

(2006) 10 MP CK 0032
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12307 of 2005

H.R. Ahirwar

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 06-10-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21(3)
Constitution of India, 1950 — Article 226, 227

Citation : (2007) 1 MPLJ 567

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Advocate : P.N. Dubey, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

By this writ petition, preferred under Articles 226 and 227 of the Constitution of India, the Petitioner has called in question the legal propriety of the order dated 17-8-2005 passed by the Central Administrative Tribunal, Jabalpur Bench (in short, "the tribunal") in O.A. No. 778 of 2004 whereby the tribunal has rejected the application preferred u/s 19 of the Administrative Tribunal Act, 1985 (for brevity, "the Act") on the ground that the same was barred by time and the delay in preferring the application did not deserve condonation inasmuch as no application for condonation of delay was filed and further the Petitioner had accepted the punishment of compulsory retirement by receiving the monthly pension of four years.

Questioning the correctness of the order, Mr. P.N. Dubey, Learned Counsel for the Petitioner submitted that the tribunal has grossly erred by observing that no application for condonation of delay was filed inasmuch as in the original application, the Petitioner has extensively stated with regard to the delay caused in filing the original application and if Section 21(3) of the Act is appreciated in

proper perspective, there is no mandate to file a separate application but what is required is to show sufficient cause. Learned Counsel has further submitted that the Petitioner has proffered adequate reasons for the belated approach and hence, the tribunal should have condoned the delay and adverted to the lis on merits. It is further submitted by Mr. Dubey that this Court has decided the similar case in W.P. No. 1827 of 2003 on 10-12-2003 and after delivery of said judgment the Petitioner who was required to approach the authority first approached but when the authority did not react, he approached the tribunal immediately and, therefore, the finding of the tribunal that the delay had not been appropriately explained does not warrant acceptance. It is contended by him that the Petitioner has to be treated at par with the writ Petitioner in W.P. No. 1827 of 2003 and when parity prevails, the limitation has to be condoned in view of the decision rendered by the constitution bench in the case of K.C. Sharma and others Vs. Union of India and others, .

Mr. N.S. Ruprah, Learned Counsel appearing for the Respondent per contra submitted that the application for condonation of delay may not be specifically necessary but delay has to be properly explained. It is urged by him that the conduct of the Petitioner has to be seen whether the situation warrants liberal approach for condonation of delay. Learned Counsel further submitted that the order of compulsory retirement was passed on 13-3-2000 and the Petitioner approached the tribunal in the year 2004 after expiry of four years and the reasons given are neither cogent nor germane and hence, the order passed by the tribunal is absolutely invulnerable.

The singular question that arises for consideration whether the delay in Filing the original application should have been condoned by the tribunal. It is worth noting here that in paragraph 5, the tribunal has observed that the Petitioner had not moved any application for condonation of delay. Whether the application is necessitous or not need not be adverted to in this case. In the original application preferred u/s 19 of the Act, the Petitioner in paragraph 3 has stated thus:

Limitation

The applicant respectfully submit that though the final order was passed in the year 2000 but because of the serious illness of his wife, the Petitioner could not approach this Hon''ble Court. It is respectfully submitted that the Appellant's wife has been an acute patient suffering from depression and therefore she was to be personally attended by the applicant to prevent her from committing any attempt on herself. It is however, during the nursing of his wife that the Petitioner came across the judgment passed by the Hon''ble High Court of M.P. in the case of Union of India v. A.K. Mishra, wherein a co-employee who was charge-sheeted along with Petitioner was granted the benefit of reinstatement by modifying the order of punishment of Compulsory retirement to that of the stoppage of three increments with cumulative effect and the reinstatement without backwages but with continuity of service. The Petitioner approached the

Authorities for a similar treatment however, no heed has been paid by the Authorities and therefore the Petitioner is approaching this Hon''ble Court carving the indulgence for grant of similar benefit as has been given to a Co-employee Shri A.K. Mishra under the circumstances, the Petitioner respectfully submit that there has been a bona fide delay in approaching this Hon''ble Court for the redressal of his grievance and this Hon''ble Court for the redressal of his grievance and this Hon''ble Court be pleased to condone the same in the interest of justice.

Submission of Mr. Dubey is that when the judgment is passed by the forum setting aside the punishment that gives cause of action to a person who is similarly placed. Be it noted, the punishment of compulsory retirement which was imposed on one A.K. Mishra, it was assailed before the tribunal. The tribunal quashed the same. The department being aggrieved preferred the writ petition whereby a Division Bench of this Court after placing reliance on the decision rendered in the case of Director General R.P.F. and Others Vs. Ch. Sai Babu, and Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, reduced the punishment by withholding three increments with cumulative effect. The tribunal in its order has stated that there was no evidence, whether A.K. Mishra had accepted the order of punishment of compulsory retirement and whether he received pension. It is beyond dispute that the Petitioner had accepted the order of punishment by not assailing the same and received pension. The ground taken as regards limitation relates to factum that his wife was suffering from depression and for the said reason he could not approach the tribunal on time. Additionally, he thought of filing the application after coming across the decision rendered in the case of A.K. Mishra (supra).

In the case of Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, the constitution bench concurred with the order passed by the Full Bench of the tribunal rendered in the case of C.R. Rangadhamaiah v. Chairman, Railway Board, (1994) 27 ATC 129 (Bang) (FB). The finding of the tribunal has been enumerated in paragraph 10 of the judgment. On the basis of the said decision of the Full Bench of the tribunal, various benches of the tribunal passed the orders giving relief on the same grounds.

Mr. Dubey as has been indicated earlier has emphatically placed reliance on the decision rendered in the case of K.C. Sharma (supra). In paragraph 5 of the said decision Their Lordships observed that the correctness of the decision of the Full Bench of the tribunal has been affirmed by the Apex Court in the case of C.R. Rangadhamaiah (supra). In paragraph 4, Their Lordships noted the fact that the Appellants therein were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration but that rejected. Since they failed to obtain redress, they filed the application seeking relief before the tribunal but the applications were dismissed being barred by limitation. Their Lordships held that the tribunal should have condoned the delay.

The issue that arises for consideration whether the case of the Petitioner would be governed by the decision rendered in the case of K.C. Sharma (supra). On a perusal of both the decisions cited above, we are of the considered opinion that the judgment rendered in the cases of K.C. Sharma (supra) and C.R. Rangadhamaiah (supra) are the judgments in rem but the same is not the position here. In the individual case challenge of the compulsory retirement, is a judgment in personem. In this regard, we may refer with profit to the three Judge bench decision rendered in the case of Bhoop Singh Vs. Union of India and others, wherein Their Lordships have expressed the opinion that 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. Their Lordships have further proceeded to state that Article 14 or the principle of non discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept.

In the case at hand as we have perceived, the grounds of limitation are not sufficient enough. There was delay of four years. The judgment delivered in the case of A.K. Mishra (supra) is not a judgment in rem. In the present case, Petitioner has accepted compulsory retirement by accepting the pension and the Petitioner cannot rise from slumber after four years to get the benefit of judgment. Hence, we do not perceive any fault in the order passed by the tribunal.

Resultantly, the writ petition, being devoid of merit, stands dismissed.

There shall be no order as to costs.