

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 854 of 2006**

**Present:**     **Hon'ble Mr.Gokul Chandra Pati, Administrative Member**  
                   **Hon'ble Mr.Swarup Kumar Mishra, Judicial Member**

Jhari Mallick, aged about 65 years, S/o Late Krupasindhu Mallick, Ex-Sr, Record Sertor CPO's Office, GRC, Kolkata, at present R/o Vill-Badkorkar, PO- Audhayee Kuru, Via- Raghunathpur, Dist-Jagatsinghpur.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Kolkata.
2. Assistant Personnel Officer (T), South Eastern Railway, Garden Reach, Kolkata.
3. Deputy Chief Personnel Officer (HQ), South Eastern Railway, Garden Reach, Kolkata.

.....Respondents.

For the applicant :       None

For the respondents:     Mr.S.K.Ojha, counsel

Heard & reserved on : 19.12.2018

Order on :n 27.12.2018

**O R D E R**

**Per Mr.Gokul Chandra Pati, Member (A)**

This Original Application (in short OA) has been filed by Sri Jhari Mallik, who was initially appointed as a Record Sorter under the respondent-railway on 5.5.1963. He was promoted as Senior Record Sorter in due course. It is stated in the OA that while working as Senior Record Sorter, he suffered from serious illness on 14.4.1993 and remained bed ridden till 23.11.1995. It is stated that he had informed the higher authority about his illness by post. It is further stated that during his illness, the respondents framed charges against him on 1.09.1995. Inquiry Officer (in short IO) was appointed. On 24.11.1995, the applicant appeared before the IO and produced a medical certificate from 15.4.1993 to 23.11.1995. It is stated by the applicant in the OA that the IO completed the inquiry without ascertaining the genuineness of his claim of absence due to illness. Then the disciplinary authority (respondent no. 2)

issued the order to remove the applicant from service vide order dated 15.1.1996 (A/3). After receiving the order removing him service, the applicant fell ill again and he became physically invalid.

2. Thereafter, vide letter dated 23/29.10.2003 (A/4), the applicant represented to the respondent no. 1 through the Union to change the order to treat the case as compulsory retirement so that he can get his retiral benefits. This representation was treated as revision petition, which was rejected as being a time barred petition vide order dated 20.10.2003 (A/5). This OA has been filed to challenge the punishment orders at A/3 and A/5, which upheld the punishment as per the order at A/3.

3. Then on 30.07.2008, the wife of the applicant filed petition informing that the applicant has expired on 16.07.2007 and requested to allow substitution of the wife and son as legal heirs of the applicant in the OA. this petition was considered and vide order dated 14.10.2009, it was rejected as it was filed with a delay and no delay condonation application was filed despite opportunity to the applicant's wife. Then the MA No. 126/2012 was filed to recall the order dated 14.10.2009. But since no follow up was done and the MA was also delayed, it was also dismissed vide order dated 23.08.2012.

4. The wife of the applicant filed Writ petition against the order of rejection before Hon'ble High Court. Vide order dated 24.03.2014, Hon'ble High Court quashed the order of the Tribunal and allowed the petitioner to file a fresh substitution petition enclosing the legal heir certificate, with following observations:-

" If such a petition is filed, we are confident that the learned Tribunal will take a sympathetic view towards wretched condition of the petitioners and permit the case to be heard on merit, as expeditiously as possible and dispose of the same in accordance with law after condoning the delay."

5. In pursuance to the order dated 24.03.2014 of Hon'ble High Court, the applicant's counsel filed the MA No. 268/2014 for substitution petition and MA No. 407/2014 for condonation of delay for filing the substitution application. Then the respondents took a long time for filing the reply to the MAs and finally on 11.08.2017 without serving a copy on the applicant's counsel who remained absent. Vide order dated 12.12.2018, a last opportunity was granted to the applicant's counsel to pursue the case and it was made clear that the matter shall be considered on merit under rule 15 of the CAT (Procedure) Rules, 1987 in case the applicant remains absent.

6. Accordingly, the matter was considered on 19.12.2018 on merit under the rule 15 of the CAT (Procedure) Rules, 1987 since no one appeared on behalf of the applicant. The MA No. 407/2014 to condone delay for filing the MA No.

268/2014 (substitution application) is to be considered. The reason given in the application is that Puni Mallik wife of Late Jhari Mallik is an old and uneducated lady who did not know the legal procedure. In the reply, the respondents have mentioned that the application has been filed under section 5 of Limitation Act, which is not permissible. It is also stated that the effect of the order of Hon'ble High Court does not take away the effect of delay already caused. In view of the observation of Hon'ble High Court that the matter should be heard on merit after condoning delay and since the respondents have taken more than three years for filing the reply to the substitution application and delay condonation application, we are inclined to accept that the reasons furnished for delay to be satisfactory. Hence, the MA No. 407/2014 is allowed and the delay in filing the MA No. 268/2014 i.e. the substitution application is condoned.

7. On consideration of the substitution application (MA No. 268/2014), the reply furnished by the respondents have mentioned that the applicant did not take step in time and delay was not condoned by Hon'ble High Court. It is seen that there is nothing in the reply, which was filed after about 3 years of filing the MA No. 268/2014 by the applicant, contradicting the legal heir certificate filed by the learned counsel for the applicant. Hence, there is no ground for rejecting the MA No. 268/2014 after condoning the delay. Hence, the MA No. 268/2014 is allowed and the applicant's counsel is directed to amend the OA by replacing the name of the applicant by his wife and his son by the next date. Since learned counsel for the applicant is absenting on a number of dates, the Registry to send the urgent free copy to the learned counsel for the applicant.

8. The MA No. 407/2014 and MA No.268/2014 are allowed as above.

9. It is seen that the pleadings in the OA have been exchanged. Learned counsel for the respondents shall inform whether any additional counter will be filed by him on the amendments approved above. List on 3.1.2019.

10. Free copy of the order be given to the learned counsels for both sides.

(SWARUP KUMAR MISHRA)  
MEMBER (J)

(GOKUL CHANDRA PATI)  
MEMBER (A)

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