

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 23.11.2023.
Pronounced on: 30.11.2023.

LPA No. 114/2021
CM No. 8557/2021

Ex. Rfn Shakti Singh, Age 66 years
Army No.9081709,
S/O Late Sh. Raghunath Singh
R/O Village Rajpur Kuwar,
P.O. Birpur
District Samba, J&K-181133.

....Petitioner(s)/Appellant(s)

Through :- Mr. Arjun Bhatia, Advocate.

V/s

1. Union of India through
Secretary, Ministry of Defence,
Govt. of India, New Delhi.
2. The Chief of Army Staff, IHQ of
MoD (Army), New Delhi-110001
3. PCDA(P), through Senior Officer,
Draupdi Ghat, Prayag Raaj,
U.P.-211014.
4. OIC, JAK LI Record Office,
Pin 911097 C/O 56 APO

....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

ORDER

TASHI RABSTAN,J:

CM No.8557/2021 (Delay condonation application)

1. Instant application has been filed by the applicant/appellant seeking condonation of delay of 1912 days in filing the accompanying appeal against the order dated 30.05.2016 passed by learned Single Judge in SWP No. 1147/2016 titled '*Shakti Singh v. Union of India and Ors*'.

2. Mr. Arjun Bhatia, learned counsel appearing for the applicant-appellant has vigorously argued that delay in filing the appeal on the part of the applicant is neither intentional nor willful.

3. It is contended that the impugned order is passed on 30.05.2016 and the applicant was unaware of the same because the counsel engaged by him has not informed the applicant of the fate of the writ petition. It is next contended in the application that it is only in the month of October 2021, when applicant approached another counsel to ascertain the status of his writ petition, he was told by his counsel that he was also unaware of the status of the writ petition. Finally, he came to know about the dismissal of his writ petition from some other counsel, he filed the instant application seeking condonation of delay of 1912 days.

4. Learned counsel for the applicant submits that the grounds urged in the appeal are strong on merits and the applicant is sure to succeed in the appeal, and in case the delay is not condoned, the appeal will not be heard on merits.

5. Learned counsel for the applicant further submits that the advocate engaged earlier by him to prosecute the writ petition before the writ court had not informed the applicant about the dismissal of the writ petition, therefore, the applicant could not take appropriate steps to file the appeal within time. Hence, the delay is on account of bonafide reason and unintentional. He submits that for the fault of the advocate, the applicant cannot be made to suffer.

6. In support of his submissions, learned counsel for the applicant/appellant has placed reliance upon judgment of the Supreme Court in Petition for Special Leave to Appeal (C) No. 20719/2022 titled '*Anil Kumar Sharma v. The State of Haryana & Ors.*' passed on 12.12.2022; *Sukhvinder Singh v. Union of India and Ors.* reported in 2014 Legal Eagle 455 and the

judgment of the Madhya Pradesh High Court in *M.C.C. No.1851/2018* titled '*Mukesh Dubey v. Asha Bhargave*' passed on 24.08.2021.

7. On the other hand, Mr. Vishal Sharma, learned DSGI for the respondents has shown strong reservations in case the delay is condoned. He submitted that delay caused in approaching the court is huge, unexplained and the reasons given for delay are nothing but charade.

8. In support of his submissions, learned DSGI has placed reliance upon the judgment of the Supreme Court in the matter of *N. Balakrishnan v. M. Krishnamurthy*, reported in (1998) 7 SCC 123 and in the matter of *Postmaster General and others v. Living Media India Limited and another*, reported in (2012) 3 SCC 563.

9. We have heard learned counsel appearing for the parties and perused this application.

10. On perusal of the application seeking delay condonation, it appears that the applicant has not bothered himself in stating any reasons whatsoever that show sufficient cause to condone the mammoth delay of 1912 days except for the ignorance pleaded by him that he all along these years was oblivious of the status of the writ petition. The judgment impugned is of the year 2016 and the application seeking condonation of delay in filing the appeal was filed only on 01.11.2021, which depicts that the applicant has acted in a very nonchalant manner. The cavalier attitude on the part of the applicant is writ large as he has not cared a bit to even give specific dates, for example, date of receiving the certified copy of the judgment, which is conspicuous by its absence. The delay explained is not at all explained. There is no cause shown, let alone plausible and cogent sufficient cause for seeking condonation of delay which would sway this

Court to take a lenient view as the approach adopted by the applicant is nothing but perfunctory, which could justify the time taken in filing the appeal.

11. It is not the case of the applicant-appellant that the judgment impugned is an ex-parte judgment, as the applicant/appellant is represented by Mr. Rajesh Pal Smotra, Advocate before the writ court.

12. The judgments relied upon by the learned counsel for the applicant/appellant are quite distinguishable as in these judgments the delay was satisfactorily explained, here it is the other way round as the application seeking delay condonation is filed on vague grounds. It is the duty of the applicant/appellant to enquire about the status of his case from time to time from his counsel. In the present case, it seems that the applicant/appellant has gone to oblivion after assigning the case to his counsel, which shows that the applicant/appellant has proceeded in the matter in a very careless way.

13. Law is well settled with regard to condonation of delay in filing the appeal and same has been reiterated in judgment passed by the Apex Court in **Brijesh Kumar and ors. v. State of Haryana and ors** reported as **AIR 2014 SC 1612**, the relevant extract whereof is reproduced below:

“11. The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of Section 5 of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a

belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.”

8. Having regard to above referred judgment, it suggests that the applicant have viewed delay as a non serious matter and its lackadaisical tendency is exhibited by filing a delay condonation application on vague grounds.

9. In view of the facts and circumstances of the case, observations made hereinabove and the settled law position, we are of the opinion that the no cause is shown by the applicant/appellant, let alone sufficient cause for condoning the inordinate delay of 1912 days in filing the appeal. The application seeking condonation of delay deserves to be dismissed and is dismissed accordingly.

10. As a result thereof, the accompanying appeal i.e. LPA No.114/2021 is also dismissed.

Jammu:
30.11.2023
Raj Kumar

(Puneet Gupta)
Judge

(Tashi Rabstan)
Judge

Whether the order is speaking?	:Yes/No.
Whether the order is speaking?	:Yes/No.