

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

M.A. No.021/00299/ 2018 in O.A.No.021/00482/2018

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O.A.No.021/00482/2018

Date of CAV:19.12.2018.

Date of Order :30.01.2019.

Between :

Harish Kumar Municipally, s/o M.P.Narsing Rao,
Aged about 32 yrs, Occ:Ticket Collector/FNB,
Secunderabad Division, South Central Railway,
Secunderabad.

...Applicant

And

1. Union of India, M/o Railways,
rep., by its General Manager,
South Central Railway, Rail Nilayam,
III Floor, Secunderabad-500 071.

2. The Senior Divisional Commercial Manager,
Secunderabad Division, South Central Railway,
Sanchalan Bhavan, I Floor, Secunderabad-
500 071.

... Respondents

Counsel for the Applicant ... Mrs.S.Anuradha

Counsel for the Respondents ... Mr.V.V.N.Narasimham, SC for Rlys.
Rep., by Mr.Bheem Singh

CORAM:

THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

The applicant has filed the OA along with M.A.No.299/2018 seeking condonation of delay of 65 days in filing the OA.

2. **Brief facts of the case:**

The applicant herein has submitted that he was appointed on 07.08.2003 as Ticket Collector in Secunderabad Division of South Central Railway. During the year 2010, he had applied for two years study leave and the said application was processed and forwarded to the Divisional Railway Manager (DRM), Secunderabad Division for sanction through Sr.DPO/SC. As the said application was not processed in the office of Sr.DPO/SC, the applicant approached the respondent no.2 explaining the urgency for sanction to study leave and the respondent no.2 having been convinced permitted the applicant to proceed on leave assuring that the leave will be sanctioned in due course. Basing on the assurance given by the respondent no.2, the applicant joined the study course and attended the same.

3. The applicant has further submitted that he had been approaching the concerned dealing official with regard to putting up his application for sanction to the DRM. The applicant was not given any intimation with regard to his sanction of leave for over two years, but in the year 2012, he

was surprised to receive an order removing him from service, vide order dated 09.05.2012 issued by the Divisional Commercial Manager in the capacity of Disciplinary Authority. The applicant made a detailed appeal to the respondent no.2 explaining the circumstances under which he proceeded on leave and sought for setting aside the penalty imposed. The respondent no.2 allowed the appeal observing as follows:

"It came to light that even though a letter was sent to APO/T/SC by ACM/SC on 15.07.2010 asking him to put up the leave request by the then employee Sri Harish Kumar in a file duly considering the leave policy in vogue, it was not put up. The letter was still untraceable in personnel branch as per the APO/M/SC on 3.9.2013, so it seems there was a mistake from the administration side to take a decision on the leave request by M.Harish Kumar and communicate accordingly".

The reinstatement orders were issued on 07.09.2013, which was received by the applicant on 11.09.2013. The applicant was unable to report for duties for his personal and domestic problems. However, the applicant approached the respondent no.2 through representation dated 27.09.2016, which was received by the Sr.DPO/SC on the same day itself. As there was no response, the applicant made another representation on 03.04.2017, which was again not considered by the respondent no.2. The applicant personally approached the respondent no.2 several times, but the respondent no.2 refused to meet him. Under the above circumstances, the applicant has approached this Tribunal seeking a direction to the respondent no.2 herein to consider his representations dated 03.04.2017 and 27.09.2016 and permit the applicant to report for duties based on the

reinstatement orders issued by the respondent no.2 in appeal modifying the penalty of removal from service to that of withholding of annual increment of pay for a period of three years with cumulative effect with all consequential benefits and continuity in service.

4. The Counsel for the Respondents stated that the present OA is barred by limitation since there is a delay of more than 5 years from the date of passing of the reinstatement order and since there has been no explanation for the delay, the delay cannot be condoned. The applicant is only seeking a direction for disposal of his representations in the guise of such a long delay. Moreover, the applicant has not stated any reasons as to why he was unable to report for duties due to his personal and domestic problems. Inspite of the reinstatement orders were issued way back in 2013, the applicant has not joined duty without giving any reasonable explanation.

5. The Counsel for the Respondents has also cited the judgment of the Hon'ble Supreme Court in SLP (C) No.25795/2008, CC.No.11425/2008 in *C.Jacob v. Director of Geology and Mining & Another*, wherein it has been categorically stated that “without giving explanation for the delay, the applicant had filed a representation and because there will be some delay in replying to such a representation, the ex-employee took advantage and

filed an application before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation and normally the Tribunals/High Courts without examining the merits issue direction to consider and dispose of the representation. The order clearly states that-

“The Courts/Tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any decision on rights and obligations of parties. Little do they realize the consequences of such a direction to consider. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason for the direction to consider. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”

The judgment clearly states that every representation made may not be replied on merits and representations relating to matters, which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim.

6. In view of the above facts and circumstances, the M.A.No.299/2018 and OA.No.482/2018 are dismissed since the submission of the representation to the competent authority and the pendency of the same does not save the limitation. Moreover, no cogent reasons have been given for not reporting for duty ever since the reinstatement order was issued in 2013. No order as to costs.

Sd/-

**(NAINI JAYASEELAN)
MEMBER (ADMN.)**

Dated this the 30th day of January 2019

Dsn.