

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH, MUMBAI**

**MISCELLANEOUS APPLICATION NO.427/2014**

**IN**

**ORIGINAL APPLICATION No.382/2014**

**DATE OF DECISION: 7<sup>th</sup> January, 2019**

**CORAM: HON'BLE DR. BHAGWAN SAHAI, MEMBER (A)**  
**RAVINDER KAUR, MEMBER (J)**

Shri Venkatesh Eknathrao Pande,  
 Age 65 years,  
 Retired as Station Manager,  
 Central Railway, Thane.  
 A/6, Prabodhan Gruh Sanstha,  
 Sector No.26, Swami Samarth Nagar,  
 Pimpri Chinchwad Navnagar,  
 Pune - 411 044. **... Applicant**

**( By Advocate Shri J.M. Tanpure)**

**VERSUS**

1. Union of India,  
 Through the General Manager,  
 Central Railway, CST,  
 Mumbai - 400 001.
2. The Divisional Railway Manager (Personnel),  
 Central Railway,  
 C.S.T. Mumbai - 400 001 **... Respondents**

**(By Advocate Ms. Sangeeta Yadav)**

**O R D E R (ORAL)**

**Per: Ravinder Kaur, MEMBER (J)**

By this order, we shall dispose of the MA  
 No.427/2014 filed in OA No.382/2014 for  
 condonation of delay in filing the OA. The

present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 claiming the following relief:-

*“(a) For the declaration that applicant is entitled for the benefit of Modified Assured Career Progression Scheme (MACP) i.e. for the third promotion/financial upgradation.*

*(b) Respondents be directed to revise and pay, enhanced pension, commuted value of pension, gratuity, Leave encashment etc. after granting benefit of MACP Scheme of 2009 alongwith 18% interest thereon.*

*c) Heavy/Exemplary costs to the extent of Rs.10,000/- be awarded to the applicant.”*

**2.** A perusal of OA reveals that the applicant was denied the benefit of MACP vide letter dated 27.04.2012 (Annexure A-1) which was received by the applicant in response to his application for the benefit of MACP Scheme. Vide letter dated 27.04.2012 he was informed that the applicant had been engaged as Traffic Signaler Grade Pay of Rs.1900 (110-180). He was granted first promotion as ASM GP of Rs.2800/-(330-560), 2<sup>nd</sup> promotion Grade Pay of Rs.4200/- (425-700) w.e.f. 01.01.84 and 3<sup>rd</sup> promotion as SS Grade Pay of Rs.4600 w.e.f. 24.03.1997. Thus, he was not entitled for MACP Scheme.

**2.1** As per this letter, the cause of action arose in favour of the applicant on 27.04.2012. However, he filed the present OA on 11.06.2014

with delay of around 410 days. The applicant moved Miscellaneous Application No.427/2014 referred to above seeking condonation of delay on the grounds as mentioned in para 3 of the application that his elder daughter had suffered second abortion in 2013. As a result, the applicant as well as his elder daughter were suffering from mental illness. The applicant's mental equilibrium was not at ease as Doctor told him that his elder daughter would not have any issue. It took considerable time for the applicant to convince his daughter to adopt a baby. The applicant was going from pillar to post in search of a baby at various places in Maharashtra. Finally, in 2014 she decided to adopt a baby girl from Akola District. It is claimed that for this reason it was not possible for the applicant to approach this Tribunal in time and there is no deliberate delay in filing the OA.

**2.2** In support of his contentions, the applicant has relied upon the judgment of the Hon'ble Apex Court in the case of **Collector Land Acquisition, Anantnag and another Vs. Master Khatiji and others, AIR 1987 SC 1353.**

3. No reply has been filed by the respondents to the MA for condonation of delay. However, they have contested the same.

4. We have heard Shri J.M. Tanpure, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents and have gone through the material available on record.

5. Admittedly in the instant case the cause of action arose as on 27.04.2012 when the applicant was communicated by the respondents vide letter No.BB/P/558/GT/SM dated 27.04.2012 that he was not eligible for MACP. He approached this Tribunal on 11.06.2014 after about 410 days. Section 21 of the Administrative Tribunals Act, 1985 is set out herein below:-

**"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;*

*(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.*

*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 sub-section (1) of within a period of six months from the said date, whichever period expires later.*

*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.”*

6. In the present case, the applicant has taken the plea that the delay in filing the present OA was on account of the fact that his daughter had suffered abortion in the year 2013 and thus both the applicant as well as his daughter were suffering from mental illness. However, the applicant has not disclosed the date as to when his elder daughter had suffered the abortion nor he has placed on record any medical document in this regard. He has also not placed on record any document regarding mental illness suffered by the applicant as well as his daughter. Even

the document of adoption of the child by his daughter in 2014 has not been placed on record so as to justify that the grounds for condonation of delay taken by the applicant are genuine.

7. As per Section 21 of the Administrative Tribunals Act, 1985, the period prescribed for filing OA is one year from the date of cause of action. In the present case, the period of one year was over by 26.04.2013. The applicant thereafter as per the settled proposition of law was required to explain the delay of each and every day. However, he has failed to do so. He has not given the detailed reasons with dates on account of which he was prevented from filing the OA within the period of limitation.

8. In the case of **B. Madhuri Goud Vs. B. Damodar Reddy, 24 (2012) 12 SCC 693** the Hon'ble Apex Court has culled out broadly the following principles to be taken into consideration while disposing of application for condonation of delay:-

*21.1(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay for the Courts are not supposed to legalise injustice but are obliged to remove injustice.*

*21.2(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and*

*purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

*21.3(iii) Substantial justice being paramount and pivotal the technical considerations should not be give undue and uncalled for emphasis.*

*21.4(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel or litigant is to be taken note of.*

*21.5(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

*21.6(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

*21.7(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

*21.8(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

*21.9(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

*21.10(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

*21.11(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

*21.12(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

*21.13(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

*22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

*22.1(a) An application for condonation of delay should be drafted with careful concern and not in a half haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

*22.2(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

*22.3(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*

*22.4(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.*

**9.** As per the principles referred to above, the concept of liberal approach while handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of short duration or few days calls for a liberal delineation.



**10.** In the present case, the delay of 410 days beyond the period of limitation can be termed as inordinate delay. Therefore, it was the duty of the applicant to explain the delay of each day, by showing sufficient cause which prevented him from filing the present OA within the period of limitation.

**11.** The applicant has relied upon the case of Collector Land Acquisition, Anantnag and another Vs. Master Khatiji and others (supra). Though we fully agree with the proposition laid down in the aforesaid judgment, however, the same is not applicable to the facts and circumstances of the present case. In the aforesaid case, the Hon'ble supreme court held as under:-

*“The doctrine of equality before law demands that all litigants including the State as litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact on account of an impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on part of the State is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. So also the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles a decision on merits,”*

**12.** In the aforesaid case, the Hon'ble Apex Court expressed its view that the state as well as the other applicants are to be accorded the same treatment and to ensure that law is administered in even-handed manner. This observation is not applicable to the facts and circumstances involved in the present case.

**13.** In the present case, the applicant was only required to prove that he was prevented by sufficiently reasonable cause to approach the Tribunal within the period of limitation, which he has failed. Hence, the MA No.427/2014 being devoid of merits is dismissed. Consequently, the OA also stands dismissed on account of inordinate delay in filing the same. No order as to costs.

**(Ravinder Kaur)**  
**Member (J)**

**(Dr. Bhagwan Sahai)**  
**Member (A)**

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