
(2019) 10 CAT CK 0018

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 1959 Of 2019

Sarvesh Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 07-10-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20(2)(a), 20(2)(b), 21, 21(1)(a),
21(1)(b), 21(3)
Constitution Of India, 1950 — Article 58

Citation : (2019) 10 CAT CK 0018

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : BC Nagar, Satpal Singh

Final Decision : Dismissed

Judgement

1. Today, MA No. 1959/2019 seeking condonation of delay of about 1 year in filing the OA is listed for consideration. In the OA, the applicant has sought the following reliefs:-

"(i) To reimburse the remaining amount of Rs.3,44,644/- to the applicant.

(ii) Penal interest on the amount of Rs.344,644/- to be paid to the applicant from 29.11.2012 till the date of reimbursement is made."

2. In this MA, the applicant states that her late husband, while suffering from Liver Cancer, was undergone level transplant surgery on 02.08.2012 for which an advance payment of Rs.23,50,000/- out of the total expenditure incurred to the tune of Rs.27,29,811/- was sanctioned by the Chief Medical Directors office, Baroda House, New Delhi, vide letter No.2012/H/6-1/39, but the remaining amount of expenditure Rs.3,44,644/- was not paid by the respondents despite many representations filed by her late husband on 20. 11.2012, 29.11.2012, 17.04.2013 and 13.02.2014. The applicant further pleaded that after the demise of her husband on 18.07.2014, she had requested for medical reimbursement of

Rs.3,44,644/- to Chief Medical Superintendent, Delhi on 05.05.2016 and 30.01.2017 but the claim is still pending. The applicant has thus submitted that due to the above circumstances, the delay of about 1 year in filing the OA has occurred, which is neither deliberate nor intentional. She has thus prayed for condonation of delay in filing the OA.

3. The respondents have filed their reply to the MA for condonation of delay and submitted that the claim for medical reimbursement is pertaining to the year 2012, whereas the present OA was filed in the year 2019. They have thus contended that the present OA is hopelessly time barred and the MA for condonation of delay in filing the OA deserves to be dismissed on this ground alone.

4. After hearing both the parties and perusing the record, it becomes clear and an admitted position that her late husband, while suffering from Liver Cancer, had undergone liver transplant surgery on 02.08.2012 and the respondents had made the advance payment of Rs.23,50,000/- out of the total expenditure incurred to the tune of Rs.27,29,811/- and for the remaining amount of expenditure Rs.3,44,644/-, the late husband of the applicant had first filed the representations but the applicant has proposed to file the OA in year 2019, i.e., after a period of about 7 years from the date of his claim for medical reimbursement, i.e., 20.11.2012. Hence, this is inordinate delay of about 7 years in filing the present OA and the said delay cannot be allowed in disregard to the limitation under Section 21 of the Administrative Tribunals Act, 1985 in light of the D.C.S. Negi v. Union of India & others (Civil Appeal No.7956 of 2011) decided on 7.3.2011 in which it was viewed that the Tribunal should give due regard to Section 21 of Administrative Tribunals Act, 1985. Relevant portion of said judgment reads thus:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which reads 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 on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned 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) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(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".

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).

In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant."

5. It is also noted that the Apex Court in the case of S.S. Rathore v. State of Madhya Pradesh, (1989) 4 SCC 582. In the said case, the Hon'ble Supreme Court has held thus:-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause

of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

6. As is clear from the above judgments of the Hon"ble Supreme Court that reasons for delay have to be first considered before considering the OA in which there is considerable delay. We find that in this case, there is a delay of over half-dozen years before filing this OA. MA for condonation of delay only speaks about representations preferred before filing of the OA. Mere filing of the representation(s) does not extend the period of limitation for filing the OA and no adequate reasons have been given for unexplained delay of over six years in filing this OA. Hence, in view of the factual position and the decisions on such matters by the Hon"ble Supreme Court, the MA for condonation of delay in filing the OA is found to be bereft of any merit and is dismissed. Accordingly, OA is also dismissed. No costs.