
(2018) 03 CAT CK 0057

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 1776, 1777 Of 2017, Original
Application No. 4376 Of 2014

Rajesh Kumar

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 08-03-2018

Acts Referred:

Citation : (2018) 03 CAT CK 0057

Hon'ble Judges : Raj Vir Sharma, J; Praveen Mahajan, Member (A)

Bench : Division Bench

Advocate : Sachin Chouhan, Arti Mahajan

Final Decision : Allowed

Judgement

Raj Vir Sharma, J

1. MA No.1776 of 2017 has been filed by the applicant seeking condonation of delay in the filing of MA No.1777 of 2017 for restoration of OA No.4376 of 2014.
2. The applicant had filed OA No.4376 of 2014 assailing the order of termination of services passed against him by the respondent. In the O.A., the applicant urged, inter alia, that the impugned order of termination of his services passed by the respondent without holding a regular departmental enquiry and without affording him a reasonable opportunity of hearing is bad and illegal and liable to be quashed.
3. As the learned counsel for the applicant did not appear on 13.5.2015 when the O.A. was listed for hearing, the Tribunal dismissed OA No.4376 of 2014 for default, vide order dated 13.5.2015.
4. MA No.1777 of 2017 was filed by the applicant on 20.2.2017 for setting aside of the order dated 13.5.2015 and for restoration of OA No.4376 of 2014. MA No.1776 of 2017 was filed by the applicant for condonation of delay in the filing of MA No. 1777/17. The applicant has contended, inter alia, that due to

communication gap between him and the previous counsel engaged by him, he could not take appropriate steps to pursue the matter, and that due to fault of the learned counsel, he should not suffer. After receipt of copy of the order dated 13.5.2015, he contacted his previous counsel who advised that the OA could be restored at any time. Thereafter, he came to know that OA No.2351 of 2015 filed by a similarly placed person has been allowed, and the impugned order of termination of services passed by the respondent has been quashed by the Tribunal vide order dated 26.10.2016. In December 2016, he received back all the papers from his previous counsel and filed MA No.1777 of 2017 for restoration of OA No.4376 of 2014 and MA No.1776 of 2017 for condonation of delay in the filing of MA No.1777 of 2017. In view of the above, it has been contended by the applicant that as the delay in the filing of MA No.1777 of 2017 is neither intentional nor deliberate, MA No.1776 of 2017 may be allowed and MA No.1777 of 2017 considered on merits.

5. Resisting MA No. 1776 of 2017, the respondent has filed counter reply.

6. After having gone through the record of OA No.4376 of 2014, we have found considerable merit in the applicant's prayer for condonation of delay in the filing of MA No. 1777 of 2017 for restoration of OA No.4376 of 2014.

7. It transpires from record that the OA was listed before the Bench for preliminary hearing on the question of admission on 11.12.2014 when notice was directed to be issued to the respondent and the counsel representing the respondent accepted notice and undertook to file counter reply within four weeks. Thereafter, the OA was listed before the Bench on 24.2.2015, 25.2.2015 and 17.3.2015 when the applicant's counsel was present. On 24.3.2015, when the OA was listed, the Bench adjourned the matter to 30.3.2015. On 30.3.2015, though the learned counsel for the parties appeared, the Bench did not function as the Hon"ble Administrative Member was on leave, and the O.A. was sought to be listed on 20.7.2015, vide entry dated 30.3.2015 made by the Court Officer. Instead of listing the O.A. on 20.7.2015, the Registry of the Tribunal listed the O.A. for hearing on 13.5.2015. As the applicant's counsel did not appear on 13.5.2015, the Tribunal dismissed the O.A. for default by passing the following order:

"None appears for the applicant. On the last occasion also, no one appeared. In the absence of interest being taken in the matter, OA is dismissed in default for non-prosecution."

It is pertinent to mention here that as per the entry dated 30.3.2015 made by the Court Officer, the O.A. ought not to have been listed by the Registry on 13.5.2015 for final hearing. Furthermore, the observation made by the Tribunal in order dated 13.5.2015 that "On the last occasion also, no one appeared" is contrary to the said entry dated 30.3.2015 made by the Court Officer. In fact, it is found that the applicant's counsel appeared on 30.3.2015, and due to non-functioning of the Bench, the hearing did not take place and the O.A. was to be

listed on 20.7.2015. In the above view of the matter, and considering the totality of the facts and circumstances of the case, particularly the condition of the applicant after termination of his services, we are not inclined to accept the objection/contention raised by the respondent.

8. In the light of our above discussions, we allow MA No. 1776 of 2017 and condone the delay in the filing of MA No.1777 of 2017 for restoration of OA No.4376 of 2014.

9. Let MA No.1777 of 2017 for restoration of OA No.4376 of 2014 be listed before appropriate Bench for hearing on 26.3.2018.