

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3594/2007**

% ***Date of Decision: 21.03.2011***

R.P. VASHISTHA Petitioner

Through : Mr. R.K. Shukla, Advocate

versus

GOVERNMENT OF NCT DELHI & ORS Respondents

Through : Mr. Rajiv Nanda, Additional
Standing Counsel for GNCTD
along with Mr. V.P. Dwivedi,
Assistant Engineer.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

VEENA BIRBAL, J.

+ CM Nos.20028-20029/2010 in W.P.(C) No.3594/2007

These two applications are filed by the petitioner. In one application i.e. CM No. 20028/2010, prayer is made for restoration of three applications i.e. CM Nos. 7552-7554/2010 which were dismissed in default on 31.05.2010. The other application i.e. CM No. 20029/2010 is for condonation of delay of 110 days in moving the aforesaid application.

The background of the case is as under:-

Petitioner had filed the aforesaid writ petition challenging the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 14th November, 2006 by which the OA filed by him against the order of the Disciplinary Authority dated 2nd April, 2002 imposing a penalty of reduction in pay by three stages in the time scale of pay for a period of three years with cumulative effect, had been dismissed. A show cause notice was issued to the respondent as to why rule nisi be not issued, returnable for 19th November, 2007. On 19th November, 2007, counsel for respondents had appeared. Thereafter, matter was listed on 21st January, 2009. As no one appeared on behalf of the petitioner, the writ petition was dismissed for non prosecution on that date.

In August 2009, petitioner moved C.M 7553/2010 for restoration of writ petition along with application being C.M 7552/2010 for condonation of delay of 171 days in moving the application for restoration. Both these applications were returned by the Registry as there were some objections. Thereafter, petitioner had filed another application being C.M 7554/2010 for condonation of delay of 214 days in refiling the aforesaid applications. All these applications were listed on 31st May, 2010. On the said date neither
CM Nos. 20028-29/2010 in W.P.(C) No. 3594/2007

the petitioner nor his counsel appeared. Accordingly all the three applications were dismissed in default.

Thereafter petitioner filed present two applications i.e. C.M 20028/2010 for restoration of aforesaid three applications i.e. CM Nos. 7552-7554/2010 and another application being C.M No.20029/2010 for condonation of delay in filing C.M 20028/2010. In the application for restoration it is stated that counsel for the petitioner could not appear before the court on 31st May, 2010 as his clerk Sh. Radhey Shyam had not given proper information about the listing of the matter on that day. It is alleged that Sh. Radhey Shyam was in touch with the Registry of this court where he was informed on 24th September, 2010 that the aforesaid applications were dismissed in default on 31st May, 2010. On that very day, clerk of the counsel obtained copy of the order dated 31st May, 2010 from the internet facility provided by the Delhi High Court Bar Association in chamber block and thereafter the aforesaid two applications i.e. application for restoration as well as condonation of delay have been moved. It is stated that non appearance of the counsel for the applicant/petitioner on 31st May, 2010 was neither intentional nor deliberate and the same had occurred due to communication

stated above. It is stated that there is bonafide mistake in non-appearance on 31.05.2010 and as such, petition be restored to its regular number.

In the application for condonation of delay, it is stated that petitioner had come to know about dismissal of aforesaid C.Ms only on 24th September, 2010 and application for restoration of aforesaid C.Ms was moved before 24th October, 2010. It is stated that there is no delay in moving the application for condonation of delay but by way of abundant caution the application is moved for condoning the delay of 110 days.

The respondent has opposed the applications by filing separate replies thereto. The stand of the respondent is that the writ petition was dismissed for non prosecution on 21st January, 2009. Thereafter, petitioner had moved C.Ms 7552-7554/2010 for restoration of writ petition along with application for condonation of delay in moving restoration application as well as application for condonation of delay in refiling the said two applications which were also dismissed in default on 31st May, 2010. It is stated that there was delay of 171 days in moving the application for restoration of petition and further delay of 214 days in refiling the application for restoration as well as condonation of delay. It is stated that in CM Nos. 20028-29/2010 in W.P.(C) No. 3594/2007

these circumstances it is unimaginable that counsel for petitioner would wait for months together to get the aforesaid applications listed for hearing. It is stated that application for restoration is vague and does not give sufficient cause for non appearance on 31st May, 2010, as such both the applications are liable to be dismissed.

No rejoinder is filed by the petitioner in respect of replies submitted by respondent despite opportunity given in this regard.

We have heard learned counsel for the parties.

The main ground stated in the application is that clerk of the counsel namely Sh. Radhey Shyam who is alleged to have been in touch with the Registry was informed only on 24th September, 2010 that the application for restoration of writ petition along with application for condonation of delay had been dismissed in default and on that very day copy of the order dated 31.05.2010 was obtained through the internet facility made by the Delhi High Court Bar Association in the chamber block and necessary steps were taken to move the present application. It may be mentioned that though the ground taken for non-appearance is non-communication to the counsel for petitioner by his clerk Sh. Radhey Shyam but the application is not supported by the affidavit of said clerk of the counsel. Further, the name of the person to whom the clerk has

CM Nos. 20028-29/2010 in W.P.(C) No. 3594/2007 Page 5 of 7

allegedly contacted in the registry is also not stated. In application for condonation of delay, which is supported by affidavit of Sh.Radhey Shyam, clerk of the counsel, neither in the application nor in the affidavit, there is averment to the effect that clerk was informed by the Registry on 24th September, 2010 about the dismissal of C.M.Nos.7552-7554/2010 on 31st May, 2010. Under these circumstances alleged cause stated for non-appearance on 31.5.2010 is not believable. It is also not stated as to what steps were taken by the petitioner or his counsel prior to 24.9.2010 for getting the said application listed. The reasoning given in the application is vague. There is total negligence as well as inaction on the part of petitioner in pursuing the matter. The approach of the petitioner in pursuing the present two applications where writ petition has already been dismissed in default on 21.1.2009 and thereafter applications for restoration of petition, condonation of delay of 171 days in filing the said application and condonation of delay of 214 days in refiling have also been dismissed in default on 31.5.2010, will pursue in the manner as is alleged in the present applications is a casual approach. The same lacks bonafide on the part of petitioner.

In view of above discussion, the applications are without any merit. There is no sufficient cause for condonation of delay and also no sufficient cause for non appearance on 31st May, 2010. Both the applications are without any merits and are dismissed.

VEENA BIRBAL, J.

ANIL KUMAR, J.

MARCH 21, 2011

ssb