

(2012) 01 DEL CK 0284
In the Delhi High Court
Case No : Writ Petition (C) 9113 of 2011

Ashwani Kumar

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0284

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : A.K. Behera, for the Appellant; R.V. Sinha for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This appeal is directed against the orders dated 31.01.2011 and 23.03.2011 passed in OA No. 3664/2009 and RA No. 87/2010, respectively by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"). The petitioner is aggrieved because the petitioner's said O.A. was dismissed on the ground of it being barred by limitation. The Review Application was also dismissed by virtue of the order dated 23.03.2011.

2. The facts in brief are that an order dated 13.07.2007 was passed whereby penalty of reduction of pay by four stages below for a period of four years with cumulative effect was awarded to the petitioner. The appellate authority by virtue of its order dated 03.03.2008 reduced the penalty by directing the reduction of pay by three stages and not by four stages. The revisional order was passed on 16.09.2008 whereby the penalty imposed by the appellate authority was maintained. Admittedly, the O.A. was filed by the petitioner before the Tribunal on 02.12.2009. According to the learned counsel for the petitioner, the starting point of limitation should be taken as 07.10.2008, i.e., the date on which the petitioner received the order passed by the revisional authority. Even if, we take 07.10.2008 as the starting point of limitation in this case, the OA has been filed

after 1 year and 25 days. The period of limitation prescribed u/s 21 of the Administrative Tribunals Act, 1985, is one year. As a result, there is a delay of 1 month and 25 days which amounts to 55 days delay.

3. In the application for condonation of delay filed by the petitioner before the Tribunal, the reasons given for the delay by the petitioner were that the petitioner's father had become seriously ill soon after the Revision Petition of the petitioner had been dismissed. The petitioner's father was allegedly suffering from various troubles, including kidney and cardiac problems. It was also contended that there was no other male member in the family to look after him and the petitioner could manage to "snatch" some time only in the month of November, 2009 when he was able to contact his advocate and was thereafter in a position to file the O.A. on 02.12.2009. The petitioner furnished certain medical certificates pertaining to the illness of his father dated 20.01.2009, 04.06.2009 and 15.09.2009.

4. We find that the Tribunal has considered this aspect in detail and particularly in paragraph 5 of the impugned judgment which reads as under:-

5. In the instant case, applicant has stated he could not file OA in time because his father had become seriously ill on account of kidney trouble and cardiac problems, therefore, he was busy attending to him. Perusal of the document annexed by the applicant shows a Doppler test was conducted on 20.1.2009 but everything was normal. He has also annexed one report of ultrasound dated 4.6.2009 which shows the father was having enlarged prostate and another report dated 15.9.2009 of Doppler which suggest kidney disease but none of these documents show the father's condition was so bad or that he was hospitalized due to which applicant could not have filed the case. In any case, his revision was decided in September, 2008 whereas the tests have been conducted at a much later date, therefore, we do not find any plausible ground to condone the delay.

5. The learned counsel for the petitioner has drawn our attention to a decision of the Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, , which, according to him, laid down certain guiding principles with regard to condonation of delay. However, we find that in the very same judgment, in paragraph 9, the Supreme Court has made it clear that sometimes length of delay is no matter and acceptability of the explanation is the only criterion. The Supreme Court further observed that sometimes a delay of the shortest range may not be condoned due to want of an acceptable explanation, whereas in certain other cases, a delay of a very long range can be condoned because the explanation is satisfactory. The Supreme Court observed that once the court accepts the explanation as sufficient, it is the result of a positive exercise of discretion and further that normally the superior court should not disturb such a finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or was arbitrary or perverse.

6. In the present case, we find that the Tribunal has not accepted the explanation sought to be given by the petitioner. The Tribunal has exercised its discretion in a sound manner based on legal principles and has arrived at the conclusion that the delay has not been sufficiently explained. We see no reason to interfere with this view of the Tribunal which cannot, by any stretch of imagination, be considered to be untenable, arbitrary or perverse. Consequently, this petition is dismissed.