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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA No. 7/2005
in OA 2408/2003

New Delhi this the 15th day of December, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

Smt. Anita Sharma
W/o Shri Yogesh Sharma,
Enquiry and Reservation Clerk,
Under Chief Commercial Manager,
IRCA Building, Northern Railway, State Entry Road,
New Delhi.

..Applicant

(By Advocate Shri B.S. Mainee)

VERSUS

Union of India through:

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Chief Commercial Manager (PM),
Northern Raiway,
Northern Railway Reservation Office,
IRCA Building, State Entry Road,
New Delhi.
3. The Dy.Chief Commercial Manager (DB),
Northern Railway Reservation Office,
IRCA Building, State Entry Road, New Delhi.

..Respondents

(By Advocate Shri Rajinder Khatter)



ORDER

This Review Application (RA) has been filed against the order dated 10.11.2004 whereby the 'OA was dismissed'. R.A. is filed on the ground that no enquiry was held by the respondents yet in the order dated 10.11.2004 it has been recorded that respondents had conducted an enquiry into the matter in accordance with law. He has also submitted that he had relied upon number of judgments, which have not been referred to in the judgment and there was no evidence on record to prove the charge framed against the applicant. Therefore, order dated 10.11.2004 may be recalled.

2. RA was filed on 7.1.2005. Since it was barred by limitation, applicant has filed MA 93/2005 seeking condonation of delay.

3. It is stated by the applicant that copy of the order dated 10.11.2004 was supplied to her on 29.11.2004. She could not file RA within one month because she was out of station on sanctioned leave due to an emergency from 25.12.2004 to 2.1.2005. She joined the duty on 3.1.2005 and contacted her lawyer who took two days time to prepare the RA and the same was filed on 7.1.2005. Thus delay is bonafide. The same may, therefore, be condoned.

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4. Application for condonation of delay is opposed by respondents who have stated that since RA is barred by limitation, RA is not even maintainable under law and delay cannot be condoned in view of Rule 17 of the CAT (Procedure) Rules, 1987. Counsel for respondents also submitted that the scope of review is very limited and is not permissible for the forum hearing the RA to act as an appellate authority. They have denied that applicant was out of station on sanctioned leave due to an emergency w.e.f 25.12.2004 to 2.1.2005 and have stated that no documentary proof has been annexed in application for condonation of delay by the applicant. Therefore, the delay may not be condoned and application for condonation as well as RA both may be dismissed. He has relied on the following judgments:

Judgment dated 8.9.2005 given in RA No. 11/2004 in OA 161/2001 Patna Bench which in turn relied on a full bench judgment of Hon'ble High Court of Hyderabad in the case of G.Narasimha Rao Vs. Regional Joint Director of School Education.

1975(3) SLR 933 - Chander Kanta Vs. Sheikh Habib

AIR 1995(5) SC 455) -Smt.Meera Bhanja Vs. Smt. Nirmala Kumari Chaudhary

1997(8) SC 715) - Parsion Devi and Ors. Vs. Sumitri Devi & Ors.

2002(1) SCC 28) - Subhash Vs. State of Maharashtra

2004(2) ATJ SC 190 - UOI Vs. Tarit Ranjan



5. Applicant has filed rejoinder reiterating the stand already taken. Counsel for applicant has relied on the following judgments:

1997(10) SCC 593- Surjit Singh Vs. UOI & Ors.

2003(2) SC SLJ 35) - Shankar K. Mandal Vs. State of Bihar

E. Chanchania reported in AIR 1953 Madras page 39-

2001(1) 76 page State of Bihar Vs. Kameshwar Prasad Singh and Ors

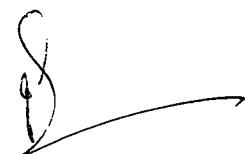
to states that power to condone has been conferred for dispensing justice and there should be liberal approach in the matter of condonation of delay.

6. I have heard counsel for both the parties and perused the pleadings as well. Since this RA is barred by limitation and an objection was taken by respondents that delay cannot even be condoned it is necessary for me to deal with this preliminary objection first because unless this hurdle is crossed by applicant, the RA cannot be entertained on merits.

7. Rule 17 of CAT (Procedure) Rules, 1987 for ready reference reads as under:

17(1) "No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed".

Section 22 of Administrative Tribunals Act, 1985 gives power to the Tribunal for reviewing its decision. Section 22 (1) states "A Tribunal shall not be bound by the procedure laid down in the Code of Civil



Procedure, 1908(5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private".

Sub Section (3)of Section 22 further states "A Tribunal shall have, for the purposes of (discharging its functions under this Act) the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f) reviewing its decisions
- (g)
- (h)
- (i)

From the above, it is clear that power to review the order has been given to the Tribunal by Section 22 of the Administrative Tribunals Act, 1985. In the same section it is also clarified that Tribunal shall have the same power as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908). If civil court can condone the delay, Tribunal gets the same power by virtue of Section 22 (3) of ATAct, 1985. Rule 17 of CAT (Procedure) Rules, 1987 only lays down procedure for carrying out the

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power given under Section 22 of ATAct, 1985. Though rule 17 (1) starts in negative form and states that no application for review shall be entertained unless it is filed within thirty days from the date or receipt of copy of the order sought to be reviewed but that cannot take away the power of Tribunal to condone the delay if sufficient cause is shown by the party applying for review because power to condone is already given under the Act which cannot be taken away by the rules.

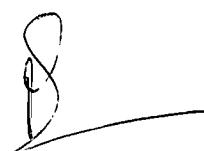
8. There are judgments both in favour and against this preposition. Counsel for respondents relied on judgment given by Patna Bench in RA 11/2004 in OA 161/2001 wherein a view was taken that delay of even one day cannot be condoned in view of full Bench decision of Hyderabab High Court in Writ Petition No.21734 of 1998 decided on 19.11.2003. However, Full Bench of Calcutta High Court has taken a different view in the case of **UOI & Ors Vs. CAT & Ors.** decided on 8.10.2002. Calcutta High Court has taken the view that Rule 17 does not take away the general power and jurisdiction of the Tribunal for condonation of delay under Section 22 because it has the same power and jurisdiction under Section 22 of the Act like a Civil Court and therefore delay can be condoned. Apart from it even full bench of Tribunal has also taken the view that delay can be condoned in

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RA if sufficient cause is shown (N.L.Nichani & Ors Vs. UOI & Ors Full Bench judgments 1989-91 Vol.II page 85). In the absence of direct judgment of Hon'ble High Court of Delhi, I would be bound by the full bench of Tribunal. The judgments given by other High Courts would have of course persuasive value and we can follow the one which is supporting our view. No judgment has been cited by either party of Delhi High Court on this point by which we would be governed.

9. At this juncture it would be relevant to quote the judgment of Hon'ble Supreme Court in the case of L. Chander Kumar Vs. UOI and Ors reported in 1997 SCC (L&S) 577 at 618). It has been held in this case as follows:

“We have already emphasised the necessity for ensuring that the High Courts are able to excise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on question of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforeslated contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Courts writ jurisdiction under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls”.

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In view of above judgment in case there was any judgment on this issue by the Hon'ble High Court of Delhi that would be binding on us but the judgments on the same issue by other High Courts would have only persuasive value in coming to a decision. Since different views have been taken by different High Courts we would respectfully follow the full bench judgment of Hon'ble High Court of Calcutta as according to me also that seems to be correct interpretation of Section 22 (f) of ATAct read with rule 17 of CAT (Procedure) Rules, 1987. In my considered opinion reasoning given by the Full Bench of Hon'ble High Court of Calcutta seems is correct and our own full bench has also taken the same view. I, therefore, hold that Tribunal does have power to condone the delay in filing the RA in deserving cases provided sufficient cause is shown. However, this delay cannot be condoned in a routine manner.

10. The next question that is arises whether delay in this RA can be condoned in the given circumstances or not. Counsel for applicant vehemently argued that delay should be condoned in the instant case as applicant has a good case on merits and delay is only of 7 days (according to him). Therefore, in order to do substantial justice in the matter,

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applicant's RA should not be dismissed on technical ground of delay. He heavily relied on the Judgment of the Hon'ble Supreme Court in the case of **State of Bihar Vs. Kameshwar Prasad Singh and Anr (surpa)**.

11. I have read the judgment and find that even in the said judgment emphasis is on showing sufficient cause. Even in the above said case definite finding was recorded by the Hon'ble Supreme Court as follows:

“ ...we are of the opinion that sufficient cause has been made out by the petitions which has persuaded us to condone the delay in filing the petitions. Dismissing the appeals on technical grounds of limitation would not, in any way, advance the interest of justice but admittedly, a result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but hundreds of other persons who are stated to be senior than the respondents”.

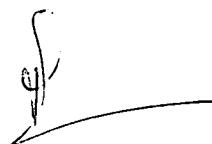
From the above, it is clear that even the Hon'ble Supreme Court condoned the delay because they found that if the impugned judgments are not interfered with, they would have affected 100 of other persons who were otherwise senior to respondent. Thus there was justification/ sufficient cause shown to the satisfaction of Hon'ble Supreme Court for interfering in the matter of Sate of Bihar. Similarly in the case of **Nand Kishore Vs. State of Punjab** reported in 1995(6) SCC 614 also though Hon'ble Supreme Court condoned delay of about 31 years but it was condoned under the peculiar



circumstances of the case which is mentioned in the judgment. Similarly In the case of **N. Balakrishnan Vs. M. Krishnamurthy** reported in 1998(7) SCC 123) it was held "Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes of the shortest/range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory".

Therefore, from all the above cases, it is seen that delay can be condoned provided the party gives an explanation to the satisfaction of the court as to why there was delay in approaching the Hon'ble Court. Counsel for applicant was not able to show us any judgment, wherein it has been held by the Hon'ble Supreme Court that law of limitation should be thrown out of the window and delay should be condoned in a routine manner for entertaining all the cases in spite of being barred by limitation.

12. In this background if we look at the application for condonation of delay, the reasoning given by applicant is that she received copy of the order on 29.11.2004 and she was out of station on sanctioned leave due to an emergency from 25.12.2004 to 2.1.2005. In the reply filed by respondents they have stated categorically that no document has been annexed by the

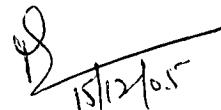
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applicant to support her averment. In spite of it, in rejoinder applicant neither bothered to file any supporting document nor she has given any categorical reply to parawise para 3 of the reply. On the contrary, counsel for respondents produced for court's perusal the application given by applicant herself to show that applicant had only sought casual leave from 21.12.2004 to 31.12.2004, no emergency was shown on the said application nor any permission was sought for leaving the station. In para 3 of the application for condonation of delay it is stated by the applicant categorically that she was out of station on sanctioned leave due to an emergency which shows that she has not come to the court with clean hands. After all if she is praying for condonation of delay, at least applicant is expected to come to the court with a valid excuse and bonafide request. She cannot be allowed to take the court for granted by making a wrong statement. Filing an application for condonation of delay is not an empty formality if that is permitted, people will start filing the application or RAs without bothering for the limitation as per their own convenience, which cannot be permitted in law. The application for condonation of delay needs to be dismissed on this alone. Admittedly applicant received copy of the

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order dated 10.11.2004 on 29.11.2004 as per her own showing. Therefore she ought to have filed RA in normal course by 28.12.2004. RA was admittedly filed on 7.1.2005. There has been delay of about 10 days in filing the RA. It has been held by the Hon'ble Supreme Court in the cases referred to above (supra), number of days is not really important what is important is whether the ground shown for condoning the delay is satisfactory or not

13. In view of the above discussions, I am satisfied that no sufficient cause has been shown by the applicant and she has not even come to the Court with clean hand. Therefore, the delay cannot be condoned. MA for condonation of delay is accordingly rejected. Since delay has not been condoned, RA being barred by limitation gets automatically rejected. No order as to costs.


15/12/05
(Mrs. Meera Chhibber)
Member (J)

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