

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00009/2014

Date of order: 3rd July 2019

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Nand Kishore Chawhan,
Son of Late Ramphal Chawhan,
Of Bandel Locopara,
P.O. - Bandel, P.S. - Chinsurah,
District - Hooghly,
West Bengal,
Pin - 712123.

... Applicant

VERSUS -

1. Union of India,
Represented by General Manager,
Eastern Railways,
17, Netaji Subhas Road,
Fairly Place,
Kolkata - 700 001.
2. Divisional Railway Manager,
Eastern Railways,
Howrah Office at
DRM Building,
P.O. - Howrah,
District - Howrah,
Pin - 711 101.
3. Senior Divisional Mechanical Engineer (Power),
Eastern Railways,
Office at DRM Building,
P.O. and District - Howrah,
Pin - 711 101.
4. Sr. Divisional Personnel Officer,
Eastern Railways Office at DRM Building,
P.O. and District - Howrah,
Pin - 711 101.

.. Respondents

For the Applicant : Mr. B.B. Datta, Counsel

For the Respondents : None

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"In view of the fact your applicant prays to the effect that -

The Respondents be directed to appoint your applicant in terms of the representation dated 12.11.2012 seeking to appointment to the post of the Substitutes in the Eastern Railway."

2. Heard. Ld. Counsel for the applicant, examined documents on record.

3. The applicant's submissions is that the applicant's father was working as a Driver with the respondent authorities, who had retired on 31.7.1985 as Senior Driver and, that, the applicant, being an aspirant to be appointed as Substitute in terms of notification dated 14.1.1985, fulfilled the requisite formalities. No appointment order having been issued, however, despite representations being made thereon, the applicant, being aggrieved, has approached the Tribunal praying for the relief.

4. Although no reply is found on record, upon perusal of the documents annexed to the Original Application, it is seen that the circular for engagement as Substitute was issued on January 17, 1985 (Annexure A-1 to the O.A.) and that the applicant had applied towards the same on 29.7.1986 (Annexure A-2 to the O.A.). Although the applicant in his pleadings have stated that a number of representations and appeals have been made to the respondent authorities for

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appointment, none are found on record except one last reminder dated 12.11.2012 (Annexure A-6 to the O.A.).

It is obvious from the documents perused and the pleadings before us that the instant matter is hopelessly barred by limitation as mandated by Section 21 of the Administrative Tribunals Act, 1985. We also do not find any prayer for condonation of delay or suitable explanation towards the same.

Section 21 of the Administrative Tribunals Act, 1985 provides for limitation of filing an O.A. as under:-

"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.

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Further, sub-Section 3 of Section 21 of the said Act, provides as under:-

"(3) 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."

In this context, we refer to a judgment delivered by the Hon'ble Supreme Court in the matter of **Chennai Metropolitan Water Supply & Sewerage Board and ors. V. T.T. Murali Babu**, reported in AIR 2014 SC 1141 in which the Hon'ble Apex Court heavily came down on the Courts/Tribunals for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of

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the observations of the Hon'ble Apex Court as contained in paragraph 16 is quoted hereinbelow:-

" Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principles that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects activity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely "procastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay also brings in hazard and causes injury to the lis. In the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the respondent employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unauthorizedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which is acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

Further, in the matter of **Lanka Venkateswarlu v. State of AP** (2011) 4 SCC 363, the Hon'ble Apex Court has held as under:-

"26. Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay."

5. In our considered view, no explanation having been offered on the long delay in filing of the application, the same does not merit consideration. The maxim of "vigilantibus, non dormientibus, jura subveniant" (law assists those who are vigilant and not those sleeping over their rights) is applicable in this case.

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We do not think that this is a fit case for condonation of delay after a gap of over thirty years which was not explained suitably by the applicant and hence consider this O.A. as hopelessly barred by limitation by Section 21 of the Administrative Tribunal Act, 1985.

6. Hence, the matter is dismissed. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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