

(2005) 07 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 1353 of 2004

Ramjibhai Chamanbhai

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9
Limitation Act, 1963 — Section 5
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2005) 25 GLH 614

Hon'ble Judges : Bhawani Singh, C.J.; H.K. Rathod, J

Bench : Division Bench

Advocate : B.K. Oza for Mr. Bipin I. Mehta, for the Appellant; Megha Jani, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, C.J.

In *Delhi Development Authority v. Skipper Construction & Another* reported in 2005(3) Supreme 335, it has been observed by the Apex Court as under :

"There are some cases which at times strengthen the idea that existing laws may be inadequate to grant relief to persons whom, the court feels genuinely to be entitled to relief. Courts, more particularly, this Court, will not adjure its duty to prevent violent miscarriage of justice by passing such orders as are necessary to uphold the rule of law and lift the veil of purported legality over such perfidious acts. In such cases the Court should not allow itself to be deflected by red herrings drawn across the track. It has to pass such orders as the circumstances warrant, of course within the four corners of law to secure the interest of justice and to appease its judicial conscience. The facts of the present case have some such unique features. In *Miller v. Minister of Pensions* (1947 (2) All ER 373), it was observed that the law would fail to protect community if it admitted fanciful

possibilities to deflect the course of justice. Technicalities should not stand in the way of Courts doing substantial justice."

1. This petition is directed against the judgment of the CAT passed in OA No. 440 of 1988 dated 2.8.1991. Petitioner was Artisan Khalasi with the Railways. During the course of employment, he suffered injury, thereby, incurring disability to the extent of 30%. He claimed alternative post on being declared medically unfit for D/I category post held by him. Initially, he was appointed substitute on 15.11.1977 under Loco Foreman Bhavnagar Para. He was granted temporary status on 24.8.78. He suffered injury on 11.11.1986. He was given compensation of Rs. 26,603.00 for loss of earning capacity. He appeared before the Screening Committee for absorption in alternative post. However, it was not offered since he was substitute. Permanent Railway Employees are entitled to alternative job as a matter of right whereas temporary railway servants are considered for alternative job subject to certain conditions. Petitioner was screened along with other substitutes of Mechanical Department and was placed on provisional panel vide Memorandum dated 4.8.1988 subject to his passing medical examination and verification of character as per existing rules. However, absorption could not be done since no post in the lower category like C1, C2 was available and the screening committee decided that being a substitute, no alternative job can be offered. Accordingly, it was decided to delete his name from the muster roll/ official records.

2. Therefore, question for consideration is, whether the petitioner is entitled for absorption against alternative post. It is not in dispute that the petitioner was appointed Substitute Artisan Khalasi on 15.11.1977 and given temporary status on 24.8.1978. Question for examination is not the entitlement of the petitioner to benefits after discharge from service but providing of alternative employment to him after suffering of 30% disability during the course of employment. Position of substitute attaining temporary status and other workmen attaining temporary status has been examined by us in *Rukhiben Rupabhai v. Union of India* (Special Civil Application No. 15807 and 15808 of 2003 dated 11.5.2005]. It has been held that after attaining the temporary status, substitute or the workmen are entitled to pension and other benefits including regularization, rather, substitutes have two advantages, namely they are getting into regular employment from the stage of substitute or get temporary status. However, in this case, petitioner got temporary status on 24.8.1978, therefore, his consideration by the Railways for absorption in alternative post as substitute is illegal.

3. Indian Railways is a big organization providing employment to millions. With a view to deal with such cases, benevolent provisions, providing alternative jobs was considered necessary. Therefore, Government of India Ministry of Railways (Railway Board) Indian Railway Establishment Manual (Volume-1) Revised Edition, 1989 page 13 provides for absorption of medically incapacitated staff in alternative employment. Paragraphs 1301 to 1315 comprehensively deal with absorption of medically incapacitated staff in alternative employment, particularly

a temporary railway servant in Group(ii) of para 1302 who become medically unfit for the post on account of the circumstances arising out of and in the course of his employment benefit admissible to permanent railway servants as at (a) of paragraph 1304 is available. Provisions, referred to above, go to the extent of providing alternative employment even to those who do not suffered disability during the course of employment with the Railways and also provide for creation of supernumerary posts to accommodate employee if it is not available with it at the time employee suffers disability and later adjust him against the post which becomes available. Relevant Rule 1304 is quoted :

"1304. Railway servants incapacitated for service in posts held by them

(a) permanent railway servants - A permanent railway servant in group (ii) of para 1302 above must also cease to perform the duties of the post he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the leave. Rules by which he is governed, from that date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit, his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should be extended by grant of extraordinary leave subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post. It should, however, be noted that -

(i) the actual creation of supernumerary post will follow the acceptance of offer of alternative post;

(ii) the supernumerary post should be abolished as soon as a permanent post is found for the railway servant concerned.

NOTE : The purpose of granting extraordinary leave envisaged in this para is that in case the Railway administration is able to find a suitable alternative employment for a medically incapacitated employee, there should be no break in his service. Since the period of such extraordinary leave counts for the purpose of special contribution to PF in the case of a railway servant governed by the state Railway Provident Fund Rules but not in the case of pensionable railway servant the latter employee may-not like to avail of the extraordinary leave but may instead prefer to quit service on pension immediately on the expiry of his period of leave with allowances. In such case, extraordinary leave need not be granted to a railway servant if he so desires.

2. In the matter of absorption, of a medically incapacitated staff in alternative post, Railway Administrations should take care to ensure that the interests of

staff in service are not adversely affected as far as possible. The alternative appointment should be offered only in posts which the staff can adequately fill.

(b) Temporary Railway Servants - A temporary Railway Servant in group (ii) of Para 1302 above who becomes medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the benefit admissible to permanent Railway servants as at (a) above should be given.

A temporary employee has become medically unfit for the post held by him, on account of circumstances which did not arise out of and in the course of employment, the benefit of Rule 304 RI (of Fifth Edition 1985) will not be admissible. While, therefore, it is strictly not obligatory to find alternative employment for such an employment, every effort should nevertheless be made to find alternative employment. The employee concerned should be granted leave as is due to him plus extraordinary leave not exceeding three months the total not exceeding six months. If no alternative employment could be found in this period, the employee should be discharged from service.

4. We have no manner of doubt that if the respondents would have examined case of the petitioner for alternative employment properly in accordance with tenor and spirit of these rules, the petitioner would not have suffered for all these years, would have been employed immediately in alternative employment. Ms. Meghaben Jani, learned counsel for the Railways submits that this petition suffers from the vice of delay and laches, CAT decision is dated 2.8.91. Review order is dated 2.8.1996. Petition is filed on January 29, 2004.

5. We do not appreciate this submission. Under the Rules and as a Model Employer. Railways should have provided alternative employment to the petitioner immediately on the occurrence of disability which arose during the course of employment. Instead of doing so, it considered petitioner's case taking him to be a substitute in 1987 although petitioner had acquired temporary status on 24.8.1978. After acquiring temporary status on 24.8.1978, accident took place on 11.11.1986 by which time, the petitioner had served as a temporary railway servant for more than eight years.

6. Law on this subject about delay is almost settled that the court should not take technical approach while examining question of delay. Technicalities cannot hijack rhythm divine of justice.

7. In Collector, Land Acquisition. Anantnag and Another v. Mst. Katiji and other [AIR 1987 SC 1353], the Apex Court observed as under in para 3 of the judgment :

"3. The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to

apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matter instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
 3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.
 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."
 8. Recently, the Division Bench of the Rajasthan High Court has, in Trilok Chand Saini Vs. State and Others, , considered the question of delay and observed that the question of delay is a matter of discretion with the court. Length of delay is no matter. It was observed that the acceptability of explanation is only criterion. Explanation not smacking of dilatory strategy - In every case of delay there can be some lapse in the part of litigant concerned. That alone not sufficient to shut down plea of condonation and turn door against litigant. Court said in Paragraphs 4 and 5 that;
- "4. Be that as it may, the State of Rajasthan is praying for dismissal of this application u/s 5 of the Limitation Act. If the applications filed u/s 5 of the Act, 1963 are dismissed it will heavily cost to the State Government. If the Court goes on dismissing the applications u/s 5 of the Act, 1963 the State Government will suffer. Most of the appeals on behalf of the State Government are tiled beyond the period of limitation prescribed. The object of fixing time limit under the Act, 1963 is not to deny the rights. The preliminary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situation is not because in

the expiry of such time a bad cause would transform in a good cause. The rules of limitation are meant to see that parties do not resort to their dilatory tactics to seek their remedies. Object of providing legal remedy is to repay the damage caused by the reason of legal injury. Condonation of delay is a matter of discretion of the Court. Section 5 of the Act, 1963 does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, accordingly of explanation is the only criteria. Sometimes the delay of shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of very long period can be condoned where the explanation thereof is satisfactory. Being the human being, in every case of delay there can be some lapses on the part of the litigation concerned, that alone is not enough to turn down the plea and to shut the door against him. If the explanation does not smack of mala fide or does not put forth as a part of dilatory strategy the Court has to show utmost consideration to the suitor. Only in cases when there is a reasonable ground to think that the delay was occasioned by a party deliberately to gain time, the Court may not accept the explanation. It is difficult to accept what for the litigant will permit the limitation for filing of the appeal should lapse. He will not wait for the expiry of the limitation prescribed for filing of the appeal. Refusal to condone the delay would result in closing the door to a litigant from putting forth his cause. There is no presumption that the delay in approaching the Court is always deliberately. It is no more *res Integra* that the words "sufficient cause" u/s 5 of the Act, 1963 should receive the liberal construction so as to advance substantial justice. Litigation is not luxury. It is not an amusement. Only under compulsion it is resorted to.

5. Having gone through the contents of the application filed by the appellant u/s 5 of the Limitation Act we are satisfied that the explanation furnished for this delay it is not put forth as a part of dilatory strategy. It is also not the case where the appellant can be blamed that deliberately to gain the time this delay has been made. The conduct of the appellant does not, on the whole, warrant to castigate him as a irresponsible litigant. It is true while condoning the delay which is there in filing of the appeal, the Court ordinarily should not forget the opposite party altogether. But, here the opposite party is State of Rajasthan, a welfare state, seldom to file the appeal within limitation and it is not expected from it to oppose such an application of a suitor. In case the delay in filing of the appeal is condoned, the State of Rajasthan is not likely to be adversely affected. It is a matter of claim made by the appellant for promotion with effect from the date his juniors were promoted with the consequential benefits. In case this claim of the appellant is accepted, he will get some financial benefits in present and in future. If ultimately he succeeds in establishing his claim to the satisfaction of the court he may be given the notional benefits. Otherwise also ordinarily such claims of the employees are accepted it cannot be said that the state will adversely affect to the extent where the appeal has to be dismissed as barred by limitation. During these days when everybody is fully occupied or

avocation of life an omission to adopt extra vigilance need not to be used as a ground to depict him as a litigant not aware of his responsibility and to visit him with drastic consequences."

9. Recently, the Division Bench of this court considered the question of delay when the Central Administrative Tribunal, Ahmedabad Bench dismissed the Original Application on the ground of delay in *Mulabhai N. Chavda v. Union of India* (Special Civil Application No. 4076 of 2004 decided on 28.4.2005), it said in para 3 to 4 that;

"3. ...True it may be that petitioner approached the General Manager also in addition to the Additional Divisional Railway Manager, to later as per direction of CAT and former, of his own. While approaching the General Manager, bona fide belief may be to seek relief against removal from service from higher authority and not to delay the matter. Assuming, CAT directed him to approach the Additional Divisional Railway Manager, but it did not prohibit him from approaching the General Manager. Approaching General Manager does not amount to lack of bona fides on the part of petitioner. After having received adverse order from Additional Divisional Railway Manager dated 28.12.1994, he may be under the impression that higher authority may decide the revision petition in his favour. The General Manager should have disposed of the revision application within reasonable time instead of keeping the same pending. This delay has impaired further action on order of Additional Divisional Railway Manager dated 28.12.1994. That is how, petitioner approached the CAT late. Application could be filed before CAT for condonation of delay, may be after objection by respondents. Petitioner was being advised by lawyer in his matter. Revision petition to General Manager, Western Railways, was also preferred on the advice of lawyer. He expected the General Manager to decide the application which was not done. Detailed facts are stated in the application supported by affidavit.

4. Ordinarily, a litigant does not stand to benefit for lodging the matter late. Where stakes are high, refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. It must be grasped that system is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. (see : *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, , *Union of India (UOI) and Others Vs. A. Vasu*, , *State of Haryana*

Vs. Chandra Mani and others, . While considering the matter of delays, Court ought to keep in mind the judgment impugned, extent of the property involved and the stakes of parties, discretion to be exercised to advance substantial justice (See : M.K. Prasad Vs. P. Arumogam, . In Ram Nath Sao alias Ram Nath Sahu and others v. Gobardhan Sao and others - AIR 2002 SCW 978, the Apex Court has held that "sufficient cause" u/s 5, Limitation Act or Order 22, Rule 9, CPC (5 of 1908) should receive liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to party."

10. In State of Nagaland Vs. Lipok AO and Others, . the Apex Court observed as under on this aspect in paras 8 to 14 :

"8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction (sic discretion) vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In N. Balakrishnan Vs. M. Krishnamurthy, it was held by this court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient. Although no special indulgence can be shown to the Government, which in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

9. What constitutes sufficient cause cannot be laid down by hard and fast rules. In New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult, , this court held that discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In Brij Indar Singh v. Kanshi Ram [ILR (1918) 45 Cal 94 : AIR 1917 PC 156] it was observed that true guide for a court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain Vs. Kuntal Kumari and Others, a Bench of Three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

10. In Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Mata Din Vs. A. Narayanan, this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

11. In *State of Kerala v. E.K. Kuriyipe* [Supp. SCC 72] it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In *Milavi Devi v. Dina Nath*, (1982) 3 SCC 366 it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

12. In *Kathpalia v. Lakhmir Singh* a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector Land Acquisition v. Katiji* a Bench of two Judges considered the question of limitation in an appeal filed by the state and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice -- that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in hierarchy. This Court reiterated that the expression "every day's delay" must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational, common sense, pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the state as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the State is the applicant. The delay was accordingly condoned.

13. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subject to appeal) and the inherited bureaucratic methodology imbued with the note making, file pushing, and passing on the buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which

represents collective cause of the community, does not deserve a litigant non grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In *Prabha v. Ram Prakash Karla* [Supp. SCC 339] this Court had held that the court should not adopt an injustice oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

14. In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect of which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected but what in the ultimate analysis, suffers is the public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process. The delay of over one year was accordingly condoned."

11. In relation to the Government servants, there is The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. 1995 (1 of 1996) coming into force on February 7, 1996. Section 47 of this Act provides that;

"47. Nondiscrimination in Government employment. - (1) No establishment shall dispense with or reduce in rank an employee who acquires a disability during his service :

Provided that if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits :

Provided further that if it is not possible to adjust the employee against any post he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability :

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

12. [See (1) Delhi Transport Corporation Vs. Rajbir Singh and Sadh Ram, ; (2) Kunal Singh Vs. Union of India (UOI) and Another, ; (3) Union of India v. Sanjay Kumar Jain reported in AIR 2004 SCW 4577; (4) Shri Kuldeep Singh Vs. Delhi Transport Corporation, I.P. Estate, New Delhi, ; (5) LIC of India v. Chief Commissioner for Disabilities, Ministry of Social Justice and Empowerment and others 2003 I LLJ 673 Delhi High Court; (6) GSRTC v. Gopal Mohanbhai Patel 2003 (2) GLH 428 Gujarat High Court; (7) University of Rajasthan v. Sarendrakumar Goel 2003 1989 FLR 393 Rajasthan High Court DB.]

13. Therefore, the Railways has not considered the case properly and delayed the matter on technical ground driving the petitioner to litigate before the Central Administrative Tribunal from 1988 to 1996. Flight of the railway servant suffering disability fighting litigation continuously cannot be lost sight of. Failing to get alternative employment before the Central Administrative Tribunal, he is driven to file this petition before this Court with the background explained hereinabove, it cannot be said that the delay is fatal disentitling the petitioner to seek relief from this Court, particularly when he suffered accident at the age of about 26 years and today, he is 42 years old, still having many years to reach the age of superannuation, therefore, he has continuous cause of action. Contention raised by Ms. Jani on behalf of the Railways is, therefore, rejected. Petition is allowed. Orders of the Central Administrative Tribunal dated 2.8.1998 in OA No. 440 of 1988 and Review Application No. 13 of 1992 dated 20.8.1998 are set aside. Respondents are directed to provide alternative employment while protecting

salary to the petitioner with continuity of service from 11.11.1986. Question a (sic)es whether the respondents should be directed to pay back wages to the petitioner. Looking the fact that there being no evidence pointing out that the petitioner remained without employment during all these years, and because he is getting back to service, past wages/salary is not awarded. However, he shall be deemed to be in continuous alternative employment from 11.11.1986, considered for regularization and other consequential benefits including protection of salary admissible under the rules. This judgment be implemented within two months. Rule is made absolute in terms indicated hereinabove. No order as to costs.