

(2023) 07 CAT CK 0045

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 180, 00504 Of 2023, Original
Application No. 180, 00264 Of 2023

A.P. Sunny

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21(1)
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 8(4)

Citation : (2023) 07 CAT CK 0045

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : Dennis Varghese, Varghese P Chacko, O.M. Shalina

Final Decision : Dismissed

Judgement

K. Haripal, Member J

1. This Miscellaneous Application has been filed under Rule 8(4) of Central Administrative Tribunal (Procedure) Rules, 1987 for condoning 13 months and 29 days delay in filing the Original Application.

2. According to the applicant, he has challenged Annexure A-17 order rejecting his application for gratuity/terminal benefits. That order was passed on 31.3.2021. As per Section 21(1) of the Administrative Tribunals Act, 1985, this Original Application had to be filed within one year, on 31.3.2022. He seeks to condone the delay of 13 months and 29 days in filing the Application due to the reasons elaborated in the Miscellaneous Application.

3. Even though a separate Affidavit was filed along with the M.A, no reasons are stated explaining the delay.

4. The respondents have filed an objection to the M.A. According to them, the applicant has not explained the delay of 13 months and 29 days in filing the application for condoning the delay as provided under Rule 8(4) of Central

Administrative Tribunal (Procedure) Rules, 1987. The applicant has to explain each day's delay. The application has been filed casually, without bonafides and therefore, the M.A is sought to be dismissed.

5. I heard the learned counsel for the applicant as well as the learned Standing Counsel for the respondents. According to the learned counsel for the applicant, he has moved this Tribunal again to high-light the hostile discrimination meted out to him and to bring forth a different treatment granted to a similarly placed employee through Annexure A-14. Even though the said Smt.Jayalakshmi Pazhur also did not make any contribution under the German Social Security Scheme, the respondents have granted her terminal gratuity. At the same time, similar privilege was denied to the applicant. The Principal Bench of this Tribunal, when moved by him, proceeded on wrong assumptions.

6. On the other hand, learned Standing Counsel submitted that no attempt has been made to explain the delay. Referring to Annexure A-14 he said that the case of Smt.Jayalakshmi Pazhur stands on a different footing and no comparison is possible with the case of the applicant.

7. The order under challenge is Annexure A-17 whereby his application for terminal gratuity was rejected on 31.3.2021. Therefore, he ought to have moved the Tribunal within one year and now he wants to condone the period beyond one year which is estimated to be 13 months and 29 days. But strangely enough, this M.A has been filed in a most rituous manner without taking care to set out reasons for the delay. It is peremptory that an application for condoning delay should be supported by satisfactory and plausible explanation for the delay. But as rightly pointed out by the learned Standing Counsel, no whisper is made either in the application or in the affidavit filed along with it, trying to explain the reasons for the delay. In the application, delay is sought to be condoned 'due to the reasons elaborated in the petition for condoning the delay filed along with this application'; all the same such reasons are not forthcoming either in the petition or in the affidavit. As a necessary corollary, this Court has to assume that the applicant does not have convincing or satisfactory reasons to explain the delay. That means, the M.A is liable to be dismissed and consequentially the Original Application is only to be rejected.

8. I have rushed through the contentions of the applicant as well. He is an ex-service man, served the Indian Navy for 12 years. After discharge from the Navy, he was locally recruited as Typist in the Indian Embassy, Bonn, Germany on 19.07.1971. He worked as such till 17.4.1986, for nearly 15 years. The grievance of the applicant is that he was not granted terminal benefits. Such a treatment was meted out to him on the guise that he had subscribed to a German Social Security Scheme and the respondents had paid the social security contribution. The applicant contends that such a stand is against facts. He had never subscribed to a Social Security Scheme. On the other hand, as a mandatory procedure, he had subscribed to a medical health scheme which is statutory for every person employed in Germany. Enrolment in such a health insurance

scheme has been taken as an embargo for paying terminal benefits.

9. Various documents were also high-lighted by him to say that he was not a member of any Social Security Scheme, especially Annexures A-6 to A-7 were high-lighted by the applicant.

10. But having going through the records made available by the applicant, it is certain that the contentions of the applicant do not merit consideration. On his own showing, the applicant had moved the Principal Bench of this Tribunal way back in 1994 with O.A 318/1994 seeking the very same reliefs. But after considering versions of both sides, by Annexure A-11 order dated 3.6.1994 that application was dismissed. It is worthwhile to extract paragraph nos. 6-8 of the order as below:

"6. There is considerable force in the stand taken by the respondents that as per the applicant's own documents, he is covered by the Social Security Scheme, in pursuance of which the respondents have paid their own contributions to the said scheme and having enjoyed the benefit of Social Security Scheme, the applicant cannot at this stage claim other terminal benefits. The respondents have drawn attention to Proviso (X) of the order dated 8.10.65 which clearly states that a local employee shall not be entitled to the payment of gratuity if the Mission is making contributions on behalf of the employee to Health/Unemployment/Medical/Old age Insurance or any other Scheme. As the Indian Embassy, Bonn was making contributions on behalf of the applicant to the Social Security Scheme of the local Government, the applicant is not entitled to payment of any terminal gratuity in terms of the order dated 8.10.65. The order dated 3.3.81 amends the earlier order dated 8.10.65 and enhances the rate of gratuity payable to the locally recruited employees in the Indian Embassy Brussels, but mentions that this amendment is applicable to the locally recruited employees in the Indian Embassy, Brussels only.

7. The rules and instructions referred to by the respondents are quite clear on the subject, and manifestly the applicant is not entitled to any terminal benefits. The mere fact that the rate of gratuity was enhanced in respect of the locally recruited staff working in Indian Embassy, Brussels, does not make out a case for the applicant to be granted terminal benefits also, because the MEA's letter dated 3.3.81 (Supra) was specifically limited to the locally recruited staff working in the Indian Embassy, Brussels. The applicant can only plead hostile discrimination if other locally recruited staff in Bonn were given the terminal benefits and he was denied the same, but this is not the case here. Further more, the applicant's contention that the respondents had not counted his service in the Indian Navy, does not advance his claim for terminal benefits as an employee locally recruited in the Indian Embassy, Bonn.

8. No good grounds have been advanced by the applicant to warrant any interference by the Tribunal in this matter, and this application is accordingly dismissed. No costs. "

11. The matter had gone up to the Supreme Court and by Annexure A-12 order dated 21.4.1995, the Special Leave Petition filed against the finding was dismissed by the Apex Court.

12. Such a matter has been tried to be raked up by the applicant again which cannot be appreciated in right earnest. According to him, at that time he was not aware of Annexure A-14 order granting payment of gratuity to Smt. Jayalakshmi Pazhur, thereafter he moved representations again. That was how Annexure A-17 had come out. The learned Standing Counsel wanted to say that the facts are different. It is true that the said Smt. Jayalakshmi had been a Clerk in the said Embassy from 25.9.1975 to 30.4.2003. It is evident from Annexure A-14 that she had not subscribed the German Social Security Scheme, thus she was granted gratuity perhaps may be basing on Annexure A-4 order. But that will not save the claim of the applicant.

13. As seen from records, there is a clear division of version whether contributions were made by the respondents towards Social Security Scheme for the applicant. From the paragraphs extracted from Annexure A-11 it can be seen that the respondents have taken a specific plea that the applicant was covered by Social Security Scheme, in pursuance of which the respondents had paid their contribution and that the applicant had enjoyed the benefits of the Scheme. The Original Application filed by the applicant was dismissed mainly on the said plank. The same stand has been taken by the respondents in Annexure A-18 as well. In other words, the contentions of the parties on this core aspect is cutting each other. It is a disputed question of fact which cannot be adjudicated by this Tribunal.

14. Moreover, as noticed earlier, the Principal Bench of this Tribunal has already taken the view that the applicant is covered by the Scheme. That order has attained finality by the orders of the Apex Court. Now the applicant cannot be heard to say that the said version is incorrect. Such an aspect cannot be allowed to be raked up a second time, after long lapse of time.

15. In view of these considerations and since the M.A for condonation of delay is dismissed, the Original Application is liable to be rejected. Rejected. No costs.