

(2010) 05 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Condl. of Delay (LPA) No. 433 Of 2006, LPA No. 291 Of 2006

Shair Mohammad Khan

APPELLANT

Vs

State of J&K & Ors.

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Limitation Act, 1908 — Section 5

Citation : (2010) 05 J&K CK 0001

Hon'ble Judges : Ghulam Hasnain Massodi, J

Bench : Single Bench

Advocate : A.M.Magray, M.I.Dar, Advocates appearing for the Parties

Judgement

Appellant Shair Mohammad Khan filed Writ Petition SWP No.1621/96, seeking out of turn promotion for fighting with the militants who had

sieged the Holy Shrine of Hazratbal on March 23, 1996, claiming parity with those who along with him had participated in the fierce encounter

with the militants. His Writ Petition was, however, dismissed along with SWP No.778/96, in which too, the petitioner therein had claimed similar

relief.

Seeking condonation of 297 days' in filing the Appeal, he seeks setting aside of the Writ Court judgment and issuance of directions to the

State respondents to grant him out of turn promotion.

The delay in filing the Appeal is sought to be condoned on the ground that he was disabled to file the Appeal being unaware about the decision of

the Writ Petition which his counsel had not conveyed to him and additionally because of his not knowing about the legal position for filing Appeal

within the prescribed period of limitation.

We have considered the submissions of the appellant's learned counsel in support of the appellant's cause seeking condonation of delay in the light of the judgment of the Writ Court.

Barring making bald allegations regarding his unawareness about the dismissal of the Writ Petition and his counsel's omission to inform him about it,

the Statement on facts appearing in the appellant's Petition does not inspire confidence, in that, neither has the appellant indicated as to how was he

monitoring the prosecution of the Writ Petition and when had he come to know about its dismissal.

A litigant is expected to remain vigilant in the prosecution of his case and his omission to prosecute his cause diligently, may not justify upsetting the

legal effect of his default, unless, however, it was projected that the default had occurred for no fault of his and he had been diligent in the

prosecution of his case.

No such case has been made out by the appellant demonstrating existence of sufficient cause justifying condonation of huge delay of 297 days in

filing the Appeal.

Even on merits of the Appeal, we find no scope for interference in the judgment of the Writ Court in view of the stand taken by the official

respondents that the appellant had not in any way resisted the militants attack and the categoric finding recorded by the learned Single Judge on the

basis of the material available on the Writ Court records that the appellant had not performed any outstanding act which would entitle him to out of

turn promotion or even to the cash award.

For all what has been said above, we find no merit in appellant's Condonation of Delay No. 433/06 and accordingly dismiss it along with LPA No.

291/06.