

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.
ORIGINAL APPLICATION NO. 829/2016

Dated 11th October 2019.

CORAM:- DR. BHAGWAN SAHAI, MEMBER(A)
RAVINDER KAUR, MEMBER (J)

Smt. Hemlata D. Naik,
Sr. Auditor (Retd) under
Pr. Director of Audit,
Cen. Railway, r/at Flat No. 111,
Aashiyana Tower, A Wing,
Sodawala Lane,
Boriwali (W), Mumbai-400 092

..Applicant

(By Advocate Shri S. N. Pillai)

Versus

1 UNION OF INDIA,
through The Comptroller & Auditor
General of India, Pocket 9,
Deen Dayal Upadhyay Marg,
New Delhi -110 124.

2 Principal Director of Audit,
Central Railway,
New Administrative Building,
C.S.T., Mumbai-.1 1

...Respondents

(By Advocate Shri V. B. Joshi)

Reserved on: 16.09.2019

Pronounced on: 11.10.2019

ORDER**PER: RAVINDER KAUR, MEMBER (J)**

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "1 that this Hon'ble Tribunal be pleased to call for the personal file of the Applicant and after perusal of the same quash and set aside the letter No. Au/Adsmn/PF/HDN/ 760 dt. 15-05-2013, i.e Annexure A.1.
- 2 that this Hon'ble Tribunal be pleased to quash and set aside the letter No Au/Adsmn/PF/HDNaik/2417 dt.27/28-08-2013, i.e Annexure A.2.
- 3 that this Hon'ble Tribunal be pleased to quash and set aside the letter No. Au/Adsmn/PF/HDNaik/3758 dt.14/18-11/2014, i.e Annexure A.3.
- 4 that this Hon'ble Tribunal be pleased to quash and set aside the letter No. Au/Adsmn/PF/HDN/5086 dt. 03/02/2015, i.e Annexure A.4.
- 5 that this Hon'ble Tribunal be pleased to direct the respondents to count the period of 57 days from 21-04-2000 to 16-06-2000 and the period of 16 days from 31-08- 2000 to 15-09-2000 as Extra Ordinary Leave on Medical Certificate, counting for pension and increment.
- 6 Cost of this Application be awarded.
- 7 Any other and further relief as this Hon'ble Court may deem fit and proper under the circumstances of the case."

2. The facts are that the applicant was working as Sr. Auditor in the inspection section at CST, Mumbai. She proceeded on sanctioned leave from 10.04.2000 to 20.04.2000 on account of marriage of her daughter at her native place in district Bulsar, Gujarat with permission to leave headquarters. She fell sick before the expiry of the leave and applied for extension of leave by 57 days along with medical

certificates.

The applicant was again on sanctioned leave with permission to leave headquarters from 20.08.2000 to 30.08.2000. Before expiry of the leave, she fell sick and applied for extension of leave by 16 days along with medical certificate.

3. It is stated that since there was no AMA within a radius of 8 kms of her residence, she submitted medical certificates from registered medical practitioners in terms of rule 19-1(ii) of CCS(Leave) Rules. However, both the above leave periods were treated as unauthorized absence, without giving her any kind of intimation/notice. The applicant has filed the present OA claiming the relief for treating the absence for the period of 57 days as well as 16 days respectively referred to above as extraordinary leave counting for pension and increment.

4. The applicant superannuated on 31.01.2013. Prior to that, M/o Finance Department of Expenditure issued OM No. 10/02/2011-E-III/A dated 19.03.2012 (Annex. A-7). The applicant is relying upon para 3 and para 4

of the aforesaid OM which read as under:

"3. On further consideration and in exercise of the powers available under CCS(RP) Rules, 2008, the President is pleased to decide that in relaxation of stipulation under Rule 10 of these Rules, those Central Government employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 1-1-2006 in the pre-revised pay scale as a one-time measure and thereafter will get the next increment in the revised pay structure on 1-7-2006 as per Rule 10 of CCS(RP) Rules, 2008. The pay of the eligible employees may be re-fixed accordingly.

4. In so far as the persons serving in the Indian Audit and Account Department are concerned, these orders are issued in consultation with the Comptroller and Auditor General of India."

5. The applicant claims that in terms of the aforesaid OM, she is entitled to one increment if her unauthorized absence for 57 days and 16 days referred above are treated as extra ordinary leave on medical ground counting for pension and increment. Consequently, she made representation dated 27.11.2012 (Annex. A-8) to respondent no. 2 with request to regularize the period of her absence referred to above in terms of Rule 19-1(ii) of CCS(Leave) Rules. Thereafter she made another representation dated 19.04.2013 (Annex A-9). She received reply dated 15.05.2013 rejecting her said representation which reads as under:

"OFFICE OF THE PRINCIPAL DIRECTOR OF AUDIT,
CENTRAL RLY. CSTM

No. Au/Admn/PF/HDN/760

Date: 15/05.2013

To,

Smt. H. D. Naik
Aashiyana Tower, A Wing
Flat No. 111, Sodawala Lane
Borivali(West)
Mumbai - 400092

Kindly refer to your letter dated 24/04/2013. In this connection, I am directed to inform you the following:

1. Encashment of leave and Re-imbursement of medical bills - Disbursement of leave encashment was initially delayed as application for regularization of period of absence was to be received from you leading to subsequent delay in updation of your leave account. Payment could not be released to you due to non availability of funds from Hqrs' Office. All the bills have been passed and will be disbursed as soon as funds are received.
2. Regularization of unauthorized leave - Your request for counting past period of EOL (Year 2000) was not agreed to by Competent Authority, as per GOI Decision I under Rule 21 of CCS Pension Rules as your pension papers were already processed and sent for passing to FA&CAO's Office."

It is the aforesaid letter/reply which is under challenge vide present OA.

6. The applicant made further representation dated 18.07.2013 addressed to the Principal Director of Audit challenging the letter dated 15.05.2013 and therein she stated that she was on medical leave during the period from 21.04.2000 to 16.06.2000 and thereafter from 31.08.2000 to 15.08.2000 and that she had submitted proper medical certificates in time. She relied upon Rule 19-1(ii) of CCS(Leave) Rules and Rule 13 and 21 of CCS(Pension) Rules, 1972. She further mentioned therein regarding the benefit she was likely to get from the OM dated 19.03.2012 referred to above if her

unauthorized absence is treated as EOL with medical certificate. To the aforesaid representation, she received reply dated 27.08.2013 to the following effect:

“

To,
Smt. H. D. Naik
Aashiyana Tower, A Wing
Flat No. 111, Sodawala Lane
Borivali(West)
Mumbai – 400092

Sub: Second representation against
regularization of unauthorized leave at the time of retirement.

X-X-X

I am directed to inform that your request dated 18/07.2013 for regularization of unauthorized absence for 57 days (21/04/2013 to 16/06/2000) and 16 days(31/08/2013 to 15/09/2000) has not been considered by the competent authority. This is for your information.”

This reply is also under challenge vide present OA.

7. The applicant thereafter made representations dated 04.09.2014 and 26.12.2014, however, the same were also rejected vide reply dated 14/18.11.2014 and 03.02.2015, respectively. The applicant sought information under RTI from Respondent no. 2 vide application dated 02.06.2015 as to why the period of absence under consideration was treated as unauthorized absence in spite of submitting proper medical/fitness certificates in time. She

received letter dated 03.07.2015 from the office of Respondent no. 2 to the following effect:

"The then Competent Authority treated the period of absence as unauthorized as the certificate was issued by Non-AMA/Non-Govt. doctor and as 16 days leave was not recommended for sanction by the then branch officer."

"Necessary entries in respect of EOL without Medical Certificate were made in the service register at the time of regularizing the leave in the year 2000 itself. Smt. H.D. Naik retired on 31-01-2013 and her first application received on 27-11-2012 i.e. just two months before her retirement. Vide GOI decision under Rule NO. 21 CCS (Pension) Rules, no entry into past events or check of past records should be undertaken once the time allowed for preparatory action for pension has ended, i.e. upto 8 months before retirement."

8. The applicant has stated that she had more than 33 years of qualifying service and since the unauthorized absence had no effect on her pension prior to the issuance of OM dated 19.03.2012 and also for the reason that unauthorized absence was not even communicated to her, she could not make representation prior to 27.11.2012 which was submitted on the basis of OM dated 19.03.2012.

9. The present OA has been filed by the applicant on the following grounds:

i) as per provision to Rule 19-1(ii) of CCS(Leave) Rules, a Govt Servant is permitted to produce a medical certificate or fitness certificate issued by Registered Medical Practitioners in case Authorized Medical

Attendant(AMA) is not available within a radius of 8 kms from his/her residence or place of temporary stay outside his/Other Hqrs.

ii) the respondents did not intimate the applicant of non-acceptance of the medical certificates or counting of the leave period as unauthorized inspite of the fact that the Dy. Director had instructed on office note dated 29.05.2000 and 27.09.2000 to intimate the applicant its consequences and call for explanation; and

iii) the memo dated 26.04.2000 asking her to report for duty was sent to her Mumbai address whereas during leave period she had given her address of Gujarat and as such she neither received the memo nor was even aware of the memo till the year 2011.

10. Along with the OA, the applicant has filed M.A. No. 924/2016 seeking condonation of delay in filing it. It is stated that vide present OA, she is challenging the letter dated 03.02.2015(Annex A-4) which was received by her on 06.02.2015. The OA was filed on 01.03.2016 and there is delay of 24 days. It is claimed that she was under medical treatment for lumbar

spondylitis for about 1 year from 2015. She went to her native place in Gujarat in January 2016 and the long journey caused acute back pain and she was under medical treatment in Gujarat from 27.01.2016 to 26.02.2016 in terms of medical certificate. She has prayed for condonation of the delay in the aforesaid circumstances.

11. The respondents have filed detailed Affidavit in reply to the OA as well as MA NO. 924/2016.

The respondents have laid stress on non-compliance of the provisions of the Section 21 of the Administrative Tribunals Act, 1985 by the applicant. It is claimed that the cause of action, if any, arose in favour of the applicant in the year 2000 when her absence for 57 days w.e.f. 21.04.2000 and thereafter absence for 16 days w.e.f. 31.08.2000 was treated as unauthorized. It is claimed that the first representation made by the applicant in this regard was on 27.12.2012 which was also beyond the period of limitation in terms of Section 21 of Administrative Tribunals Act. Further that the applicant has not explained the delay of about 16 years in filing the present OA from the

accrual of the original cause of action. It is stated that merely filing representations does not extend the period of limitation. It is submitted that since the OA is barred by limitation, on this ground itself, it is liable to be dismissed.

12. In support of their contention, the respondents have relied upon the following judgments:

- i) **P.S.Sadasivawswamy V/S S/O Tamil Nadu**
AIR 1974 SC 2271
- ii) **Jacob Abraham and others A.T. Full Bench**
Judgments, 1994-96
- iii) **Ram Chandra Samanta V/S UOI 1994(26) ATC**
228
- iv) **S.S.Rathore V/S S/O M.P. 1989(2) ATC 521**
- v) **Bhoop Singh V/S UOI IR 1992 SC 1414.**
- vi) **Secretary to Govt. of India V/S Shivaram**
M. Gaikwad (1995) 30 ATC 635= 1995(6) SLR (SC)
812.
- vii) **Ex.Capt. Harish Uppal V/S UOI 1994(2)**
SLJ 177
- viii) **L.Chandra Kumar V/S UOI 1997(2)**
SLR(SC)1.
- ix) **AIR 199 SC 564 Dattaram V/S Union of**

India

- x) 1996 LLJ 1127(SC) UOI V/S Bhagnoar Singh
(1999) 8 SCC304 Ramesh Chand Sharma V/S Udham
Singh Kamal & Ors.
- xi) 2002 (5) SLR(SC) 307 E. Parmasivan & ors
VS UOI & Ors .
- xii) State of Uttaranchal V/s Sri Shiv
Charan Singh Bhandari 2014 (2) SLR (SC) 688.
- xiii) Union Of India V/s M K Sarkar 2009 (6) SLR
756 (SC) Para14
- xiv) Isha Bhattacharyaji V/s Management
committee of Tools : 2014 (1) SLJ (SC) 20.
- xv) State Of Tripura and Ors V/s Arabinda
Chakraborty &Ors : 2014 (3) SLJ 65.

13. In reply on merits to the OA, it is submitted that the applicant had verified her service book on 05.11.2003, 01.10.2004, 20.07.2006, 31.08.2007, 20.08.2008, 20.11.2009 and 01.12.2010 (Exhibit R-3 colly) and had also put her signature in token of the verification. Hence, she was aware of the fact that her absence for 57 days from 21.04.2000 and for 16 days from 31.08.2000 was treated as unauthorized absence which was clearly recorded in the service book (Exhibit R-4). Further, she was also

informed vide letter dated 02.01.2001 (Exhibit R-5) that the said period has been treated by the competent authority as unauthorized absence, not counting for pension and increment.

14. The respondents have drawn attention of this Tribunal to Rule 7, CCS (Leave) Rules that leave cannot be claimed as a matter of right and when the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it.

15. Regarding the grant of leave to gazetted and non-gazetted Govt servants on medical certificate, learned counsel has referred to Rule 19(5) of CCS (Leave) Rules which reads as follows:

“The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited”

It is further submitted that as per the Rule position existing at the relevant time under Rule 19(1)(ii) for grant of leave on medical certificate to a non-gazetted government servant, the leave application was required to be accompanied by medical certificate in Form 4

given by an unauthorized medical attendant or a registered medical practitioner ie. in case of CGHS beneficiaries, the medical certificate along with fitness certificate must be issued by a CGHS doctor and as per 5th CPC report, para 117.14, the medical leave for all the categories of Govt employees to be sanctioned only on production of medical/fitness certificate either from a doctor in a CGHS dispensary or from a authorized medical attendant where the CGHS dispensaries are not available. It is stated that this recommendation of 5th CPC was under the consideration of the Govt and pending final decision it was decided that non-Gazetted Govt Servant applying for leave on medical certificate would be required to produce the requisite medical/fitness certificate from a CGHS doctor in case the employee was beneficiary of the CGHS and was residing in the area covered by CGHS at the relevant time.

16. It is further stated that the applicant vide letter dated 18.09.2000 requested for regularization of the absence. She had been served with memos dated 24.04.2000 and 26.04.2000. As per Annex R-18 dated 29.05.2000

her absence for 57 days and 16 days respectively was treated as unauthorized absence not counting for pension. This order was communicated to the applicant.

17. The applicant made representation dated 27.11.2012 on the basis of Office Memorandum dated 19.03.2012 (Annex. A-7) which was replied by respondents vide letter dated 30.04/02.05.2012 (Exhibit R-21). The respondents claim that the OM dated 09.03.2012 pertains to issuance of first increment after fixation of pay on 01.01.2006 in the revised pay structure and does not apply to a case where punishment has been imposed by the Department in the year 2000. All the representations by the applicant in the year 2012 and thereafter were rejected and the applicant was duly communicated the decision in this regard. The OA is highly belated and even otherwise on merits also the applicant has no case for reopening of the case after lapse of around 15 years and is thus liable to be dismissed.

18. After hearing the submissions of both the parties, we have carefully gone through the material available on record, law points and

rival contentions of the parties.

19. Admittedly the applicant remained absent from duty for 57 days w.e.f. 21.04.2000 to 16.06.2000 and thereafter for 16 days from 31.08.2000 to 15.09.2000. This period of absence was treated by the respondents as unauthorized absence having effect on her pensionary benefits and increment. It is the claim of the applicant that she was not communicated that her absence for 57 days and 16 days has been treated as unauthorized. However the respondents claim that the applicant was well aware of the fact that her said absence had been treated as unauthorized affecting her pensionary benefits and increment as she had verified her service book on the following dates:

05.11.2003, 01.10.2004, 20.07.2006, 31.08.2007, 20.08.2008, 20.11.2009 and 01.12.2010 (Exhibit R-3 colly).

20. The respondents have drawn our attention to copies of the service record (Exhibit R-3 and R-4) which are bearing her signature in token of her inspecting the same on the dates mentioned above. Exhibit R-4 clearly finds mention as below about her unauthorized absence

for 57 days affecting her pension and increment:

"57 days EOL with medical certificate from 21.04.2000 to 16.06.2000 not counting for pension and increment(unauthorized absence)."

Therefore, when the applicant verified the service record, she became aware of the fact that her absence for 57 days and 16 days during the period referred to above had been treated as unauthorized and was ordered to be not counted for pension and increment. This fact finds corroboration from her representation dated 27.11.2012(Annex A-8) which clearly shows that she was having knowledge of the fact that her 57 days leave and 16 days leave respectively was treated as unauthorized and not counting for pension and increment.

She has nowhere claimed in the representation that she was not aware of this fact.

21. To the contrary, she herself has claimed therein that she had sent applications and medical certificates but she had been issued memos by the office stating that the above referred period was treated as unauthorized absence due to non-acceptance of medical

certificate. If she had no knowledge of this fact, how could she make the representations on 27.11.2012 onward requesting therein that the unauthorized absence of 57 days and 16 days respectively be regularized and treated as EOL on medical certificates to be counted as qualifying service for pension and increments. From these circumstances, it is crystal clear that as soon as the OM dated 19.03.2012 (Annex A-7) was issued, the applicant was well aware of the fact that period of 57 days and 16 days of her absence had been treated as unauthorized absence, that is why for regularization of the unauthorized absence, she approached the concerned authorities vide her representations dated 27.11.2012.

22. In these circumstances, it was the the duty of the applicant to have approached this Tribunal within a period of one year from the date of said order of the respondents treating her absence for 57 days and 16 days as unauthorized and not to be counted for pension and increment or from the date of her knowledge of said order, whichever was earlier. However, the applicant approached this Tribunal in 2016

i.e. after lapse of around 12 years from the date of her knowledge of these orders.

23. She claims that she filed several representations with the respondents against that order on 24.04.2013, 18.07.2013, 04.09.2014 and 26.12.2014, which were rejected vide orders dated 15.05.2013, 27.08.2013, 14/18.11.2014 and 03.02.2015 respectively. Her counsel has argued that the cause of action arose in her favour when the representation dated 26.12.2014 was rejected on 03.02.2015. The period of one year from the date of order dated 03.02.2015 for filing the OA expired on 05.02.2016 in terms of Section 21 of the Administrative Tribunals Act, 1985, whereas the present OA has been filed on 02.03.2016. Hence, there is delay of only 24 days in filing the OA it is claimed.

24. However, we are unable to accept the stand taken by the applicant that the cause of action arose in her favour on 03.02.2015 vide order at Annex A-4 by which her representation dated 26.12.2014 was rejected. It is the settled proposition of law that while considering the issue of limitation under Section 21 of the Administrative Tribunals Act, 1985, the crucial

date for counting the period of limitation is the date on which the cause of action first arose and neither when the employee submitted his representation for redressal of his grievance nor from the date of order passed by the concerned authority on such representation. Admittedly there is no time limit fixed for the employee to make a representation against the order by which he/she is aggrieved, though he/she is expected to file it for redressal of the grievance within a reasonable time, so that the authority can also take a decision thereon at the earliest. Hence in the present case the contention of the applicant that the representation dated 26.12.2014 was rejected vide order dated 03.02.2015 and hence the cause of action arose in favour of the applicant from that date is of no consequence and the present OA cannot be treated to be within the limitation in terms of Section 21 of the AT Act.

25. The case record itself speaks that the absence of the applicant for 57 days w.e.f. 21.04.2000 to 16.06.2000 and for 16 days w.e.f. 31.08.2000 to 15.09.2000 was treated as unauthorized absence and it was ordered that

this period would not be counted for pension and increment. Therefore, the cause of action arose in favour of the applicant when this order was communicated to her or when she gathered the knowledge about it. The respondents have not brought on record any material about communication of this order to the applicant treating the period of 57 days and 16 days as unauthorized absence, not to be counted for pension and increment. However, they have brought to our notice that the applicant had on various occasions verified her service book and in token of thereof, she had put her signature along with the date. Such verification as per record was firstly carried out on 05.11.2003. The relevant entry regarding 57 days EOL and 16 days EOL treated as unauthorized absence was made in the service record in the year 2000 itself and therefore on 05.11.2003 and on several occasions thereafter when the applicant verified the service record, she was aware of this entry which is corroborated by her representation dated 27.11.2012.

26. Therefore, we conclude that the cause of action arose in her favour on 05.11.2003. Thus

the applicant was required to file the present OA in terms of Section 21 of Administrative Tribunals Act within a period of one year from that date i.e. 05.11.2003. However, the present petition has been filed by the applicant on 02.03.2016 after lapse of more than 11 years. The record also shows that the applicant had filed her first representation for regularization of her unauthorized absence of 57 days and 16 days vide letter dated 24.04.2013 which was rejected vide order dated 15.05.2013(Annex A-1). Thereafter she filed 2nd representation dated 18.07.2013 which was rejected vide order dated 27/28.08.2013(Annex A-2) followed by another representation dated 04.09.2014 rejected vide order dated 14/18.11.2014(Annex A-3) and lastly she filed the representation dated 26.12.2014 which was rejected vide order dated 03.02.2015(Annex A-4). The applicant has attempted to project that the cause of action in her favour arose from 03.02.2015, thereby claiming a delay of only 24 days. However, for the reason that her last representation was dismissed on 03.02.2015, the cause of action cannot be treated to have

accrued in her favour from that date.

27. The applicant has admitted that she filed the relevant representations for regularization of her unauthorized absence of 57 days and 16 days only on the account of issuance of OM dated 19.03.2012 (Annex A-7) which might have entitled her to one increment. This shows the conduct of the applicant that but for this OM, she would not have challenged the order of the respondents declaring the period of 57 days and 16 days as unauthorized absence. The applicant kept quiet till the OM dated 19.03.2012 was issued. We have no trace of doubt that the applicant could have challenged the order of non-regularization of 57 days unauthorized absence as early as possible within a period of one year from the date of her knowledge acquired on 05.11.2003 if not before. However, she did not resort to any such challenge till the OM dated 19.03.2012 came to her notice.

28. Section 21 of the Administrative Tribunals Act, 1985 is set out herein below:-

"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.

Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or, as the case may be, Clause (b), of sub-section (1) of within a period of six months from the said date, whichever period expires later.

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."

29. As per Section 21 of the Administrative Tribunals Act, 1985, the period prescribed for filing OA is one year from the date of cause of

action. In the present case, the period of one year was over as on 05.11.2004. The applicant thereafter as per the settled proposition of law, was required to explain the delay of each and every day. However, she has failed to do so. She has not given detailed reasons with dates on account of which she was prevented from filing the OA within the period of limitation.

30. The Hon'ble Apex Court in the case of case of State of Uttaranchal and Another Vs. Sri Shiv Charan Singh Bhandari and Others, reported in 2013 (11) Scale 56 observed in para 20 of its judgment that anyone who sleeps over his right is bound to suffer. This judgment is fully applicable to the facts and circumstances of the present case.

31. In the case of B. Madhuri Goud Vs. B. Damodar Reddy, 24 (2012) 12 SCC 693 the Hon'ble Apex Court has culled out broadly the following principles to be taken into consideration while disposing of application for condonation of delay:-

21.1(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay for the Courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms

are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3(iii) Substantial justice being paramount and pivotal the technical considerations should not be give undue and uncalled for emphasis.

21.4(iv) No presumption can be attached to deliberate causation of delay but gross negligence on the part of the counsel or litigant is to be taken note of.

21.5(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be

based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a half haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

32. As per the principles referred to above, the concept of liberal approach while handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of

short duration or few days calls for a liberal delineation.

33. In the present case, the delay of more than 11 years beyond the period of limitation can be termed as inordinate delay. Therefore, it was the duty of the applicant to explain this delay by showing sufficient cause which prevented her from filing the present OA within the period of limitation, but she has failed to do so.

34. In view of the above discussion, MA No.924/2016 being devoid of merits is dismissed. Consequently, the OA also stands dismissed on account of unjustified inordinate delay in filing it. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

gm.

JD
22/10/18

