

---

**(2008) 10 AHC CK 0085**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 584 of 2008**

Doodh Nath Prasad

APPELLANT

Vs

Union of India and another

RESPONDENT

---

**Date of Decision :** 01-10-2008

**Acts Referred:**

Limitation Act, 1963 — Section 14, 5

**Citation :** (2008) 10 AHC CK 0085

**Hon'ble Judges :** Pradeep Kant, J and Abhinava Upadhyay, J

**Final Decision :** Disposed Of

---

## Judgement

1. Though the special appeal is barred by limitation, as it has been filed beyond ten days of the period of limitation, learned counsel for the respondents has no objection, in case the delay is condoned.

2. We also feel that the delay of ten days is not such, so as not to entertain the appeal on merits.

3. The appellant, while working as Rakshak (now known as Constable) in Railway Protection Force, having found involved in a criminal case, was removed from service vide order dated 29.12.88. The appellant did not pursue the departmental remedy of appeal or revision nor challenged the order of removal from service in any court of law for a period of approximately four years, when in the year 1992 he filed a regular suit bearing number 283 of 1992 in the civil court against the order of removal. The suit was dismissed by the learned trial court on 24.12.99 on the ground of limitation.

4. Against the said judgment and order, regular civil appeal was filed, wherein a plea was taken by the respondents that the matter being a service matter, is cognizable before the Central Administrative Tribunal and, therefore, in view of the judgment of the Supreme Court in the case of Union of India v. L. Chandra Kumar and others, (1997) 3 SCC 261, the appellate court was not having jurisdiction to hear the appeal and the appeal was not maintainable. The

appellant's counsel agreed to the said objection and conceded that the appeal was not maintainable and that the remedy lies in Central Administrative Tribunal, which persuaded the Court to pass an order accordingly. The appellate court, therefore, allowed the application moved by the respondents and directed that the appeal be returned to the appellant for being presented in the appropriate court. This order was passed on 17.9.07.

5. The appellant instead of approaching the Central Administrative Tribunal, preferred the present writ petition in March, 2008. The writ petition has been dismissed by the learned Single Judge on the ground of laches.

6. Sri Anadi Krishna Sinha, learned counsel for the appellant tried to persuade the court to exercise its discretionary jurisdiction looking to the fact that the appellant has become remediless and at no point of time his grievance could be addressed to the court and, therefore, laches be condoned and the writ petition be directed to be heard on merits.

7. Smt. Amita Srivastava appearing for the respondents, in response, submitted that it is a case where right from the very beginning the appellant has been negligent and that since the suit itself was barred by limitation, the subsequent events would neither create a new cause of action nor would extend the period of limitation and, therefore, the order passed by the learned Single Judge does not suffer from any illegality.

8. Learned counsel for the appellant has placed reliance upon a judgment of the apex court in the case of *State of Nagaland v. Lipok AO and others*, (Criminal Appeal No. 484 of 2005), wherein the Supreme Court has said that if noncondonation of delay in approaching the court results into gross miscarriage of justice, then the delay may be condoned.

9. There cannot be any dispute to the argument raised by the learned counsel for the appellant that a person cannot be left remediless and that in case there is gross miscarriage of justice, the delay may be condoned and the petition/appeal may be entertained but it cannot be taken as a general rule as the question as to whether delay should be condoned or laches may be treated as explained, will depend upon facts of each and every case. It is also true that in case a person under a bona fide legal advice, mistakenly but diligently pursues the remedy in wrong forum, then all the period which is consumed in pursuing such remedy may be excluded while computing the period of limitation, which principle may apply in a case of writ petition also. This is the principle of Section 14 of Indian Limitation Act.

10. Likewise, Section 5 of the Limitation Act, as it applies to the Courts, can be applied in the High Court also but where an aggrieved person remains silent by not initiating any proceedings for a large number of years and then suddenly when he moves the Court, he finds that it is a wrong forum, the question would be that whether in such a case, delay should be condoned or not.

11. In the instant case, the appellant was removed from service on 29.12.88. There was a remedy of appeal and thereafter revision in the statutory service rules. The appellant did not avail the remedy available to him, before appellate forum and, of course, there was no question of preferring revision, when he did not chose to file appeal against the order of removal from service. He did not approach any .court and it was only after four years that he filed the civil suit. For such a long delay in approaching any prescribed forum or court against the order of removal from service, there has to be some explanation. Neither in the writ petition nor in special appeal, any reason has been given as to why the appellant did not challenge or react against the order of removal from service right from 29.12.88 till the year 1992, when the civil suit was filed.

12. Assuming that the appellant had approached the High Court straightaway in its writ jurisdiction in the year 1992, instead of going to the civil court, even then the petition would have suffered from extreme laches and the writ petition could not have been entertained, unless those laches were explained.

13. We, therefore, on the said principles, have anxiously considered the question, as to whether the delay in filing the writ petition should be condoned or laches may be taken as explained, but we find that there being no explanation on behalf of the appellant for not making any grievance against the order of removal from service for pretty long four years and there being no explanation in the present petition and also in the special appeal, we find ourselves unable to condone the delay or treat the petition within reasonable time.

14. The aforesaid facts establish beyond doubt that the appellant himself was not vigilant and was not conscious of his rights and, therefore, for a man who sleeps over his right, the Court would not come to rescue.

15. The provisions of Section 14 of the Limitation Act have been introduced with a purpose. The purpose and the object is that a litigant should not be made to suffer because of the mistaken and incorrect advice given by the lawyers. If lawyer gives an incorrect advise, which should be nonetheless bona fide and not a nonbona fide advice, the remedy cannot be stopped from being pursued in the appropriate forum because of such a misadvice. Section 14 takes care only of those cases, where a wrong forum has been chosen under a bona fide advice and the case is pursued diligently but if these facts are missing, the benefit under Section 14 cannot be extended in a case where remedy has been pursued in a wrong forum.

16. While considering the question of condonation of delay in approaching the Court or explanation regarding the laches, it has to be seen as to whether delay has occurred because of the conduct of the litigant himself or because of the mistaken advice given by the counsel. If it is the conduct of the person concerned himself (appellant in the present case), then he has to explain reasons for not coming to the Court within time and if the reason for delay is the mistaken advice, then of course, the matter is to be seen in the light of the

provision of Section 14 of the Limitation Act.

17. The first appeal filed against the order of the learned trial court dismissing the suit was decided, rather, the memo of appeal was returned on 17.9.07. The appellant thereafter did not approach the High Court promptly but he took about six months when he approached the High Court in March, 2008. There is no explanation either for the period of four years in filing the civil suit in the year 1992 against the order of removal from service nor there is any explanation for the period after 17.9.07 when the memo of appeal was returned for being presented in appropriate court.

18. That being so, we are unable to accept the plea of the learned counsel for the appellant for entertaining the special appeal. We find no error in the order impugned.

19. The special appeal is dismissed.