



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. M.A. 350/00134/2016
O.A. 350/00403/2016

Date of order : 31.07.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Ashis Kumar Mondal,
Son of Late Aditya Prosad Mondal,
Aged about 55 years,
Working as Senior Section Engineer,
Drawing Section, Engineering Department
Under DRM of Senior DEC (Coordinate), E. Railway,
Howrah Division, Howrah, residing at
273/1, G.T. Road, Baidyabati, P.S. Srirampur,
Dist. Hooghly, Pin -- 712222.

---Applicant

1. The Union of India,
Through the General Manager,
Eastern Railway,
17, N.S. Road,
Fairlie Place,
Kolkata - 700 001.

2. Chief Personnel Officer,
Eastern Railway,
17, N.S. Road,
Fairlie Place,
Kolkata - 700 001.

3. Divisional Railway Manager,
Eastern Railway,
Howrah Division,
Howrah - 711 101.

4. Senior Divisional Personnel Officer,
Eastern Railway,
Howrah Division,
Howrah - 711 101.

---Respondents

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For the Applicant : Mr. T.K. Biswas, Counsel

For the Respondents : Mr. A.K. Banerjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

An M.A. bearing No. 350/00134/2016 has been filed for condonation of delay in connection with O.A. No. 350/00403/2016 (*Ashis Kr. Mondal v. Eastern Railway*). In the Original Application, the applicant has prayed for the following relief:-

"(a) An order directing the respondents to implement the proper decentralisation order dated 9.12.1987 (Annexure A-1) and further directing the respondents to recast the seniority list of 6.1.2012 (Annexure A-8) and placing the applicant in seniority position before his junior namely, Nabendu Mondal and thereafter release the all consequential benefits;
(b) An order directing the respondents to consider the representation dated 25.8.2012 within a specific period;
(c) Any other or further order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper.

2. The O.A. was filed seeking directions to implement the decentralisation order of the respondent authorities dated 9.12.1987 (Annexure A-1 to the O.A.) and to recast the seniority list dated 6.1.2012 (Annexure A-8 to the O.A.).
3. The application, however, was filed on 7.3.2016. Although the extent of the delay has not been specified in the Miscellaneous Application praying for condonation of delay, it is seen from records that a delay of 4 years and 2 months has occurred in filing the Original Application.
4. The applicant has explained the delay as follows:-

That, when the seniority lists were published, the applicant raised objections both verbally and written at the material time but the respondents had never informed their decision to the applicant till the date of filing of the Original Application and as it is the duty of the respondents to issue a suitable reply to the objections raised by the applicant, the applicant had waited for such a long period giving rise to delay in filing the O.A.

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5. We have heard the Ld. Counsel for the applicant and respondents and have perused the documents on record.

6. Section 21 of the Administrative Tribunal Act, 1985 provides the limitation period for filing the O.A. as under:-

"21.(1)(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;

(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 has 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 the said Act provides as under:-

(3) Notwithstanding anything contained in sub-section (1) of 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.

7. The applicant has submitted that he had represented against the said seniority list, so impugned, and the only representation we find on record is that dated 25.8.2012 (Annexed as A-8 to the O.A.). No further reminders are in the pleadings and, hence, the applicant's explanation that he had waited in vain for a reply from the respondent authorities in response to his application dated 25.8.2012 is not convincing. Although not on record, the seniority list might have been finalised at a later stage given that the provisional seniority list for Sr. Section Engineer was published on 6.1.2012 (Annexure A-8 to the O.A.) calling for representations on the same. In fact, the applicant could have challenged the final seniority list, if so issued, in an O.A. arising from the fresh cause of action, which he has chosen not to prefer till date. Hence, his explanation that he was waiting for the respondent authorities to reply to his letter dated 25.8.2012 does not serve as a convincing reason explaining the delay of nearly four years in filing the O.A.

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8. In this context, we refer to a judgment delivered by Hon'ble Supreme Court in the matter of **Chennai Metropolitan Water Supply & Sewerage Board and ors. Vs. 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 para 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 principle 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 inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring 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 had remained unauthorisedly 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 in 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. 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."

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9. In our considered view, the explanation offered for condonation of delay is neither sufficient nor satisfactory and thus does not merit consideration. The maxim of "*vigilantibus, non dormientibus, jura sub-veniant*" (law assists those who are vigilant and not those sleeping over their rights) is applicable in this case.

10. Hence, the M.A. No. 350/00134/2016 praying for condonation of delay in filing the O.A. No. 350/00403/2016 does not succeed and is dismissed accordingly.

11. Since delay is not condoned, there is no question of entertaining and deciding the O.A. on merit. Consequently, the O.A. stands disposed off.

12. There are no orders on the costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

