

(2020) 03 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 6285 Of 2018

Anil Ramdas Pawar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Limitation Act, 1963 — Section 5

Central Civil Services (Conduct) Rules, 1964 — Rule 3[1][i], 3[1][ii], 3[1][iii]

Citation : (2020) 03 BOM CK 0018

Hon'ble Judges : A.S. Chandurkar, J; Vinay Joshi, J

Bench : Division Bench

Advocate : S. Marathe, U.M. Aurangabadkar, P.H. Khobragade, R.G. Agrawal

Final Decision : Allowed

Judgement

Â Date,Events.

17.03.2003,"Major penalty, charge sheet issued.

16.08.2004,Enquiry report submitted.

22.08.2005,Penalty was imposed.

09.05.2008,Review by same authority was rejected.

24.11.2006,"Original Application No.365 /2006 filed by Mr. Bhat, was allowed.

,"Original Application No.123 /2006 filed by Mr. Nair, was allowed.

22.01.2013,High Court of Kerala confirmed the order passed in Original Application No.123/2006 (Mr. Nair).

13.10.2013,High Court of Karnataka confirmed the order passed in Original Application No. 356/2005 (Mr. Bhat).

24.05.2013,"Original Application No.2168/2013, along with application for

condonation of delay M.A.No. 2145/2013, filed by the petitioner.

12. The petitioner would contend that when he was again posted at Amravati in the year 2013 from Jammu and Kashmir, he came to know that co-",

members of TEC namely Mr. Bhat and Mr. Nair, were exonerated. After getting knowledge that similarly situated co-members were exonerated",

from similar charges, he has immediately challenged the order of punishment by preferring Original Application before the CAT, and therefore, delay",

is unintentional and liable to be condoned.,

13. Respondents have resisted for condonation of delay before the CAT. According to respondents, there was inordinate and unexplained delay on the",

part of the petitioner in approaching the CAT. The reasons canvassed for condonation of delay are totally unsatisfactory. The petitioner had ample,

opportunity to pursue his cause before the respective CAT, wherever he was posted. Respondents would submit that the petitioner cannot take",

advantage of the order of exoneration passed in the matter of co-members of TEC i.e. Mr. Bhat and Mr. Nair. The delay is running into more than 5,

years, and therefore, there is no justification in claiming condonation.",

14. CAT was not satisfied about the cause canvassed by the petitioner to explain the delay. It is observed that there were no compelling,

circumstances for the petitioner for not approaching CAT within the stipulated period. Though petitioner was transferred to Jammu and Kashmir,"

however, for a period of 1 ½ years, he did not join at Kashmir. Though he was transferred in a sensitive area, however, he could have availed leave",

for approaching the Tribunal. It is observed that the designation of Mr. Bhat was different, and he was holding different responsibility, therefore, the",

case of petitioner cannot be equated with Mr. Bhat. CAT has observed that the limitation of one year provided for service matters is a Legislative,

wisdom, which has to be followed. The CAT has distinguished all the reported judgments cited by the petitioner and ultimately by expressing",

dissatisfaction on the explanation, refused to condone the delay.",

15. We have heard the learned counsel appearing for the respective parties. Learned A.S.G.I. though fairly conceded that CAT is empowered to,

condone of delay, however, submitted that looking to the matter, it is not a fit case to condone the delay. The controversy is restricted to see whether",

the petitioner has made out a sufficient cause to condone the delay of near about

5 years and few months.,

17. Shri Marathe, learned Counsel for the petitioner submitted that due to frequent transfers, the petitioner was not stable at one place. Petitioner was",

shouldering higher responsibility in sensitive area of LOC in Jammu and Kashmir, which enabled him to take timely action for his own cause. The",

second ground is about acquiring knowledge of exoneration of co-employees. It is submitted that in the year 2013, when the petitioner was posted",

back at Amravati, he came to know about exoneration of Mr. Bhat and Mr. Nair, in departmental action. Though in stricto sensu decision in the cases",

of Mr. Bhat and Mr. Naik has no direct relevance, however, it is canvassed that the petitioner being similarly charged, he is reasonably entitled for",

equal treatment. In this behalf petitioner has relied on the reported case of K.C. Sharma and other .vrs. Union of India (1997) 6 SCC 721, wherein the",

Honâ??ble Supreme Court has expressed that the Tribunal should have condoned the delay, as several other similarly situated persons got the",

benefit. In the said case the issue was of general importance as several employees were benefited and, therefore, in such a background delay was",

condoned.,

On similar line, the petitionerâ??s learned counsel placed reliance on judgment of Honâ??ble Supreme Court in case of Inderjit Singh .vrs. State of",

Punjab and another (2010) 12 SCC 529, in which though there was no aspect of delay, but, it was held that when the co-accused has been reinstated,",

other is also entitled for reinstatement being similarly charged. Infact the said issue touches to the merits of the claim, with which presently we are not",

concerned. Lastly on the point of parity, the petitionerâ??s learned counsel has relied on the decision of Supreme Court in cases of Rajendra Yadav",

.vrs. State of Madhya Pradesh and others (2013) 3 SCC 73 and Life Insurance Corporation of India and others .vrs. Triveni Sharan Mishra (2014) 10,

SCC 346, wherein the same principle was explained.",

14. The learned Counsel for the petitioner has argued that the punishment of reduction by three stages in the time scale of pay for a period of three,

years, gives continuous cause of action, hence delay is liable to be condoned. To buttress said submission, reliance is placed on the decision of",

Supreme Court in case of Union of India and others .vrs. Tarsem Singh (2008) 8 SCC 648. In the said case a person was held ineligible for pension,",

which was constituted as continuous cause of action, as the loss is continuous. The petitioner's case is distinct, as neither he was dismissed nor",

deprived from pensionary benefits. Though the effect would be on the quantum of pension, however, it is not the case of continuous wrong to say that",

it has continuing source of injury. At the most it can be said that there can be effect of said injury, but, the action of imposing penalty of reduction by",

three stages in the time scale was one time action. Therefore, it cannot be said that the petitioner has continuous cause of action.",

16. In service related claims, the Courts are bent upon to reject claims on delay and laches context to its repurgations. In most of the cases",

administrative decisions, which relates to or affects several others, cannot be reopened after long time, like case of seniority or promotion. However",

an exception can be carved out in cases where the delay would not affect the rights of a third party. Herein, in case of reversal of order of",

punishment it would not affect anybody's right, therefore, while considering the delay, this aspect also bears significance.",

17. The learned Counsel for the petitioner has vehemently argued that condonation of delay is a matter of discretion of the Court. The term,

"sufficient cause" should be construed liberally so as to advance the cause of justice. Learned counsel pointed out decision of Supreme Court in,

case of N. Balakrishnan .vrs. M. Krishnamurthy (1998) 7 SCC 123 .He has pointed out paragraph nos.9, 10 and 11 of the judgment. Those",

paragraphs are reproduced below :,

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion,

can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes",

delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range",

can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of",

discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on",

wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the",

superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even, untrammelled by the conclusion of the lower court.,

10. The reason for such a different stance is thus:,

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time- limit fixed for,

approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.,

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their",

remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-,

span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of,

time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for",

each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The Law of limitation is thus,

founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to,

litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but,

seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.â??,

18. It postulates to adopt a liberal approach to sub-serve the cause of justice rather to defeat on technicalities. In absence of any presumption, the",

Court cannot suspect the cause for delay, unless it is lacking of bonafides. The acceptability of the explanation is the criteria and not the length of",

time. After all it is matter of judicial discretion depending upon the facts of each case.,

19. The petitioner took us through the decision of the Honâ??ble Supreme Court in case of *Esha Bhattacharjee .vrs. Managing Committee of,*

Ragunathpur Nafar Academy and others (2013) 12 SCC 649. In this case the Supreme Court has laid down certain guidelines, which are reproduced",

below:,

21. From the aforesaid authorities the principles that can broadly be culled out are:

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 given 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 encapsulate 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.â??,

20. On the touchstone of the above proposition, the cause for delay has to be examined and tested on the basis of emerging facts. The petitioner has",

nothing to gain by not filing the Original Application within the reasonable time or by causing intentional delay, and therefore, it cannot be said that the",

same lacks bonafide. After all petitioner would be at loss on account of delay, and therefore, the explanation offered if viewed from the angle of",

bonafides, it will not go against the petitioner.",

21. Undisputedly, during the intergeniam period, the petitioner was transferred to Chandrapur, Wardha, Amravati and lastly at Jammu and Kashmir.",

There is no dispute that the petitioner was officer of the Telecom Department, posted in sensitive area of Baramullah at Jammu and Kashmir.",

According to the petitioner, he was holding the post of responsibility, therefore, he was unable to take prompt action. Though respondent argued that",

petitioner could have availed leave, but, we may not know the responsibilities and restrictions of job in said area. The action of filing the Original",

Application requires some home work like, mental preparation, collection of documents, engaging Advocate, seeking opinion, making financial",

arrangement and so on. Therefore, it would be unrealistic to expect that within a short leave the applicant / petitioner could have done the job.",

Therefore, frequent transfers and particularly transfer at Jammu and Kashmir can be the reason which we may term as a reasonable explanation for",

delay.,

22. The learned Counsel appearing for the department while resisting the delay has relied on the decision of Karnataka High Court in case of Sri N.C.,

Pullaiah .vrs. The Union of India and others (R.P.No.10063/2018 in W.P.No. 108340/2017 dated 21.06.2019). In said case, the delay of 34 years was",

not condoned, as the explanation was not found to be reasonable. We may note that it was factual decision which has no application in different set of",

facts.,

23. The learned counsel for the petitioner canvassed that in the year 2013 when the applicant was brought back to Amravati, he learnt about",

exoneration of his fellow colleagues who were Members of TEC. It is a matter of record that the petitioner, Mr. Bhat and Mr. Nair, Members of",

TEC, have jointly recommended the tender of second lowest bidder M/s. Bay and Company. Naturally the charges of misconduct against all of them",

were mostly similar in which all of them were found guilty. Broadly speaking from the view point of petitioner, same material was assessed while",

considering the case of Mr. Bhat and Mr. Nair, by two different forums, in which they were exonerated. Naturally the petitioner would expect that he",

would get the same treatment of exoneration, if his punishment was tested on merit. Perhaps, this was the reason which has prompted the petitioner to",

knock the doors of CAT, though belatedly. Respondents would submit that the decisions in case of other TEC Members are not relevant, since, the",

case of petitioner has to be independently evaluated. He would submit that one cannot take benefit by saying that he was awaiting the decision in,

similarly situated cases. In that regard, respondent relied on the decision of Rajasthan High Court in case of Babu Lal Bishnoi .vrs. Union of India and",

another (Civil Writ Petition No. 10839/2016 decided on 26.09.2016). The facts of the said case were distinct, as the then claimant was awaiting for",

decision in other similarly situated cases. Herein, it is not the case of the petitioner that he was aware about the proceedings filed by Mr. Bhat and Mr.",

Nair, and was awaiting for its adjudication. It is his case that in the year 2013, when he was brought back to Amravati, he came to know about the",

decision in the case of Mr. Bhat and Mr. Nair. Therefor the said decision has no application to the facts of this case.,

24. Undisputedly, the statute of limitation is founded on public policy with an aim to aid to the diligent and to prevent oppression. The legislature in its",

wisdom has intentionally not defined the term "sufficient cause", perhaps to give complete freedom to the Courts to do the justice on the basis of",

facts of each case. There are variety of circumstances, which one cannot foresee, and therefore, the term "sufficient cause" has to be",

interpreted in the context of facts and circumstances of each case.,

25. While considering the application for condonation of delay, besides the cause

expressing inability, bonafides, and other factors do have impact. We",

may hasten to add that each and every circumstance which may have impact for a cause canvassed has to be examined. It is a matter of record that,

other two Members of the TEC on some what similar charges were exonerated, and those decisions have attained finality. We are not expressing in",

clear terms that the charges against all three were exactly the same and the reasoning for exoneration is also the same. Certainly, the same is not the",

domain of this Court in this petition, but, it is to be left to the appropriate Tribunal in case the matter is tested on merits. However, on broader basis, it",

is undeniable that the petitioner, Mr. Bhat and Mr. Nair were Members of the TEC having similar role in making recommendation of a particular",

Tenderer. The loss caused to the exchequer was of course same to the tune of Rs. 55 lakhs. Therefore, on prima facie basis, it can be said that the",

other two similarly situated delinquents on testing of their claims, got exonerated. Naturally the question is as to why the petitioner shall be denied if on",

merits he is entitled for the same consequence. Mere ground of delay shall not become a cause for denying substantial justice to petitioner. Though it,

is a service matter, the facts are such that condonation of delay and reversal of punishment, on merit, if any, would not affect the third party rights or",

have impact on the other employees, like the case of seniority, promotion etc.",

26. Therefore, a hyper technical view or mathematical approach in such matters on above peculiar facts is nothing, but, denial of justice. Therefore in",

peculiar facts we hold that this is a fit case to condone the delay and provide an opportunity to the petitioner to test his case on merits. In the,

circumstances, for the reasons recorded above, the impugned order passed in M.A.No.2145/2013 in O.A.No.2168/2013, by the Central Administrative",

Tribunal, Mumbai Bench, Camp at Nagpur (CAT), on 19.01.2018, is unsustainable, hence the same is quashed and set aside. The delay is condoned",

and the Central Administrative Tribunal is directed to proceed further in accordance with law.,

27. Writ Petition is accordingly allowed. Rule is made absolute in the aforesaid terms, with no order as to costs.",