

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

M.A.No.260/194/2018
(Arising out of O.A.No.260/496/2018)

Date of Reserve: 21.01.2019

Date of Order: 04.02.2019

CORAM:

HON'BLE SHRI GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE SHRI SWARUP KUMAR MISHRA, MEMBER(A)

N.Nayak...Applicant

-VERSUS-

K.V.S....Respondents

Present:

For Applicant: Mr. D.P.Dhalasamant

For Respondents: Mr.H.K.Tripathy

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Heard the learned counsels for both the sides on M.A.No.194/2018 filed by the applicant seeking condonation of delay in filing O.A.No.496/2017.

2. Earlier this Tribunal vide order dated 12.01.2018 dismissed the said O.A. on the ground of O.A. delay and laches. Aggrieved with this, the applicant had approached the Hon'ble High Court of Orissa in W.P.(C) No.3506 of 2018 and the Hon'ble High Court vide order dated 18.05.2018 disposed of the said Writ Petition in the following terms:

"Heard Mr.D.P.Dhalasamant, learned counsel for the petitioner.

This application has been filed challenging the order dated 12.01.2018 passed by the learned Central Administrative Tribunal, Cuttack Bench, Cuttack in M.A.No.456/2017 & O.A.No.496 of 2017, wherein the application for condonation of delay filed by the petitioner was rejected on the ground that the petitioner cannot throw the burden on an unnamed advocate and accordingly dismissed the Original Application.

Learned counsel for the petitioner submitted that the petitioner explained the delay to the extent that he has handed over the documents to his counsel, but he has not taken the step nor informed the same about the petitioner.

Since major punishment has been imposed on the petitioner and learned counsel for the petitioner submits that the petitioner may be given liberty to explain the delay and disclose the name of the counsel, this Court remits the matter back to the Tribunal with an observation that in case the petitioner files such an application explaining the delay and disclosing the name of the counsel, in such event the Tribunal shall hear the application and dispose of the same in accordance with law".

3. In compliance with the aforesaid direction of the Hon'ble High Court, the applicant has filed by the above Misc. Application seeking condonation of delay. It has been submitted that the delay in filing the O.A. No.496/2017 is neither deliberate nor intention and it was due to fault of the Advocate Shri P.C.Kar who had held the brief on behalf of the applicant in the year 2006 and when the applicant approached Shri Kar, he was given an impression that the matter is pending adjudication before this Tribunal and it would take some time for final disposal. In the meantime, applicant

submitted representation dated 17.2.2014 to the Respondent No.3 for reconsideration of his case and to exonerate him of the charges after reviewing the report of the I.O. Since the matter could not develop, the applicant filed representation to Respondent No.2 through Respondent No.6 which however was forwarded vide Memo dated 18.8.2015, 05.02.2016 & 37.8.2016. In the meantime, the applicant could come to know that his Advocate Shri Kar had not filed any application before this Tribunal and in the circumstances, the applicant approached this Tribunal in the instant O.A. along with Misc. Application No.456 of 2017 for condonation of delay, which as indicated above, vide order dated 12.01.2018 of this Tribunal was dismissed on the ground of limitation.

4. In the M.A.No.194/2018 applicant has pointed out that he has been imposed major penalty by an authority who was neither competent to issue charge sheet nor impose punishment of compulsory retirement on him. It is the case of the applicant that in the interest of justice, equity and fair-play the delay should be condoned and the O.A. heard and decided on merit.

5. On being noticed, the respondents have filed objection to M.A.No.194/2018 for condonation of delay. It has been submitted that the averments made in the M.A. are vague and ambiguous and the applicant has not shown sufficient cause for not making the application within the prescribed period of limitation. It has been contended that the applicant

has not disclosed the full name of the Advocate to whom he had allegedly handed over the papers for filing the case and the date on which he handed over the papers and in the process the applicant has attempted to mislead this Tribunal. According to respondents, in order to make out a case the applicant has built up a fictitious story to cover up the limitation. To buttress their contentions, respondents have relied on various decisions of the Hon'ble Supreme Court on the point of limitation.

6. We have considered the rival submissions advanced at the Bar. Section 21 of A.T.Act, 1985 deals with Limitation. It lays down that :

- (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;
 - (b)in a case where an appeal or representation such as is mentioned in Clause0B0 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
- (2) Notwithstanding anything contained in sub-section (1), where-
 - (a)the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
 - (b)no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause(a), or, as the case may be, Clause(b), of subsection (I) of within a period of six months from the said date, whichever period expires later.

(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.

7. In the instant case, the peculiarity involved is that although the applicant had entrusted the brief to Shri P.C.Kar, Advocate and was given an impression that the application which has been filed would take some time for final disposal by this Tribunal, but the fact remains that no such application had been filed by the Advocate concerned and thereby, the delay has occurred in approaching this Tribunal. The applicant has also pointed out that the delay is neither deliberate nor intentional and it was the circumstances beyond his control. The applicant has also urged that he has been imposed major penalty by an authority who was not competent to impose any such punishment and it would be against all canons of law if the O.A. is not heard and decided on merit.

8. We have given our anxious thoughts to the arguments advanced by both the sides and we are satisfied that there was sufficient cause on the part of the applicant for not approaching the Tribunal within the

prescribed period of limitation. In view of this, we condone the delay in filing the O.A. M.A.No.194/2018 is thus allowed.

9. Registry is directed to list this matter on.....for admission.
10. Free copy of this order be handed over to learned counsel for both the sides.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATIL)
MEMBER(A)

BKS

