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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

**MA No.263/2005
MA No.264/2005
IN
OA No.2111/2003**

New Delhi: this the 15th July, 2005

HON'BLE MR.S.K.NAIK, MEMBER(A)

Gurpal Singh

.....Applicant

Versus

Union of India & Ors

Respondents.

**Present: Shri Lallan Tiwari, learned counsel for the
applicant.**

**Shri R.L.Dhawan, learned counsel for the
respondents.**

ORDER

Applicant in OA No.2111/2003 has filed these MAs. While MA No.264/2005 has been filed seeking condonation of delay in filing the restoration application. MA No.263/2005 has been filed with prayer to restore the OA to its original position and the matter be heard on merit.

2. Learned counsel for the applicant has submitted that the applicant was an old aged person and was undergoing treatment for his illness and, therefore, he could not appear on 4.8.2004 when the matter had

J. Naik

been fixed for hearing. He has contended that the applicant had to go out of station for treatment and recently came to know about the dismissal of his application. Urging that the delay was not intentional and keeping in view the nature of illness of the applicant, the delay may be condoned and the OA be restored to its original position for hearing on merit.

3. Respondents have filed their replies to MAs and have opposed the MAs. Learned counsel for the respondents have contended that as is evident from the record, the Tribunal was constrained to dismiss the OA of the applicant for non-prosecution by clearly stating in its order that applicant has not been appearing for the last several hearings and, therefore came to the conclusion that he was not interested in prosecuting this case. The applicant, therefore, cannot contend that he was either not given adequate number of chances or sufficient indulgence by the Tribunal to decide the matter on merit. However, since he himself failed to pursue the matter, he cannot make out a case for restoration on compassionate ground.

4. Objecting to the application for condonation of delay, the counsel has contended that while the applicant was earlier not serious in pursuing his case, even now he has not given any plausible explanation as to why he could not file application within time. Merely stating that the applicant is an old aged person and was out of station for treatment does not constitute

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sufficient cause for revival of the OA. Applicant has neither submitted any medical certificate or proof of his having gone out of station for treatment. Referring to judgment of the Hon'ble Supreme Court in the case of "**Rattan Chandra Sammanta Vs. UOI & Ors.**"(JT 1993 (3) SC 418), learned counsel has contended that as per the law laid down therein that "delay deprives a person of the remedy available in law. A person who has lost his remedy by lapse of time loses his right". The counsel has submitted that there is absolutely no case for condonation of delay and, therefore, there is no ground for Tribunal to recall its earlier order.

5. After hearing both the sides, I have duly considered their contentions.

The OA was dismissed for non-prosecution on 4.8.2004 in which the Tribunal observed that "applicant has not been appearing for the last several hearings. He is absent even today. It seems that he is not interested in prosecuting this case. It is dismissed in default and non-prosecution."

6. Thus, it is abundantly clear that the Tribunal was constrained to dismiss the OA after providing several opportunities. Even after the OA was dismissed on 4.8.2004, the present MAs have been filed on 2.2.2005. Thus after a gap of six months only explanation offered for delay was that the applicant was out of station for treatment. No medical certificate or proof of absence from the Station for such a long period has been produced. The

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counsel has advanced the plea on the ground of compassion. However, the law on the subject has been laid down by the Hon'ble Apex Court in **P.K.Ramchandran Vs. State of Kerala (JT 1997(8) SC 189** in which it has been held that "the law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribed and the courts have no power to extend the period of limitation....." ^{Having regard to this} I have no other option but to hold that in the absence of any material to satisfactorily explain the delay, the MAs have to be treated as devoid of any merit and the same are dismissed. No costs.


(S.K.NAIK)
MEMBER (A)

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