
(2019) 10 CAT CK 0023

In the Central Administrative Tribunal

Case No : Miscellaneous Application No. 1394 Of 2019

Suresh Kumar

APPELLANT

Vs

Delhi Transport Corporation And Ors

RESPONDENT

Date of Decision : 10-10-2019

Acts Referred:

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

Citation : (2019) 10 CAT CK 0023

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

Bench : Single Bench

Advocate : Kiran Ahlawat, Ruchira Gupta

Final Decision : Dismissed

Judgement

1. Today, MA No. 1394/2019 seeking condonation of delay of over 24 years in filing the OA is listed for consideration. In the OA, the applicant has sought the following reliefs:-

"a) Direct the respondent DTC to give pension as per office order no.16 dated 27.11.1992 to the applicant who retired on opting VRS, as per circular dated 03.03.1993.

b) That any other order, relief or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case can be also passed in favour of the applicant and against the respondents."

2. In this MA, the applicant states that the respondent DTC has not given pension to him as per Pension Scheme 27.11.1992 and has also not decided his representation dated 10.10.2018 claiming grant of pension. The applicant has further pleaded that he is only possessing the educational qualification of matriculation and as such, is not knowledgeable person and hence the delay be condoned. The applicant has also pleaded that he was only a driver and got

retired in 1995 by opting for VRS. The applicant has further pleaded that he had no knowledge that through the litigation, it was possible to get pension nor had he any means or time to spend in legal fights. The applicant has submitted that only in the year 2018, he was advised by the counsel that he should try for getting pension as many similarly placed retired employee were granted pension after the orders passed by the Hon'ble High Court and accordingly, submitted a representation to the Corporation for pension in October, 2018. The applicant has thus submitted that due the above circumstances, the delay of about 24 years in filing the OA has occurred, which is neither deliberate nor intentional. The applicant has thus prayed for condonation of delay in filing the OA.

3. The respondents have filed their reply to the MA and submitted that the present MA has been filed by the applicant seeking condonation of delay of almost 24 years in filing the OA in which he is seeking pension under the DTC Pension Scheme, 1992 after having retired voluntarily from the services of the respondent no.1 way back in 1995. They have also contended that the act of sending representation dated 10.10.2018 by the applicant to the Respondent Corporation after a period of more than 20 years from the date of his retirement does not cure the defect of limitation and the said action of the applicant cannot be allowed in terms of the Hon'ble Supreme Court's judgment in Union of India Vs. MK Sarkar (2010)2 SCC 59 wherein it was held that repeated representations cannot give rise to a fresh cause of action. They have also contended that the applicant has sought condonation of delay on the ground that he is not a knowledgeable person as his education qualification is only till matriculation. 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 the applicant through the OA is now seeking the benefit of DTC Pension Scheme 1992, i.e., after a period of more than 27 years of its introduction and moreover, the applicant got voluntary retirement in the year 1995 itself. Hence, this is inordinate delay of about 24 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 inordinate delay of over 24 years before filing this OA. MA for condonation of delay only speaks about a representation preferred before filing of the OA which was filed on 10.10.2018 that too after an inordinate delay of about 26 years of introduction of the DTC Pension Scheme 1992. Mere filing of the representation(s) does not extend the period of limitation for filing the OA. We also find that the only plea taken by the applicant for this inordinate delay that he is only matriculate and hence, not a knowledgeable person, cannot be tenable in the eyes of law, as the Hon'ble Supreme Court in a catena of judgments, has held that the ignorance of law cannot be an excuse to extend the limitation. 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.