

(2022) 10 CAT CK 0036

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 1254 Of 2019 In Original Application No. 180, 00925 Of 2019 & Original Application No. 180, 00925 Of 2019

D. Rejith

APPELLANT

Vs

Hindustan Organic Chemicals Ltd. And Ors.

RESPONDENT

Date of Decision : 27-10-2022

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21(3)
Indian Penal Code, 1860 — Section 120B, 420
Prevention Of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Code Of Criminal Procedure, 1973 — Section 239
Limitation Act, 1963 — Section 5
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 8(4)

Citation : (2022) 10 CAT CK 0036

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

Bench : Division Bench

Advocate : V. Sajithkumar, V.Krishna Menon

Final Decision : Dismissed

Judgement

K.Haripal, Member J

1. This application was filed by the applicant in the above O.A. under Section 21(3) of the Administrative Tribunals Act and Rule 8(4) of the Central Administrative Tribunal (Procedure) Rules, seeking to condone 1719 days delay in filing the application. In support of the application the applicant has filed an affidavit on the following lines: He has preferred this application aggrieved by the inordinate delay on the part of the respondents to consider the appeal submitted by him against the order of penalty of reduction to a lower time scale of pay, imposed on him just three days prior to his retirement. Applicant had entered service of the Hindustan Organic Chemicals Limited as Senior Marketing Officer on 03.09.1986. In due course of service he was promoted as Assistant Manager, Deputy Manager, Manager and finally while holding the post of Chief Manager

(Marketing), he was placed under suspension on 01.03.2005. From 01.03.2005 till his retirement in February 2014, he remained under suspension. Later, after enquiry, Annexure-A3 order was passed by the 2nd respondent on 25.02.2014. He preferred Annexure-A9 appeal against the same on 25.06.2019. According to him, he was mentally and physically troubled by the repetitive CBI investigations and departmental proceedings for no fault on his part. He underwent Ayurvedic treatment for Rheumatism and was even hospitalised at Ernakulam Medical Centre, for many days. He got some mental relief only after he was discharged under Annexure-A5 order of the CBI Court, holding that the charges levelled against him were without prima facie evidence and that the steps taken by him had got more profit to the company. Then only he got peace of mind and he decided to prefer an appeal before the competent authority and to challenge Annexure-A3 order before this Tribunal. That resulted in 1719 days delay in filing the Original Application. According to him, there is no prima facie evidences to sustain the charge against him. So he seeks to condone so much days delay in filing the application.

2. The application has been opposed by the respondents. According to them, there is no material or reason to substantiate the delay in filing the Original Application. Pendency of investigation by the CBI cannot be stated as a ground for not preferring appeal within the time prescribed by the statute. The applicant has not been able to prove with cogent materials the reasons for the delay in filing the Original Application. Therefore, the application is sought to be dismissed.

3. We heard the learned counsel for the applicant as well as the learned Standing Counsel for the respondent company.

4. According to the learned counsel for the applicant, the CBI is haunting him repeatedly. That caused him untold miseries and hardships and he had to face the criminal trial as well as the disciplinary proceedings. According to him, by Annexure-A5 order of the CBI Court, he has been honourably discharged, the Court even made comments that the acts of the applicant had not caused any loss to the company but only advanced the interests of the company. Still he had to face long turmoil, he was under suspension from 01.03.2005 till his date of retirement, for which there is no justification at all.

5. On the other hand, according to the learned Standing Counsel, Annexure-A9 appeal has been rejected in 2019 itself. According to her, the application is barred by limitation, sufficient grounds are not urged for condoning the delay, that the application has become infructuous also. The order passed in Annexure-A9 appeal has not been challenged and the very application is not maintainable.

6. The application is filed mainly challenging the vires of Annexure-A3 order, in which after accepting enquiry report in the disciplinary proceedings, a punishment of reduction to the lower time scale of pay for the misconduct alleged against him, has been imposed on him. According to the learned counsel

for the applicant, such an order is impossible to be implemented. But we are not concerned about the merit of the matter. The present consideration is whether there is justification or sufficient reasons have been stated by the applicant for condoning 1719 days delay, which comes around nearly 5 years.

7. On his own showing it has come out that the applicant was working as Chief Manager (Marketing) in the respondent company. He had commenced his service as Senior Marketing Officer on 03.09.1986 and by ascending ladders of promotion he became the Chief Manager (Marketing). While so, Crime No.5/2005 was registered by the local branch of the CBI against him and others, alleging offences under Sections 120B and 420 IPC besides under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act. After investigation, a charge sheet was laid. The applicant and others moved petition for discharging them under Section 239 of the Code of Criminal Procedure. By Annexure-A5 order dated 05.08.2015, the applicant was discharged finding that the allegations against him are groundless. There was also a disciplinary proceedings initiated against him which ended in a finding against him by the enquiry officer, following which Annexure-A3 order was passed imposing a punishment as aforesaid. That order was passed on 25.02.2014, that is before he was discharged from service under Annexure-A5. Whatever it may be, Annexure-A9 appeal was preferred before the Appellate authority on 25.06.2019 only, that is after more than five years of imposition of Annexure-A3 penalty. This application was filed stating that there is inordinate delay in considering the appeal. While seeking to quash Annexure-A3, alternatively it is stated that the respondents should be directed to condone the delay in preferring Annexure-A9 appeal. But now from the words of the learned Standing Counsel which is not disputed, it has come out that the appeal was rejected in 2019 itself and therefore the alternate prayer has become redundant.

8. Now the remaining question is whether sufficient reasons are made out by the applicant for condoning 1719 days delay in filing the application.

9. As noticed earlier, he has stated that due to the criminal proceedings, departmental proceedings etc, he was mentally and physically troubled, that he was undergoing Ayurvedic treatment for Rheumatism and also underwent treatment in Ernakulam Medical Centre etc. It is very important to say that when an application is filed for condoning the delay, the applicant is expected to state sufficient grounds for condoning the delay. It is the settled proposition of law that such an application cannot be filed as a matter of right. We are conscious that an application for condoning the delay has to be liberally construed; normally Courts take a very liberal approach towards such an application. At the same time the applicant has a duty to appraise the Court that he was justified in not filing the application on time. Even though we do not insist to explain each day's delay convincing and probable reasons should have been stated when the delay is very long.

10. Section 21(3) of the Administrative Tribunals Act enables the applicant to file an application beyond the period of limitation stated in the Act, provided he gives

sufficient cause for not making the application within such period. Here the question for consideration is whether sufficient reasons are stated by the applicant.

11. As held by the Hon'ble Supreme Court in *Basawaraj and another v. Special Land Acquisition Officer* [AIR 2014 SC 746], sufficient cause is the cause for which the party could not be blamed for his omission or lapse; 'the word sufficient embraces no more than what provides a platitude, which when the Act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. Sufficient cause means that the party should not act in a negligent manner or there was a want of bonafide on his part in view of the facts and circumstances of a case or it cannot be alleged that the party has not acted delegently or remained inactive.' According to the Supreme Court, the applicant must satisfy the Court that he was prevented by any 'sufficient' cause from prosecuting his case and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay.

12. In *P.K. Ramachandran v. State of Kerala and another* [(1997) 7 SCC 556] it is held that when faced with such an application for condonation of delay, the Court must record its satisfaction that the explanation for the delay was either reasonable or satisfactory.

13. In *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Acadamy and others* [(2013) 12 SCC 649], the Apex Court has enumerated various principles, in the context of Section 5 of the Limitation Act in the matter of condonation of delay. According to Supreme Court, even though the Court has to take a liberal approach, the concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play. There is a distinction between inordinate delay and delay of short duration of a few days, in the case of 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.

14. But after going through the materials on record and in the light of the principles stated above, we have no doubt that the applicant has failed in giving sufficient cause for the delay. The cause of action had arisen on 25.02.2014, the remedy available to the applicant was to prefer an appeal, which has already been done, even though after a lapse of years. Now that appeal stands rejected also. As rightly pointed out by the learned Standing Counsel for the respondents, the order rejecting Annexure-A9 appeal has not been brought before this Tribunal, may be the application was filed before passing orders on Annexure-A9. Whatever it may be, the orders passed against Annexure-A9 appeal has not been challenged before Tribunal.

15. As noticed earlier, the grounds urged are too general, abstract and lacking in particulars. The very bonafides of the applicant is liable to be doubted. It is

stated that he was mentally and physically troubled due to investigations carried on by the CBI. Even though Annexure-A5 gives him exoneration from the charges, on his own showing a second charge sheet has been laid against himself and his wife by the CBI alleging amassment of disproportionate assets during a particular period of time. We are not concerned about it also. Suffice it to say that sufficient grounds are not urged for condoning nearly five years delay in approaching the Court. In our assessment, no explanation much less a reasonable or satisfactory explanation is forthcoming from the applicant for the inordinate delay of 1719 days in moving the Tribunal. The application is badly barred by limitation. Convincing and cogent reasons are not shown for condoning so much delay and therefore the M.A. is liable to be dismissed. Dismissed.