
(2018) 07 CAT CK 0054

In the Central Administrative Tribunal

Case No : Original Application No. 3668 Of 2016

Devi Krishan Sharma

APPELLANT

Vs

President And Ors

RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21, 21(1), 21(3)
Constitution Of India, 1950 — Article 226

Citation : (2018) 07 CAT CK 0054

Hon'ble Judges : Nita Chowdhury, Member (A); S.N. Terdal, J

Bench : Division Bench

Advocate : Hanu Bhaskar

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

MA No. 4389/2017

1. This is the 3rd application filed by the applicant seeking the following reliefs:-

"(i) Allow this M.A. and condone the delay of 1206 days.

(ii) Admit the accompanying O.A. as filed for adjudicating the cause mentioning therein against non-payment of full pay and allowances for the suspension period being wholly unjustified, brushing aside the chance of miscarriage of justice.

(iii) Direct the respondents to pay the cost as imposed in the order dated 26.04.2017 and 25.05.2017 of this Hon'ble Tribunal under sec.35B of CPC, 1908.

(iv) Pass any other or further order which this Hon'ble Tribunal deems fit in view of the facts and circumstances of the case and in interest of justice."

2. First of all, MA No. 4389/2017 was taken up. It was noted that this is the third application for condonation of delay and that the first application, i.e. MA No. 3225/2016 for condonation of delay had been dismissed on 27.10.2016 on the

ground of non-mentioning of specific period of delay. Thereafter applicant filed second MA No. 3638/2016 which was also dismissed on 25.05.2017 on ground of non-mentioning of number of days imparting liberty to file fresh MA mentioning the exact number of days.

3. The applicant has stated that delay be condoned because he was suffering from health problems. However, he has not given any details about how many years he was suffering from the said health problems and how this prevented him from filing his OA within the prescribed period.

4. The respondents vehemently opposes the present MA and points out that the Hon'ble Courts have on innumerable occasions passed the orders directing that the condonation of delay should take place only when there are genuine reasons given for the same.

5. It is further submitted by the respondents that as the applicant is in effect challenging the order dated 12.06.2012 whereby his representation for grant of suspension allowance was rejected and against the said order, it is seen that there is delay of 1223 days. Further the applicant is seeking full pay and allowances for the period he was under suspension and this cause of action could only be claimed to have arisen when the applicant was suspended on 17.04.2005. Hence the delay has never been satisfactorily explained.

6. It is noted that the Hon'ble Supreme Court in the case of D.C.S. Negi v. Union of India & others (Civil Appeal No.7956 of 2011) decided on 7.3.2011, viewed that the Tribunal should give due regard to Section 21 of Administrative Tribunals Act, 1985. Relevant portion of said judgment reads thus:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation -

(1) A Tribunal shall not admit an application,

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason

of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period".

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).

In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant."

7. Similarly, in Ramesh Chand Sharma etc. vs. Udham Singh Kamal & Ors., 2000 (2) AISLJ S.C. 89, Hon'ble Supreme Court held as under:

"7. On perusal of the materials on record and after hearing Counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21 (3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the O.A. filed before the Tribunal after the expiry of three years could not have been admitted and disposed of on merits in view of the statutory provision contained in Section 21 (1) of the Administrative Tribunals Act, 1985."

8. With regard to delay the Hon'ble Apex Court in the case of Bhoop Singh vs. Union of India and others, 1992 (3) SCC 136 has held as under:

"2. Petitioner, Bhoop Singh, claiming to be a similarly dismissed police constable filed O.A. No. 753 of 1989 in the Central Administrative Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case and claim is similar to that of the police constables who had succeeded in the earlier rounds of litigation. The Tribunal has rejected the petitioner's application on the ground that it is highly belated and there is no cogent explanation for the inordinate delay of twenty-two years in filing the application on 13-3-1989 after termination of the petitioner's service in 1967.

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed...."

9. Further, the Hon'ble Supreme Court in the case of Karnataka Power Corporation Ltd. through its Chairman and Managing Director and another vs. K.Thangappan and anr., 2006 (4) SCC 322 has held as under:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably."

10. We do not find the applicant has been prosecuting his OA with due diligence and the delay has taken place quite clearly due to his negligence and no satisfactory reason has been given for the same.

11. Having regard to the aforementioned facts and various pronouncements of Hon'ble Supreme Court, referred to above, we do not find any reason to condone the delay and the MA No. 4389/2017 is accordingly rejected. With the rejection of the same, OA No. 3668/2016 is also dismissed as barred by time.