

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**O.A. No.63/1517/2017**

**Date of decision: 11.12.2018**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).  
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Sh. Bhagat Ram age 58 years, S/o of Late Sh. Tega Ram, Assistant Central Intelligence Officer/Tech. O/o Subsidiary Intelligence Bureau, Grade-II, Ministry of Home Affairs, Plot No.1B, Madhya Marg, Sector-19A, Chandigarh, R/o Village Surella, P/o Kharothi, Tehsil Salooni, District Chamba, Himachal Pradesh. (Group C).

**... APPLICANT**

**VERSUS**

1. Union of India through its Secretary, Intelligence Bureau, Ministry of Home Affairs, Govt. of India, South Block, New Delhi.
2. Intelligence Bureau, Ministry of Home Affairs, Govt. of India, South Block, New Delhi through its Director.
3. Deputy Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Govt. of India, Shimla (H.P.).
4. The Assistant Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Govt. of India, Shimla (H.P.).

**... RESPONDENTS**

**PRESENT:** Sh. Dinesh Kumar, counsel for the applicant.  
Sh. Sanjay Goyal, counsel for the respondents.

**ORDER (Oral)**

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**SANJEEV KAUSHIK, MEMBER (J):-**

1. By means of present O.A., the applicant assails charge-sheet dated 26.11.2014 (Annexure A-6), ex-pare inquiry report dated 07.05.2015 (Annexure A-16 colly), order dated 23.06.2015 (Annexure A-18) passed by the disciplinary authority and order dated 01.11.2017

(Annexure A-21) passed by the Appellate Authority rejecting his appeal on the ground of delay.

2. Learned counsel for the applicant submitted that earlier, immediately after imposition of penalty, applicant approached this Tribunal by filing O.A. No.63/118/2015 which was disposed of vide order dated 28.08.2017, as the applicant had not availed alternative remedy of statutory appeal against order of Disciplinary Authority. While allowing the applicant to withdraw the aforesaid O.A., liberty was granted to him to move application for condonation of delay while filing appeal and Appellate Authority was directed to consider his application for condonation of delay sympathetically and in accordance with law. Learned counsel for the applicant argues that immediately thereafter, applicant filed appeal on 22.09.2017 before the Appellate Authority, which has been turned down vide impugned order dated 01.11.2017 without considering his application for condonation of delay in right prospective and in a mechanical manner. He argues that though applicant was before this Court in O.A. against the order passed by Disciplinary Authority but without considering the period spent before this Court, the same has been dismissed on account of delay and not on merits, causing miscarriage of justice.
3. Sh. Sanjay Goyal submitted that the Department has already taken a stand in the written statement supporting impugned orders.
4. We have given our thoughtful consideration to the entire matter and have perused pleadings on record.
5. It is not in dispute that immediately after passing order by Disciplinary Authority on 23.06.2015, applicant approached this Tribunal by filing above noted O.A., without availing alternative remedy of statutory appeal. After realizing that O.A. is not maintainable for want of

alternative remedy, he withdrew the O.A. to enable him to file statutory appeal. At that time, advice was given to Appellate Authority to consider his application for condonation of delay sympathetically. The applicant filed appeal along with application for condonation of delay in which he has taken a ground that delay be condoned as he was pursuing matter before this Tribunal. Without commenting upon the time spent by the applicant before this Court, Appellate Authority has passed impugned order which, to our mind, cannot sustain because the applicant was before Court of law and has taken a ground in his application that he was not vigilant about his right that he had an alternative remedy of appeal as per rules. Be that as it may be, once he was allowed to withdraw the O.A., then Appellate Authority ought to have considered the period spent by him before a Court of law and has to condone delay and was under obligation to decide his appeal on merit. Applicant cannot be equated with the persons, who slept over their right, and did not approach Court of law, therefore, delay was to be condoned in the facts of this case.

6. In the light of above perspective, the impugned order is hereby quashed and set aside and matter is remitted back to Appellate Authority to decide his application for condonation of delay as well as appeal on merit by passing a reasoned and speaking order. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Date: 11.12.2018.  
Place: Chandigarh.

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