(2023) 02 CAT CK 0047

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 180, 00967 Of 2022 In Original Application No. 180, 00675 Of 2022

A.K. Balakrishnan APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 27-02-2023

Acts Referred:
Administrative Tribunals Act, 1985 — Section 20(2)(b)

Citation : (2023) 02 CAT CK 0047

Hon'ble Judges : Sunil Thomas, Member (J);K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : T.C. Govindaswamy, Kala T. Gopi, Nishitha Balachandran, Renuka M.R, O.M. Shalina

Final Decision : Dismissed

Judgement

Sunil Thomas, Member J

1. This Miscellaneous Application is filed by the applicant in the Original Application, seeking condonation of delay of 1760 days in filing the OA. According to the applicant, by Annexure A1 dated 12.7.2006, a penalty of reduction in pay by two stages for a period of 12 months without having the effect of postponement of future increments was imposed on him. On receipt of Annexure A1, Annexure A7 appeal dated 25.7.2016 was submitted. Thereafter, Annexure A2 corrigendum was issued by the respondents on 6.8.2016, modifying the penalty into one of reduction by four stages for a period of four months, without the effect of postponing the future increments. While so, by Annexure A8 reply to an application under the RTI Act, he was informed that the appeal was pending with the concerned authority. Annexure A8 is dated 11.5.2017. Thereafter, the applicant has been awaiting for a reply to Annexure A7. According to the applicant, the penalty imposed on him has a recurring effect on the pension of the applicant on account of the delay in granting financial upgradations as also the scale of pay as applicable to a Group-A scale of pay,

which was granted to the applicant in the year 2017. He had continued loss on his pension, and other retirement benefits. Due to various reasons, the applicant could not approach this Tribunal. Hence, a delay of 1760 days has occurred. He sought to condone the above delay.

2. The respondents have filed a detailed objection, wherein it was specifically contended that as per the extant rules, pensionary benefits of an employee has to be calculated based on his last pay drawn or its average emoluments calculated while taking into account last ten months pay drawn by him, whichever was higher. Since in the case of the applicant his average emoluments were lower, his pensionary benefits were arrived at by taking into account his last pay drawn. Hence, all other benefits such as financial upgradation under the MACPs, upgradation to level 10 of the 7th CPC, promotion to senior scale in level-11 were granted before his retirement on 28.2.2017. Due to the imposition of the penalty, the pensionary benefits of the applicant were not reduced. Hence, the claim that the penalty had a cascading effect on his pension and thereby it was a continuing cause of action was not sustainable. It was contended that by virtue of Section 20(2)(b) of the Administrative Tribunals Act the application submitted should be deemed to have been rejected on expiry of six months. The application ought to have been filed within 18 months from the date of submission of the appeal. The delay cannot be condoned.

3. The learned counsel for the applicant contended that there was reasonable cause for the delay, which has been sufficiently explained. It was contended that due to the pendency of the appeal he could not approach this Tribunal. The learned counsel sought for taking a lenient view, in the light of the decision of the Supreme Court in State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr. 2000 KHC 1413 at paragraph 12. It was contended that the Court had taken a liberal view while interpreting the expression "sufficient cause" and held that there should be a justice oriented approach rather than technical detention of "sufficient cause" for explaining each days delay. The peculiar situation arising in the present case required a lenient view especially since the penalty imposed on him had a cascading effect on his pension and hence a continuing cause of action, it was contended.

4. Evidently, by virtue of Section 20(2)(b) of the Administrative Tribunals Act, if an appeal is not responded within six months from the date of preferring the appeal, it should be deemed to have been rejected. The limitation period starts running from that day and the OA has to be filed within one year from the date prescribed in Section 20(2)(b). Evidently, he did not do so and hence, delay of 1760 days had occurred. The contention that the applicant was waiting for the outcome of the appeal cannot be a ground in the light of the above specific statutory provision, which provides for a presumption.

5. The contention of the learned counsel for the applicant that the penalty will have a cascading effect on his pension and hence, being a continuous cause of action, there is no delay, cannot be sustained at all. In their objection the

respondents have specifically stated that pension was calculated on the basis of last drawn salary and his pensionary benefits were arrived at by taking into account his last drawn salary. All benefits had been granted to him. This specific contention that the penalty did not have a cascading effect on his pension is not seen controverted by filing a rejoinder. Hence, we are inclined to hold the view that penalty did not have a cascading effect and that delay has occurred.

6. Even though efforts have been made to explain the substantial delay it has not been explained properly. There is no sufficient cause for condoning the delay. A substantial long period of delay is sought to be explained very vaguely and the application is bereft of any details. Hence, on an overall evaluation it has to be held that the applicant has not explained the substantial delay. Hence, the MA is liable to be rejected. Accordingly, MA is dismissed.

