

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.148/2017 In
O.A. No.26/2015**

Reserved On: 01.02.2019

Pronounced On: 07.02.2019

**Hon'ble Sh. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Pradeep Kumar Srivastava,
S/o Shri Kaushal Kishore Srivatava
Aged 56 years,
Group-C,
Sr. Booking Clerk,
North Eastern Railway,
Kasgnaj.Review Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India & Ors. Through

1. Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. General Manager,
North Eastern Railway,
Gorakhpur.
3. Divisional Railway Manager,
North Eastern Railwlay,
Izat Nagar. Respondents

(By Advocate: Shri V.S.R. Krishna)

ORDER

Mr. V. Ajay Kumar, Member (J) :-

The applicant, a Senior Booking Clerk in the respondent-North Eastern Railway, filed O.A. No. 26/2015 seeking the following reliefs:-

“8.1 That this Hon’ble Tribunal may be graciously pleased to allow this application and quash the impugned orders in so far as the applicant is concerned and direct the respondents to regularize the services of the Applicant from the date from which he had completed 3 years’ service as mobile Booking Clerk, and grant all consequential benefits.

8.2 That this Hon’ble Tribunal may be further pleased to Direct the Respondent of judgment of the Hon’ble High Court of Delhi to the Applicant and give all consequential benefits.”

2. He has also filed M.A. No. 2143/2014 seeking condonation of delay of 430 days in filing the said OA. The applicant sought for quashing of an order dated 15.06.1995 whereunder he was assigned seniority as a Booking Clerk with effect from 09.02.2005.

3. After hearing both sides, the M.A. No. 2143/2014 filed along with O.A. No. 26/2015, seeking condonation of delay of 430 days in filing the OA was dismissed by this Tribunal, by order dated 09.05.2017, after considering the decisions of the Hon’ble Apex Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and Another**, (2010) 5 SCC 459 and **State of Tripura & Others v. Arabinda Chakraborty & Ors.**, (2014) 5 SCALE 335, as under:-

“4. No valid reasons for condoning the abnormal delay in filing the OA are coming forth either from the pleadings or from the oral submissions of the applicant. Further, the delay is also not properly calculated, since the impugned order sought to be quashed is dated 15.06.1995 (as referred in Para 1 of the MA as well as the OA), i.e., about 20 years prior to the date of filing of the OA.

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7. In the circumstances and for the aforesaid reasons, the MA No.2143/2014 is dismissed. Consequently, the OA No.26/2015 and MA No.2144/2014 are also stand dismissed. No costs”.

4. Aggrieved with the aforesaid dismissal of the MA seeking condonation of delay and consequently the OA, the applicant filed the instant RA.

5. Heard Mrs. Meenu Mainee, the learned counsel for the review applicant and Shri V.S.R. Krishna, the learned counsel for the respondents and perused the pleadings on record.

6. Mrs. Meenu Mainee, the learned counsel for the applicant even in the review has failed to explain that how the calculation of the number of days of delay as 430 days is correct, as against the finding of the delay of about 20 years. The applicant also failed to explain the said abnormal delay even in the review except stating that the respondents were responsible for the delay in filing the OA. However, the learned counsel submits that an MA seeking condonation of delay cannot be dismissed without considering the merits of the main OA. Only after considering the merits of the OA and if it is found that there are no merits, then only the MA seeking condonation of delay can be dismissed. The learned counsel placed heavy reliance on the decision of the Hon'ble Apex Court in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others (2013) 12 SCC 649*** in support of her submissions.

7. In ***Esha Bhattacharjee*** (supra), after considering the entire case law on the issue of condonation of delay in filing applications/petitions, the Hon'ble Apex Court concluded as under:-

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. 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. 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. Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. 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. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. 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. The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. 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. 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. 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. 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. 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. 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. An application for condonation of delay should be drafted with careful concern and not in a half hazard 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. 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. 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. 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".

8. Even in **Esha Bhattacherjee's** case (supra), the Hon'ble Apex Court while observing that a liberal view is required to be taken while considering the applications seeking condonation of delay, however, in respect of abnormal and unexplained delay, held that the courts should be vigilant and not to expose the other side unnecessarily to face such a litigation and condoning the delay,

after expiry of an abnormal period, cannot adversely affect the rights of any other individual and also that the conduct of the applicant should be considered. In the present case, the applicant was seeking correction of his seniority position after a lapse of about 20 years and that too, by making wrong calculation of number of days of delay, and without making any effort to explain the delay. In the circumstances, the decision in **Esha Bhattacharjee** (supra) cannot come to his rescue.

9. In the circumstances, the RA is dismissed being devoid of any merit. No costs.

(Aradhana Johri)
Member(A)

RKS

(V. Ajay Kumar)
Member(J)