

(2002) 03 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 10246 of 1999

Balajinath Padhi

APPELLANT

Vs

Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 21-03-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21, 21(1), 21(2), 21(3)
Limitation Act, 1963 — Section 5

Citation : (2002) 93 CLT 794 : (2002) 94 FLR 312 : (2002) 1 OLR 667

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Advocate : B. Senapati and P.K. Panda, for the Appellant; M. Agarwal, Senior Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The petitioner in this writ petition seeks quashing of order dated 11.8.1999 (Annexure-6) made by the Central Administrative Tribunal, Cuttack in O.A. No. 165 of 1993 dismissing his application on the ground of delay.

2. The petitioner while working as a clerk in Choudhury Bazar Post Office, Cuttack faced departmental proceeding for alleged unauthorised absence. The disciplinary authority-Senior Superintendent of Post Offices by order dated 7.10.1980 found him guilty of the charge and removed him from service with effect from 21.4.1979 (alleged date of desertion from duty). He filed an appeal before the Post Master General against the order of removal and the appellate authority by order dated 6.8.1983 dismissed the appeal. Thereafter, the petitioner submitted a representation to the Minister concerned of the Central Government in the year 1989. He waited for some time for decision, but as there was no response, he moved the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") by filing the aforesaid application (O.A. No. 165 of 1993).

3. As indicated above, the Tribunal dismissed the application solely on the ground

of limitation. According to it, the petitioner's appeal was disposed of on 6.8.1983 and he moved the Tribunal ten years after i.e. in the year 1993. The Tribunal further held that it is doubtful whether it has the power to condone delay and besides this, there is also no prayer for condonation of delay.

4. The Tribunal clearly fell into error in doubting its power to condone delay. No doubt Section 21 of the Administrative Tribunal Act prescribes time for making an application to the Tribunal. Subsection (3) thereof however, clearly provides that notwithstanding anything contained in sub-section (1) or sub-section (2), if the application is filed beyond time, the Tribunal can condone the delay if the applicant satisfies it that he had sufficient cause for not making the application within the prescribed period. The aforesaid provision (Sub-section (3) of Section (1) commences with a non-obstante clause. It leaves little doubt on the point that the Tribunal has the power to condone delay in making an application u/s 19 on sufficient cause being shown by the applicant.

5. The Tribunal also committed illegality in not considering the prayer for condonation of delay merely because no petition was filed. A bench of this Court as back as 1971 (presided over by Chief Justice G. K. Misra) in *Hari Sankar Dikshit v. Dharanidhar Dikshit* ILR 1971 Cutt 1387, has ruled that Section 5 of "the Limitation Act, 1963 does not prescribe that an application must be filed in writing though the invariable practice is that an application is filed. In absence of an application, if sufficient evidence is available in the case record to condone the delay and the Court is satisfied with it, delay can be condoned. Therefore, merely because the petitioner's application was not accompanied with an application for condonation of delay, the Tribunal ought not to have taken it as a ground to reject the application. It may be seen that after the petitioner's appeal was dismissed by the appellate authority on 6.8.1983, he seems to have made representation to the concerned Ministry in the department of Communication on 31.5.1989 (Annexure-4), but there was no response. After waiting for some time, he finding no other way moved the Tribunal in the year 1993. Ordinarily, the petitioner should have filed an application u/s 5 of the Limitation Act, 1963 for condonation of delay. But because of apparent mistake committed by his lawyer, he should not suffer. The Tribunal could have asked him to furnish reasons for the delay. As the petitioner was removed from service about twenty years back, instead of requiring the Tribunal to examine the sufficiency of ground for not making the application within the prescribed time, we, on the basis of materials available on record hold that there was sufficient cause for him in not approaching the Tribunal in time.

6. In the result, the impugned order of the Tribunal dated 11.8.1399 (Annexure-6) is hereby quashed. The Tribunal is directed to admit the petitioner's application and dispose of the same on merit according to law within six months of receipt of this order.

The writ petition is allowed.

Pradip Mohanty, J.

7. I agree.