
(2024) 03 CAT CK 0020

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 2477 Of 2018 (Delay In Filing Original Application) In Original Application No. 1105 Of 2017

Sanjay Kumar Sharma Son Of Baleshwar Sharma Trackman-
II, Engineering-N- Mugalsarai. & Others

APPELLANT

Vs

Union Of India, Through General Manager East-Central
Railway Hajipur & Others

RESPONDENT

Date of Decision : 12-03-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 2(a)(2), 21, 21(3)

Citation : (2024) 03 CAT CK 0020

Hon'ble Judges : Rajiv Joshi, Member (J);Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : Surendra Kumar Singh, Raj Pal Singh

Final Decision : Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. The instant OA has been filed on 04.09.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to direct the respondent No. 2 to take the written test of the applicants in view of the Annexure No. 1 and Annexure No. 2 of compilation No. 1 within a reasonable fixed time, and direct the respondent No. 2 to give the appointment to the applicants after qualifying the written test within a reasonable fixed time, and to direct the respondent No. 2 to take appropriate decision on the representation dated 10.08.2017 within a reasonable fixed time, and grant any other relief deemed fit and to award cost.

2. While hearing on 12.09.2017 the Court observed that the OA is apparently barred by limitation then learned counsel for the applicant prayed for and was granted three weeks time to move a proper and detailed delay condonation application. Subsequently, on 26.03.2018 delay condonation application (MA No. 2477/2018) was moved wherein the applicants mention that by letter dated 15.05.2006 the respondent No.3 directed all the Branch Officers of East Central

Railway, Mughalsarai that in furtherance of Patrank No. E/254/G.D.C.E. 2005 dated 03.05.2006 of Maha Prabandhak / Karmik, Hazipur (respondent No. 2) to sent the name with the certified certificates and photograph of the employee of the department for direct departmental recruitment (G.D.C.I.) under 25% reserved quota for Schedule Caste for filling the vacancy. Further, by letter dated 23.04.2007 the respondent No. 2 directed all the Shakha Adhikari of officer of East Central Railway Mughalsarai to invite application from the eligible candidates for the seven categories of post and last date for depositing application forms was fixed as 05.05.2007. In accordance with the aforesaid letter dated 03.05.2006 and 23.04.2007, the applicant applied before the concerned authorities within fixed time. Thereafter, for the post of Loco Pilot written test was taken on 06.06.2010 by the respondents. Since then Assistant Loco Pilot post till date no written examination was taken for other post in view of letter dated 03.05.2006 and 23.04.2007. Hence, vide representation dated 17.03.2012 all the applicants requested to the office of respondent No. 2 that all of them had applied for other different post in view of letter dated 03.05.2006 and 04.04.2007, but till date they had not been called for any test. And it was followed by reminders on 19.03.2.2013, 04.03.2014 and 02.01.2015 but to no avail. Thereafter, lastly by letter dated 10.08.2017 the applicants requested to respondent No. 2 to take notice of their previous letters and take the written examination. When it was not replied, the applicants filed the aforesaid OA. And hence, they request that the delay in filing the OA may be condoned as the respondents are at fault for not taking the written examination of the advertised posts for which the applicant had applied within time and reminded the authorities on several occasions by written and oral requests. In view of the circumstances the applicant request that the delay should be condoned.

3. The respondents have filed objection to the delay condonation application wherein they emphasize that the applicant has filed this OA 1105/2017 on 04.09.2017 whereas the impugned matter pertains to the year 2006 and the applicants want that the respondents should conduct the examination in pursuance to the vacancies advertised in the year 2006 and 2007. They further say that the second relief claimed is absolutely premature as without any examination and without clearing examination and without being eligible, no appointment can be made. They further aver that no sound reasons has been given in the delay condonation application as to why the applicants kept mum for more than 12 years, and have come before this Tribunal after inordinate delay. They further say that except the last representation dated 10.08.2017 none of the representations of the applicants have been received by the respondents. They further point out that the applicants have not even annexed the copies of the various representations which they rely for condoning the delay. They emphasize that mere pendency of the representation before the department will not be ground for condoning the delay; and repeated and prolonged representations is not a ground for condonation of delay. Hence, they argue that the applicants have failed to explain why they are coming after such a long time

to file this OA. And the present OA is excessively time barred and not maintainable in the eyes of law in view of Section 21 of the Administrative Tribunals Act, 1985 and it needs to be dismissed.

4. The respondents cited Hon'ble Apex Court judgment on limitation as under:

"Esha Bhattacharjee vs. Raghunath Pur Nafar Acadey – (2013) 12 SCC 649 in this the Hon'ble Apex Court has rendered with reference to an application filed for condoning the delay, principled culled out by the Hon'ble Apex Court is also against the resent facts and circumstances of the case in hand as it has stated that increasing tendency to perceive delay as non serious matter and hence lackadaisical propensity can be exhibited in a non challant manner required to be curbed, of course within legal parameter.

The Apex Court further held that the conduct, behaviour and attitude of the party relating to its inaction are relevant factor to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

Karnatka Power Corporation Limited through C.M.D. Vs. K. Thangappan and others reported in (2006) 4 SCC 322, the apex court held that mere filing of representation cannot justify the delay.

Union of India Vs. Harnam Singh AIR (1993) SCC 1367, the Hon'ble Apex Court observed that the law of limitation may operate harshly but it has to be applied with all its rigor and court or a Tribunal cannot come to the aid of those who sleep over their rights and allow the period of limitation expire.

Bhoop Singh Vs. Union of India and others (1992) Vol. 3 SCC 136, the Apex Court again pleased to observe that in ordinate and un explained delay or latches is itself a ground to refuse relief to the petitioner irrespective of the merits of his claim.

S.S. Rathore Vs. State of M. P. (1989) 4 SCC 582, the Apex Court observed that repeated representation/reminder do not give right to the limitation."

5. In view of the Hon'ble Apex Court ruling the delay in filing the OA need not be condoned.

6. The case came up for final hearing on 29.02.2024. Shri Surendra Kumar Singh, learned counsel for the applicants and Shri Raj Pal Singh, learned counsel for the respondents were present and heard. We have gone through the records carefully and considered the rival contentions.

7. From the pleading of both the parties on delay clearly the applicants have failed to give any cogent and convincing reasons why for an advertisement which was made in the year 2006-07, they have come to this Tribunal only in the year 2017 for asking for relief in this OA 1105/2017. Also from the relief claimed it is clear that they are not claiming any relief on equity that pursuant to the said

advertisement of 2006-07, anyone got the benefit and they were discriminated against and denied the said benefit, although being similarly situated. It is not the case of the applicants that if the notification by the respondents' department is given for taking examination, they had a vested right under some statute or rule or regulation, which was violated and the respondents' department was duty bound to take their examination pursuant to said notification and select some of them for the posts so advertised. And so if department changed their mind subsequently not to hold any departmental test pursuant to the notification of 2006-07, they cannot be held accountable for the act at this distant future where delay is more than 12 years.

8. From the record it is also not substantiated that around 2006-07 the applicants had made due diligence and put in effort to get their grievances redressed. There is no information that any of them came to the judicial forum as they were entitled to come within six months if their rights were getting violated and they had made any representation and the same was not decided in six months time. They are mentioning that several representations were made by them in different years in their delay condonation application, but there also they mention that after the year 2006-07 first time they filed representation was only on 17.03.2012 after the delay of more than five years, which was followed up by their reminders dated 19.03.2013, 04.03.2014 and 02.01.2015 (as they mention but have not given any proof of the same) but these are also not substantiated and so from their own case after 17.03.2012, the first representation they filed, they came before this forum only on 04.09.2017 after considerable delay. So the delay between the first notification on 2006 and their representation of 2012 and then they coming to the judicial forum in the year 2017 after a prolonged gap of six and five years respectively, and more than eleven years cumulatively is not explained at all. Hence, there is no any cogent ground given and made out by the applicants to ask this Tribunal to condone the delay in this case.

9. Furthermore, if we see the pleadings of the parties in this case; it is evident that the original notification which was issued on 03.05.2006 went through some corrigendum, but later the department realised that employment notification under GDCE scheme were required to be issued by the Railway Recruitment Board, and hence it was abandoned. The applicants have not been able to show that they have any right and their right in any way was affected by the department not pursuing the said advertisement, which was probably wrongly issued, as it needed to be issued by the Railway Recruitment Board and so the department discontinued the same. And, hence at this stage before us there is no convincing reason to condone the delay in filing this OA.

10. Considering the above mentioned facts, circumstances and the citation of the Hon'ble Apex Court as under:-

"Esha Bhattacharjee vs. Raghunath Pur Nafar Acadey – (2013) 12 SCC 649 in this the Hon'ble Apex Court has rendered with reference to an application filed for condoning the delay, principled culled out by the Hon'ble Apex Court is also

against the present facts and circumstances of the case in hand as it has stated that increasing tendency to perceive delay as non serious matter and hence lackadaisical propensity can be exhibited in a nonchalant manner required to be curbed, of course within legal parameter.

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S.S. Rathore Vs. State of M. P. (1989) 4 SCC 582, the Apex Court observed that repeated representation/reminder do not give right to the limitation."

11. Hon'ble Supreme Court in the case of Ramesh Chandra Sharma v. Udham Singh Kamal reported in 2000(2) SLJ SC 89 observed 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 of which such final order has been made;

(b) In a case where an appeal or representation such as is mention 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) xxx

xxx

xxx

(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."

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the O.A. filed by the first respondent Uddham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-Section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of O.A. on merits. It was, therefore, contended that the Tribunal has totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, impugned order be set aside."

12. Apart from this, the applicant has also slept over his right for years together and has not approached forum.

13. The Hon'ble Apex Court in the case of Bhop Singh Vs. Union of India and others reported in (1992) 3 SCC 136, has been pleased to observe as under:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner irrespective of the merit of his claim."

14. The Hon'ble Apex Court in the case of High Court of Judicature of Patna Vs. Madan Mohan Prasad and others reported in (2011) 9 SCC 65 has been pleased to observe that "Similar relief cannot be given to others who slept over on his rights"

15. The Hon'ble Apex Court in the case of S.S. Rathore Vs. State of M.P. reported in 1989 4 SCC 582, has been pleased to observe that "repeated representation / reminders does not give rise to limitation."

16. In another case of Karnataka Power Corporation Limited through Its CMD Vs. K. Thangappan and others reported in (2006) 4 SCC 322, it is once again observed by the Hon'ble Apex Court that "Mere making representation cannot justify the delay."

17. The applicants have not given any better citation to controvert the above citations given by the respondents. Therefore, we are of the considered opinion that the applicants have failed to convince us that they have any ground for getting the delay condoned in filing the OA. Hence, we pass following orders.

"The MA No. 2477/2018 for condonation of delay in filing the OA is dismissed. Accordingly, the OA is also dismissed."

18. All associated MAs, if any, also stand disposed of accordingly. No costs.