

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

MA No. 651 of 2016

OA No. 764 of 2016

WITH

OA No. 738 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Jatindra Dash, aged about 46 years, S/o Late Krushna Chandra Dash, At/PO – Bagal Sahi, PS – Niali, Dist. – Cuttack, at present working as a casual worker awarded with 1/30th status at Singhyanath mahadev Temple, Archaeological survey of India site, AT/PO – Gopinathpur, PS – Badamba, Dist. – Cuttack, Odisha.

.....Applicant.

VERSUS

1. Union of India, represented through the Secretary, Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi – 110001.
2. Director General, Archaeological Survey of India, Janpath, New Delhi – 110011.
3. Superintending Archaeologist, Archaeological Survey of India, Toshali Apartment, Satya Nagar, Block No. VI, 2nd Floor, Bhubaneswar, Dist. – Khurda, Odisha.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.B.Swain, counsel
Mr.P.K.Mohanty, counsel

Heard & reserved on : 8.2.2019

Order on : 12.2.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA for grant of temporary status retrospectively as he is aggrieved by the order dated 10.2.2014 (Annexure A/6) by which the respondents have rejected the claim of the applicant. The OA has been filed with the MA 651/2016 for condonation of delay. The reply/objection to the MA have also been filed by the respondents.

2. Heard learned counsel for the applicant and the respondents on the question of delay. Applicant's counsel submits that the applicant is continuing to be engaged as a casual labourer since 1996, but the temporary status as per the scheme of DOPT vide OM dated 10.9.1993 (Annexure A/2) has not been granted to the applicant as on date. Learned counsel for the respondents

submits that the applicant is not covered by the said OM dated 10.9.1993 and objection to the plea on the ground of abnormal delay in challenging the rejection order dated 10.2.2014 passed by the respondents and such delay has not been satisfactorily explained in the MA.

3. It is seen that the applicant in the MA has stated that the delay is due to financial difficulty and it is not intentional. Although impugned order dated 10.2.2014 has been challenged in this OA there is a delay of about six months which the applicant has prayed to condone such delay. Learned counsel for the applicant has submitted a copy of the decision of Hon'ble Apex Court in the case of *Tukaram Kana Joshi & Ors. thr. Power of Attorney Holder –vs- M.I.D.C. & Ors.* in Civil Appeal No. 7780/2012. It has been held in the said judgment as under :

"11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: *P.S. Sadasivaswamy v. State of T.N.* AIR 1974 SC 2271; *State of M.P. & Ors. v. Nandlal Jaiswal & Ors.*, AIR 1987 SC 251; and *Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors.*, (2009) 1 SCC 768;)

12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have infact emerged, by delay on the part of the Petitioners. (Vide: *Durga Prasad v. Chief Controller of Imports and Exports & Ors.*, AIR 1970 SC 769; *Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors.*, AIR 1987 SC 1353; *Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors.*, AIR 1993 SC 802; *Dayal Singh & Ors. v. Union of India & Ors.*, AIR 2003 SC 1140; and *Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors.*, AIR 2011 SC 2161)."

4. Learned counsel for the respondents on the other hand has enclosed the judgment in OA No. 2155/2011 decided by the Principal Bench along with his

reply. In that OA the applicant was also a casual employee under the Archaeological Survey of India (the respondents). The application was made for seeking service benefits like medical facilities, group insurance etc. as admissible to the temporary status holder employees. In that OA the applicant had been granted temporary status under the DOPT Scheme of 10.9.1993 as stated in the cited order. In that case there was a delay in approaching the Tribunal and it was held that it is not a fit case for condonation of delay.

5. Applying the cited judgment to the present OA and MA the applicant in the present case, it is noted that the applicant has not been given temporary status. The applicant has prayed for grant of temporary status through this OA. He has claimed to be working as casual labour since 1996 and is being engaged as on date as averred by the applicant's counsel. Hence, factually the present OA is distinguishable from the OA cited by the learned counsel for the respondents, where the concerned employee had been granted temporary status and the issue was for some other service benefits in that case.

6. Taking into account the facts and circumstances of the case I am of the opinion that this OA deserves to be heard on merit and there is a case for condoning the delay. The reasons stated for the delay in the MA No. 651/2016 i.e. financial and personal difficulties are found to be sufficient for condonation of delay. Accordingly, the delay in filing the OA is condoned and the MA No. 651/2016 is allowed.

7. The respondents are directed to file a short counter to the OA within three weeks.

8. List on 15.3.2019.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath