Government of India,**
5, Esplanade East, Kolkata - 700 069.

.. Respondents

For the Applicant : Mr. J.R. Das, Counsel

For the Respondents : None

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Two M.A.s bearing Nos. 835/2017 and 836/2017 has been filed in connection with restoration and condonation of delay with reference to O.A. No. 1095 of 2000 (Krishna Ch. Sharma v. Union of India & ors.) respectively.

2. In the Original Application, the applicant had prayed, inter alia, for cancellation of letter dated 20.7.2000 (Annexure 'C') and also for refund of a sum of Rs. 1,70,727/- deducted arbitrarily from his DCRG vis-a-vis other retiral benefits along with other relief which had been dismissed for default by this Tribunal on 1.4.2005.

3. The reasons advanced by the applicant for his purported "unwilling" delay of about 11 years in filing of the prayer for restoration of the aforesaid O.A. has been explained as follows:-

(i) The applicant could obtain the copy of the said O.A., reply and the order dated 1.4.2005 on submission of necessary cost to the Registry and has filed the Restoration Application within 30 days thereafter.

(ii) His chronic ailments together with old age problems have constrained him on medical grounds.

4. The prayers of the applicant for condonation of delay as well as that for restoration of the O.A. were examined and the Ld. Counsel for the

applicant was heard. None appeared for the respondents.

5. It is seen that the Tribunal, while dismissing the O.A. for default on 1.4.2005, had categorically stated as follows:-

> " None is present on behalf of the applicant. A notice was issued to the applicant on 2.11.2004 by the Registry through Registered Post informing him that his advocate has already expired. Therefore, he may engage another lawyer, if he thinks fit and proper. In spite of this notice having been sent to the applicant, neither the applicant is present nor he is represented by any advocate. It appears that the applicant is not interested in prosecuting the case. Accordingly, the O.A. is dismissed for default as well as for non-prosecution."

6. From this it appears that the applicant had received the notice from the Registry well before the date of dismissal so as to enable him to be represented either personally or through his Ld. Counsel. It is obvious that there was no response from the applicant in spite of notice received. This assails the applicant's contention that he had filed the restoration application within 30 days after obtaining the order dated 1.4.2005. The order was passed on 1.4.2005 and the restoration of the application and that for condonation of delay was filed on 22.9.2017. The logic of filing restoration application within 30 days of receiving copy of the order therefore fails.

7. The applicant has also stated that he had been suffering from different prolonged ad chronic ailments for the last 15 years. The documents advanced in this case, however, all relate to 2017.

8. We have heard the Ld. Counsel for the applicant and have perused the documents on record. Section 21 of the Administrative Tribunal Act, 1985 provides for limitation of filing an O.A. as under:-

> "21. **Limitation - (1)** A Tribunal shall not admit an application,-
>
> (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
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> (b) In a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a

period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

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Further, sub Section 3 of Section 21 of the said Act, provides as under:-

"(3)Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

9. Hence, we do not think that this is a fit case for condonation of delay and restoration of application after a gap of 11 years which could not be explained suitably by the applicant.

10. In this context, we refer to a judgment delivered by the Hon'ble Supreme Court in the matter of ***Chennai Metropolitan Water Supply & Sewerage Board and ors. V. T.T. Murali Babu***, reported in AIR 2014 SC 1141 in which the Hon'ble Apex Court have heavily come down on the Courts/Tribunals for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of the observations of the Hon'ble Apex Court as contained in paragraph 16 is quoted hereinbelow:-

" Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principles that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects activity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely "procastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay also brings in hazard and causes injury to the lis. In the case at hand, though there has been four years delay in approaching the court, yet the writ court

chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unauthorizedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which is acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

Further, in the matter of ***Lanka Venkateswarlu v. State of AP (2011) 4 SCC 363,*** the Hon'ble Apex Court has held as under:-

"26. Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay."

11. In our considered view, the explanation offered for condonation of delay borders on unjustified pathos, and hence does not merit consideration. The maxim of "vigilantibus, non dermientibus, jura sub-veniant" (law assists those who are vigilant and not those sleeping over their rights) is applicable in this case."

12. Hence, the M.A. bearing Nos. 835 of 2017 and 836 of 2017 relating to restoration and condonation of delay of O.A. No. 1095 of 2000 fails. No order on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

SP