

(2005) 12 DEL CK 0054
In the Delhi High Court
Case No : LPA 2668 of 2005

Union of India (UOI)

APPELLANT

Vs

Kameshwar Dubey

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2005) 12 DEL CK 0054

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : B.S. Rajesh Agrajit, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This Letters Patent Appeal has been filed after a delay of about two years. It is accompanied with an application for condensation of delay u/s 5 of the Limitation Act.

2. The appeal was filed against the impugned judgment of the learned single Judge dated 20.10.2003. It is alleged in paragraph 4 of the delay condensation application that a copy of the impugned judgment was received from the Railway Advocate by the department on 9.12.2003. In paragraph 5 of the application it is stated that the competent authority decided to file the SLP and accordingly the case was referred to the headquarter on 18.1.2004 for approval.

3. In paragraph 6 of the application it is stated that after receiving the complete file from the divisional office for filing the SLP the headquarter forwarded the file on 10.2.2004 to the Railway Board to take a decision whether a SLP should be filed or not. It is alleged that the appellant sent a reminder to the headquarter on 1.3.2004.

4. In paragraph 8 of the application it is stated that as and when the letter was received the Railway Board by letter dated 26.3.2004 made some queries and received comments on 13.4.2004. Thereafter through letter dated 22.4.2004 a

reply to the query was sent to the headquarter. In paragraph 11 of the application it is then alleged that on 25.5.2004 a D.O. from the ADRM was sent to the CPO/A, Shri Arvind Kumar. In paragraph 12 of the application it is alleged that again the headquarter through letter dated 18.8.2004 desired clarification from the divisional office which was replied through letter dated 2.9.2004. In paragraph 14 it is alleged that again through letter dated 21.9.2004 the headquarter required clarification about paras 5 & 6 of the order of the High Court.

5. Thereafter in paragraph 15 of the application it is stated:-

Due to the administrative function from one place to another the matter for filing the SLP was between the sandwich so thereafter through letter dated 30.9.2004 D.O. from ADRM/FZR requested to CPO/A for early decision whether SLP will be filed or not ?

6. In paragraph 16 of the application it is stated:-

On 28.10.2004, 23.11.2004, 4.1.2005, 29.1.2005 and 14.3.2005 sent reminder to the head quarter through number of letters.

7. In paragraph 17 of the application it is stated:-

Thereafter head quarter through letter dated 29.1.2005 replied and again through letter dated 14.3.2005 sought clarification about the proposal of Special Leave Petition. It is further submitted that the petitioner herein immediately replied through letter dated 24.5.2005 when he received the letter from head quarter.

8. In paragraph 18 of the application it is stated:-

Again vide letter dated 19.7.2005 sent the reminder to the head quarter.

9. In paragraph 19 of the application it is stated:-

That the counsel for the above captioned matter was no more counsel so he could not provide/handed over the complete record of the Writ Petition to the department. It is further submitted that in the meanwhile new panel was constituted and same was handed over to the new counsel to look into the matter.

10. In paragraph 20 of the application it is stated:-

That the nominated counsel suggested to file the LPA which is the only available remedy and thereafter department had taken decision to file LPA and nominated the Counsel for drafting the Letters Patent Appeal and same may be file before the Hon"ble Delhi Court.

11. In paragraph 21 of the application it is stated:-

That the nominated Counsel drafted and filed the Letters Patent Appeal before

this Hon''ble Court in a crucial condition because so many documents are not available with the department.

It is further submitted that during drafting the Letters Patent Appeal complete original file was misplaced and how long the department should wait for filing the LPAs.

12. A perusal of these averments in the delay condensation application shows the utterly callous and cavalier manner in which the railway authorities have treated the matter of filing this appeal. In our opinion, the cause shown is clearly not sufficient for condoning the delay, rather it calls for reprimand and censure of the persons concerned for the manner in which the whole matter has been treated by the authorities concerned. Evidently the file was moving from one desk to another with nobody bothering about the limitation period.

13. In our opinion, whenever a judgment is given by a Court against some department, Government corporation or a statutory body, as soon as the certified copy is received from the counsel a note should be prepared, after consulting the counsel, stating how much is the limitation period and on what date is the limitation period ending. If an opinion is sought from some authority or lawyer as to whether an appeal should be filed against that judgment or not, in that very letter seeking the opinion the last date for filing the appeal should be clearly mentioned and he should be informed that his opinion should be sent well before that date so that the appeal can be filed without any delay.

14. However, in our country this practice is rarely followed. Very often appeals are filed long after the expiry of the limitation period. It is obvious that this is because the officers concerned are not going to lose anything from their pockets even if the appeal is dismissed on the ground of limitation or laches as they have no personal interest at stake. However, this is not a good ground for condoning the delay, rather it is a good ground for taking strong action, including suspension and dismissal of such officials, who are responsible for the delay. The present is a case where there is no good and sufficient ground for the delay in filing this appeal.

15. Hence, in this case we dismiss the delay condensation application as the appeal was filed after two years beyond the limitation period without any sufficient cause for the delay. Consequently we dismiss the appeal also. However, we direct the appellant to identify the officials responsible for this delay at the earliest and strong departmental action be taken against them, if necessary, including their suspension and dismissal in accordance with law.

16. With these observations, the delay condensation application and the appeal are dismissed. Let a copy of this judgment be sent by the Registrar General of this Court to the Law Secretaries of the Union and State Governments and other authorities concerned.