
(2019) 01 CAT CK 0127

In the Central Administrative Tribunal

Case No : Original Application No. 74 Of 2018, Miscellaneous Application No. 74 Of 2018

Vijay Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 02-01-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21
Representation Of The People Act, 1951 — Section 29A
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 16
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14

Citation : (2019) 01 CAT CK 0127

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Amit Chawla

Final Decision : Dismissed

Judgement

Nita Chowdhury, Member (A)

1. None for the respondents. We proceed to adjudicate this case by invoking the provisions of Rule 16 of the CAT (Procedure) Rules, 1987 and accordingly, we heard learned counsel for the applicant.

2. By filing this OA, the applicant is seeking the following reliefs:-

"i) To quash and set aside the Memo vide No.F-1/Misc./04-05 of S.S.P. Delhi East Division, Delhi-110051 was issued to take action under Rule 14 of C.C.S. CCA Rules.

ii) To direct the respondents to treat the applicant on duty w.e.f. 22.09.2008 with all consequential benefits to be paid to him alongwith interest @ 18% per annum.

iii) To quash the order of review petition dated 7.1.2011 and order passed in the revision petition dated 6.1.2012.

iv) Any other relief which this Hon'ble Court deems fit and proper under the facts and circumstances of this case be also passed in favour of the applicant and against the respondents."

3. Since there is delay in filing the OA, the applicant has also filed a Misc. Application bearing MA No.74/2018 seeking condonation of delay in filing the Original Application.

4. Counsel for the applicant submitted that the applicant by filing the OA seeking reinstatement on his post with all consequential benefits and the applicant on 19.2.2011 filed a review petition under Section 29A of CCS Rules against the impugned order dated 7.1.2011. However, the said review petition was dismissed vide order dated 6.1.2012 without considering the facts and circumstances of the case. Counsel further submitted that applicant could not approach this Tribunal within the stipulated time of limitation as he suffered a paralytic attack which confined the applicant to the bed for a long time and therefore he could not contact his lawyer and even could not pursue the criminal case in Karkardooma Courts. He further contended that his lawyer was also suffering from serious health problem and consequently left the practice and sold his chamber and further the applicant was not in a position to engage his lawyer due to financial crises and due to the aforesaid reasons, the applicant as well as his counsel, they could not contact each other for a long time. The applicant was under bonafide believe that the said counsel would pursue the matter on his behalf after recovering from his ailment and also the fact that the applicant was not aware about the limitation period for filing the present O.A. Counsel also contended that applicant had also lost his valuable documents and file and after making extraneous efforts, the applicant procured some documents regarding his case.

4.1 Applicant also contended that one of the alleged persons has already got the relief in OA No.1095/2013, Rajinder Bawa vs. Union of India which was pronounced on 17.4.2014 and the present case is also of same nature. Counsel also placed reliance on the judgment of Apex Court in the case of N. Balakrishna vs. M. Krishnamurti, J.D. Vol.6 242 1998 and submitted that in the said case, the Apex Court held that "Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory."

4.2 Lastly, counsel pleaded that the delay of 1460 days in filing the OA are neither intentional nor deliberate but due to the reasons beyond the control of the applicant and as such the delay of 1460 days may kindly be condoned in the interest of justice.

5. After hearing the learned counsel for the applicant, this Court observed that the Hon'ble Supreme Court in the said case (supra) observed that acceptability of the explanation is the only criterion for condonation of delay. As such this Court

has to see whether the explanation as noted above can be said to be acceptable explanation which warrants this Court to condone the delay, that too inordinate delay. In the instant OA applicant is seeking reinstatement in service as he was dismissed vide order dated 22.9.2008 after holding the departmental inquiry proceedings. Applicant also preferred his appeal against the order of the dismissal which was rejected by the appellate authority vide order dated 28.5.2010. Thereafter the applicant filed his revision petition which was also rejected by the revisionary authority vide order dated 7.1.2011 and thereafter applicant also filed his review petition which was also rejected vide order dated 6.1.2012 and the Original Application has been filed on 21.12.2017 and certain objections were raised by Registry of this Tribunal which were removed on 8.1.2018. From the aforesaid bare minimum facts it is clear that last departmental remedy which was exhausted by the applicant by filing a review petition which was decided on 6.1.2012 and as per the provisions of the Section 21 of the Administrative Tribunals Act, 1985, the O.A. should have been filed within a period of one year from the date of impugned order is passed. In the instant case, it is clear that the impugned order has been passed on 6.1.2012 when the review petition of the applicant had been rejected by the respondents and as such the OA ought to have been filed before 6.1.2013 and the instant OA has been filed on 21.12.2017, i.e., after more than 4½ years beyond the permissible limit for filing the OA against the impugned order dated 6.1.2012, besides making a bald statement with regard to his illness, no proof of the same has been furnished and no cause is given to explain the very long delay.

6. As the applicant has himself stated by referring to the Hon'ble Supreme court judgment in the case cited above, the that acceptability of the explanation is the only criterion for condonation of delay, which this Court also not dispute. But the explanations given by the applicant in the MA as quoted above in support of condonation of delay are not acceptable since the same are not supported by any documentary evidence. The applicant has not annexed any documentary proof with regard to his ailments as stated in the MA. Further contentions as noted above are also not supported by any documentary proof as if the applicant had also lost his valuable documents and file and after making extraneous efforts, the applicant procured some documents regarding his case, he could have explained when the same were lost and how and when by which means he got the same. As such the contentions in support of condonation of delay in filing the OA are not found to be satisfactory or acceptable to this Court.

7. In the result and for the foregoing reasons, MA 74/2018 is dismissed being devoid of merit and consequently, the OA is also dismissed as barred by limitation. There shall be no order as to costs.