

U/b

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.**

MISCELLANEOUS APPLICATION No.2177 OF 2016
IN
ORIGINAL APPLICATION No. 2197 of 2016

Dated this Thursday, the 12th day of December, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)

Niranjan S/o Devidas Wasnik, 72 years, Ex-SIPO, MSME
at Mumbai, R/o 592, Bhandar Mohalla Indora, P.O. Jaripatka,
Nagpur 440 014. *...Applicant*
(*By Advocate Ms. Rashi Deshpande*)

Versus

1. The Government of India, through its Secretary (MSME),
Ministry of Micro, Small and Medium Enterprises,
Udyog Bhavan, New Delhi 110 001.
2. The Deputy Secretary (SME),
Ministry of Micro, Small and Medium Enterprises,
Udyog Bhavan, New Delhi 110 001.
3. The Development Commissioner, Small Scale Industries,
Nirman Bhavan, New Delhi 110 011.
4. The Director, Small Industries Service Institute (MSME),
Kurla Andheri Road, Saki Naka, Mumbai 400 072.
5. The Deputy Director (Administration),
Ministry of Micro, Small and Medium Enterprises,
Office of Development Commissioner (MSME),
Nirman Bhavan, New Delhi 110 011.
6. Mahatma Phule Backward Class Development
Corporation Ltd., Through its Managing Director,
Head Office, at Juhu Supreme Shopping Centre,
Gulmohar Cross Road No.9, J.V.P.D. Scheme,
Juhu Mumbai 400 049. *...Respondents*

(*By Advocate Shri R.A. Gupte*)

Reserved on : 04.11.2019
Pronounced on : 12.12.2019

ORDER

Shri Niranjan Devidas Wanik, Ex-SIPO, MSME, at Mumbai and presently resident of Bhandar Mohalla, Indora, P.O. Jaripatka, Nagpur has filed this OA on 15.09.2016. He has sought quashing and setting aside of order dated 21.08.2007 (Annex A-1) issued by Deputy Director (Administration), Office of Development Commissioner (MSME), Ministry of Micro, Small and Medium Enterprises and declaration that he is qualified and entitled for prorata retirement benefits as per OM dated 09.01.1984 issued by DOPT OM (Pension Unit), declaration as unconstitutional and arbitrary for retirement benefits that categorization of Government servants between those who joined public sector undertakings before and after 09.01.1984.

2. Along with the OA, the applicant has filed MA No.177/2016 for condonation of delay in filing of the OA. In the MA, the applicant has stated that he is aggrieved of

the order of respondents dated 21.08.2007, he was an employee of Micro, Small and Medium Enterprises Department of Central Government for ten years and two days, and on resignation he was relieved from that department in 1979 and got permanently absorbed with Government of Maharashtra undertaking Mahatma Phule Backward Classes Development Corporation Limited, Mumbai and retired from service year 2002. Thus he became entitled for prorata pensionary benefit for his earlier service with Government of India. He approached respondents several times for release of pensionary benefits to him but they rejected his claim. He recently wrote letters on 04.07.2015 and 15.07.2016 to the respondents.

3. He has claimed that he is diligent and aware of his rights and the delay is not intentional. Retirement benefits is the right of the employee but even then it has been denied to him by the respondents. Therefore, he has prayed for condonation of

the delay in filing of the OA. In support of his claim, the learned counsel for the applicant has relied upon following three Supreme Court case law as follows:

(i). **R.L. Marwaha Vs. Union of India and Others, Writ Petition No.3739 of 1985 decided on 12.08.1987 reported in (1987) 4 SCC 31** holding that classification of pensioners who were working in the Government or Autonomous Body into two classes merely on the basis of retirement is unconstitutional as it bears no nexus to the object to be achieved by DOPT order dated 29.08.1984.

(ii). **M.R.Gupta Vs. Union of India and others, Civil Appeal No.7510 of 1995 decided on 21.08.1995 reported in (1995) SCC 628.**

(iii). **S.R.Bhanrale Vs. Union of India and others, Civil Appeal No.9489/1996 decided on 19.07.1996 reported in AIR 1997 SC 27 holding that bar of limitation cannot be pleaded by Government of India when the Department itself had defaulted in making payment towards encashment of leave, arrears of**

certain increments, etc.

In the present MA, I find that the applicant has pleaded for condonation of delay but no specific reason or cause has been explained by him.

4. In this case, it is noted that resignation of the present applicant was accepted by the Development Commissioner, MSME, Mumbai on 30.03.1979 and he was relieved from SISI, Mumbai vide letter dated 05.04.1979. The DOPT OM relied upon by him which extended the benefit of prorata retirement benefits to permanent Central Government employees who after resignation got permanently absorbed in State Government undertakings was issued on 09.01.1984 and the benefit of prorata retirement benefits was made applicable only from the date of issue of those orders and it was directed that cases of employees who had quit the Central Government services before issue of those orders need not be reopened.

5. The impugned order issued by the Office

of Development Commissioner, MSME dated 21.08.2007 rejecting the applicant's request for retirement benefits for his service rendered with the Central Government was in response to his representation of 22.06.2007. This shows that after having resigned from the Central Government service in March 1979, issuance of DOPT OM dated 09.01.1984 and he himself having retired from the State Government undertaking in 2002, the cause of action for him arose in 2002. But he seems to have represented for the first time only on 22.06.2007.

6. Thus, even after rejection of his representation by the above order of 21.08.2007, except mentioning in the MA that he has approached the respondents several times after that order of 21.08.2007, no specific dates of such representations have been mentioned by him. He has only mentioned the dates of only his representations on 04.07.2015 and 15.07.2016. Thus, even after the rejection of his representation by the

impugned order dated 21.08.2007, there is no specific reason or explanation as to what prevented him for approaching the Tribunal over a period of nine years in filing the OA.

7. As Per Section 21 of the Administrative Tribunals Act, 1985, where the final order has been made, the Tribunal cannot admit an application unless it is made within one year of such final order or where an appeal or representation has been made and six months have expired thereafter without such final order, within one year from the date of expiry of the period of six months.

8. In this case final order was issued by the respondents on 21.08.2007 on the applicant's representation dated 22.06.2007.

That means in OA ought to have been submitted by the applicant latest by 20.08.2008. But it has actually been filed on 15.09.2016 i.e. there is delay of more than eight years. The applicant in the MA has not even specified as to how much is the delay in filing of the present OA.

9. In this context, the Apex Court guidelines listed in case of **B.Madhuri Goud Vs. B. Damodar Reddy**, 24 (2012) 12 SCC 693 have to be noted:

"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.

10. In view of these guidelines, the applicant's total silence or action for more than eight years in approaching the Tribunal in time, especially when he himself claims in the MA that he is a diligent person and aware of his rights, does not render him deserving for condoning the delay. If he was aware of his rights and diligent then he ought to have approached the Tribunal in time and merely based on sitting idle for such a long time, in fact has rendered his claim to be stale as held by the Apex Court in **Union of India and others Vs. M.K.Sarkar, Civil Appeal No.8151 of 2009 decided on 08.12.2009 (2010) 2 SCC 59.**

11. As per Apex Court Constitution Bench view

in S.S.Rathore Vs. State of Madhya Pradesh

(1989) decided on 06.09.1989 reported in 1990

AIR 10 : 1989 SCR Supl. (1) 43 repeated unsuccessful representations cannot extend the period of limitation. Therefore, his prayer for condonation of delay cannot be accepted.

12. Hence MA No.2177/2016 is dismissed. In consequence, OA No.2197/2016 also stands dismissed.

(Dr. Bhagwan Sahai) /
Member (Administrative)

kmg*

2/12/19
13/12/19

