

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.307/2018
and

M.A.No.255/2018

Dated this the 09th day of August, 2019

CORAM: DR.BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

Shri Sunil Mahadoo,
Aged 39 years,
Working as Trackman,
Under SSE/PWI/Lasur
R/o Godavari Colony,
Near RFF Barrack, Manmad,
Dist. Nashik 423104.

... Applicant.

(By Advocate : Shri Vicky Nagrani)

Versus.

1. Union of India,
Through Central Manager,
S.C. Railway,
Secundrabad-500003.
2. Divisional Railway Manager,
South Central Railway,
South Central Railway,
Secundrabad-500003.

... Respondents.

(By Advocate : Shri R.R. Shetty)

ORDER (Oral)

Per : R.N. Singh, Member (J)

The applicant has filed MA No.255/2018 dated 26.04.2018 for condonation of delay in filing the present OA. In the said MA seeking condonation of delay, the applicant has stated that he is illiterate. He was not advised properly. He he was having no

source of income. He he has filed mercy petition and the same is still pending consideration of the respondents. He further contends that he was afraid that in case during pendency of the mercy petition, if he files the OA, the respondents may develop vindictive approach and may make him to suffer further. Though throughout the oral hearing, it has been the stand of the learned counsel for the applicant that because of pendency of the mercy petition of the applicant, OA doesn't suffer from any delay and the same is within limitation, however, while concluding his submission, he has submitted that applicant has referred to certain judgments in the MA seeking condonation of delay and they should be considered by us. Such judgments are *Divisional Manager, Plantation Division, Andaman and Nicobar Islands v. Munnu Barrick & Others, 2005 (2) SCC* to contend that 'a liberal view should be taken in case of delay when substantial justice has to be imparted', *Madras Port Trust v. Himanshu International, 1979 (4) SCC 176* to contend that 'Government should be precluded to take technical plea to defeat a cause of justice', *A. Mohan Lodh v. State of Tripura, 2004 SCC (L&S) 10*, to contend that 'the power of limitation is

discretionary, yet it has to be liberally construed', *State of Bihar v. Kameshwar Prasad Singh*, 2001 (1) *SCSLJ* 76 to contend that 'delay should invariably be condoned on sufficient cause to dispense justice if the explanation of delay does not smack of malafide or show dilatory tactics, Court must show utmost consideration', and *SDO, Telegraph v. Presiding Officer, CGIT*, 2006 *AIR SCW* 900 to contend that 'pursuing remedies in wrong forum is a justification for condonation of delay'.

There is no dispute about the aforesaid legal position. However, the applicant has not shown any sufficient or good cause which has prevented him to approach the Tribunal within limitation. Rather the facts stated by him show slackness on his part and contradiction. The reasons given by him are vague. He has filed this application in a very casual manner and he has not even indicated the period of delay which is to be condoned.

2. This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:-

"(1). Call for the record of the case from the respondents.

(2). Quash and set aside the Order of Disciplinary Authority dt.07.07.10 of

removing the applicant from service and of A.A. dt.28.09.10 & R.A. 29.01.11 confirming the order of Disciplinary Authority.

(3). Direct the respondents to treat the applicant as on duty and from 10-07-10 onwards, after reinstating him and grant him consequential service benefits from 10-07-10.

(4). Any other reliefs deemed fit and proper in the circumstances of the case may kindly be granted.

(5). Allow the O.A. With cost."

3. The factual matrix of the case are that the applicant was appointed as a Trackman in the respondent department. It is stated that he had submitted various leave applications due to illness of his wife. Moreover, his mother also met with an accident, who had been taking treatment in a private hospital. He was served with Charge Memo dated 12.03.2008 with the following Article of charge:-

"Article No.1 Clause 1

Shri Sunil Mahadoo, Trackman Gate No.15/Lasur while working in SE/P way/ Lasur 151 days is un-authorisely absenting himself from duty since 01/01/07 to 31/12/07."

4. The Departmental Inquiry was held by appointing Inquiry Officer, who submitted his report dated 09.02.2009, concluding their charge against the applicants as proved. Thereafter, the Disciplinary Authority vide order dated 07.07.2010 imposed the punishment of "Removal from Service with effect from 10-07-2010 as a measure of penalty". Thereafter, the

applicant has preferred an appeal to the Appellate Authority, which was rejected by the Appellate Authority vide order dated 28.09.2010 which reads as under:-

"The Ex-Employee was issued SF-5 on 15.03.08 for being absent for 151 days in 2007, However, he has not improved his performance and was absent for 131 days (80 absent + 47+ Swp+4+Lwp) in 2008, 167 days (74 absent + 88 Swp+5Lwp) in 2009, 82 days (63 absent+19 Swp) 2010. This shows he is habitual absentee and cannot improve his performance. Hence, penalty imposed by D.A. (ADEN/J) stand good."

5. Aggrieved with the aforesaid order of the Appellate Authority, the applicant has preferred a Revision Petition dated 26.10.2010, which was rejected by the Revisional Authority vide order dated 29.01.2011 (Annexure A-3). The applicant has also filed Mercy Appeal to the General Manager, S.C. Railway, Secundrabad, which is still pending with the respondents. In the said Mercy Appeal the applicant has stated that "Under the provision of IREC 402 Vol.I kindly give me an opportunity as RE APPOINTMENT/ New appointment on mercy grounds which may help to a poor family". Hence, this OA.

6. The respondents have filed the Counter Reply disputing and opposing the claim of the applicant in the OA stating therein that the applicant is aggrieved by the order of the Disciplinary Authority dated

07.07.2010 whereby a penalty of removal from service has been imposed upon the applicant. The Appellate Authority upheld the said penalty vide order dated 28.09.2010. The Revision Petition has also been rejected vide order dated 29.01.2011. It is contended on behalf of the respondents that that the OA is not only grossly barred by limitation but also devoid of merits. It is submitted that Appellate Authority passed the orders on 07.07.2010 whereas the OA has been filed by the applicant on 06.03.2017 after a delay of more than six years, as such the OA deserves to be dismissed on this ground alone. In reply to the application for condonation of delay, the respondents have submitted that the Appellate Authority passed orders on 07.07.2010 whereas the OA has been filed by the applicant on 06.03.2017 after a period of more than six and half years. Further, there is no explanation given for condonation of delay except that the applicant is an illiterate person and was awaiting decision of mercy appeal filed by him in the year 2014.

7. We have gone through the pleadings on record and have also heard the learned counsel for the applicant and the learned counsel for the respondents

and carefully considered the facts, circumstances, law points and rival contentions in the case.

8. The respondents are well within their competence to consider the case of applicant as per the rules and instructions of the department. As regards limitation, the present original application is hit by Section 21 of Administrative Tribunals Act, 1985. In the case of **Ramesh Chandra Sharma vs. Udham Singh Kamal** reported in 2000 (2) SLJ SC-89 the Hon'ble Supreme Court has held 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 of which such final order has been made; (b) In a case where an appeal or representation such as is mention 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. (2) xxx xxx xxx

(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. Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of Section 21 praying

for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside.

9. The Hon'ble Apex Court particularly in the case of *S.S. Rathore v. State of Madhya Pradesh* reported in 1990 SCC (L&S) 50 has observed that successive representations cannot extend the period of limitation. Para 20 and 21 of the said judgments is reproduced herein under : -

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. **Repeated unsuccessful representations not provided by law are not governed by this principle.**

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Ac. Sub Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals' Act shall continue to be governed by Article 58."

10. On the point of limitation, the Hon'ble Apex Court has reiterated its earlier view on this matter in the case of *Union of India & Ors. v. A. Durairaj* reported in JT 2011 (3) SC 254 and held as under:-

Re: Question(i)

13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly for grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage of effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

11. The question of limitation being nullified by filing an OA and getting an order with direction to decide the pending representation was also examined by the Hon'ble Apex Court in the case of *Union of India v. M.K. Sarkar* (JT 2009 (15) SC 70: 2010(2) SCC 58) and held as follows:-

"The order of the Tribunal allowing the first application of Respondent without examining the merits, and directing appellants to consider his representation has given rise to

unnecessary litigation and avoidable complications.

When a belated representation in regard to a 'stale' or 'dead' issue dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviewing the 'dead' issue or time barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation. Or erase the delay and laches.

A Court or Tribunal before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be legal position and effect."

12. The Hon'ble Supreme Court in the case of **Bhoop Singh Vs. Union of India [AIR 1992 SC 1414]** held as follows :-

"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. Under the Administrative Tribunals Act, 1985, there is a prescribed period of limitation for approaching this Tribunal. In the instant case, the applicants are claiming relief from 1988-1989 onwards by filing the present Original

Applications in the year 2011. Such inordinate and unexplained delay/lapse is itself a ground to refuse relief to the applicants irrespective of the merits of their claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the minds of others that he is not interested in claiming that relief."

13. The Hon'ble Supreme Court in *State of Uttaranchal & Another Vs. Sri Shiv Charan Singh Bhandari & others* [2014 (2) SLR 688 (SC)] held that even if the Court or Tribunal directs for consideration of representation relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action. The Hon'ble Supreme Court has dealt with its various judgments and held in paragraphs 17 and 18 as under :-

17. In *Bharat Sanchar Nigam Limited Vs. Ghanshyam Dass (2) & Others* [2011 (4) SCC 374 : [2012 (4) SLR 711 SC], a three-Judge Bench of this Court reiterated the principle stated in *Jaquish Lal Vs. State of Haryana* [1977 (6) SCC 538] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In *State of T. N. Vs. Seshachalam* [2007 (10) SCC 137 : [2007 (2) SLR 860 (SC)] this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

"....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of

India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

14. It is well settled by the Judgement of the Hon'ble Supreme Court in the case of **S.S. Rathore Vs. Union of India & Others** [AIR 1990 SC 10] wherein it has been held that "filing of repeated representations does not make out a case for condoning delay in seeking judicial intervention." It was also held that "casual, lethargic and indifferent attitude of the applicant in approaching this forum after many years cannot be condoned."

15. As regards Mercy Appeal of the applicant the Hon'ble Punjab and Haryana High Court in CWP No.2076 of 2018 Titled **Rajinder Kumar vs Union Of India & Ors** delivered on 20 March, 2018 has observed as under:-

" The petitioner impugns the order dated 25.11.2016 and 24.11.2017 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh negating his claim for re-employment. His case was rejected way back in 2001 but due to his persistence and approaching the authorities he some how gained orders that suggested sympathetic consideration despite his being a dismissed employee. Finally, his plea was rejected leading to the filing of an application before the CAT who rejected the claim.

The present petition has been filed impugning the said orders.

Learned counsel for the petitioner places reliance on Rule 402 of Railway Establishment Code Vol.I which is extracted here-below :-

"402. No person who has been dismissed from 1 of 2 Government service or convicted for a criminal offence shall be re-employed, without the sanction of the President, or if the employment or re-employment is to a Group C or Group D post, without the sanction of the General Manager."

After hearing the learned counsel for the petitioner, we are of the opinion that the petitioner is a dismissed employee and therefore, cannot press his claim for re-employment as a matter of right. If the competent authority has done so and that too in the year 2001, nothing much would survive considering the two facts that he has no inherent right to claim re-employment and secondly with the efflux of time of atleast 17 years the claim for re-employment would be rendered illusory.

No ground to interfere.

Dismissed."

16. In the light of the above discussion and law, the judgments referred by the applicant to support his application for condonation of delay are not of any help to him. The filing of belated mercy appeal and/or pendency thereof also shall not extend the period of limitation or cannot be sufficient and good ground of condonation of unexplained delay of more than six years in filing of the present OA. Moreover, it is admitted case of the parties that on 06.08.2019, an identical O.A.No.175/2017 and M.A.No.200/2017 and further on 08.08.2019 an identical O.A.No.257/2017 and M.A.No.263/2017, have been dismissed keeping in view the aforesaid law. Therefore, the present MA is liable to be dismissed.

17. In view of the aforesaid discussions as well as the law settled by the Hon'ble Supreme Court and the Hon'ble High Court, referred to above, we are of the opinion that the applicant has failed to establish a case in his favour. Hence, the MA seeking condonation of delay deserves to be dismissed. Accordingly, MA filed for condonation of delay is rejected and the OA is dismissed as being barred by limitation, delay and laches. No order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

ak/-

JD
27/8/19