

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6222 OF 2004

Sanjay Kumar s/o Narmada Prasad Pal

Age : 32 Yrs., Occ. : Business,

R/o : Railway Quarter No. RB-40 A,

Ajani, Nagpur, Dist. : Nagpur.

.... PETITIONER

V E R S U S

1. The Union of India
Through the General Manager,
Central Railway,
C.S.T., Mumbai.
2. The Additional Divisional
Railway Manager,
Central Railway, Bhusawal,
Dist. Jalgaon.
3. The Divisional Electrical
Engineer (TRD),
Central Railway,
Divisional Office, Bhusawal,
Dist. Jalgaon.
4. The Assistant Electrical
Engineer (TRD),
Central Railway,
Divisional Office, Bhusawal,
Dist. Jalgaon.

.... RESPONDENTS

.....
Mr. M.M.Bhokarikar, Advocate for Petitioner.

Mr. M.N.Navandar, Advocate for R.Nos.1 to 4.

.....
CORAM : A.V.NIRGUDE &

V.K.JADHAV, JJ.

DATE OF JUDGMENT : 7th OCTOBER, 2015

.....
ORAL JUDGMENT [PER A.V. NIRGUDE, J.] :

1. This petition mainly challenges the order dated 08/01/2002 passed by the Central Administrative Tribunal, Mumbai Bench in Original Application No. 9 of 2002. The petitioner, after completion of departmental enquiry, was dismissed from service on 24/06/1998. His departmental revision was also dismissed on 03/03/1999. Thereafter, the petitioner ought to have approached the Central Administrative Tribunal within a period of one year, however, the petitioner went on making applications after applications to his superior officers seeking mercy and/or reinstatement etc. Finally, the petitioner approached the Central Administrative Tribunal belatedly, and delay was of about two years. Section 21 of the Administrative Tribunal Act, 1985 [For short, 'the Act'] permits the Tribunal to entertain the application filed after one year only if the applicant/petitioner satisfies the Tribunal that he had sufficient cause

for not making application within such period of limitation.

2. We have perused the application, which was filed before the Tribunal. In the said application, the petitioner has very clearly mentioned that he ought to have moved the Original Application within one year from 03/03/1999. He also admitted that due to wrong advice, he had made applications to General Manager and other Officers of his employer i.e. Indian Railways and wasted his time before them. With this clear statement, the petitioner approached the Tribunal.

3. The question before the Tribunal was whether the reasons mentioned in the application amount to sufficient cause, as contemplated by Section 21 of the Act. The impugned order says that the Tribunal would not show indulgence for condoning delay because the applicant did not approach the said forum in time.

4. We perused the application seeking condonation of delay. The petitioner has stated elaborately as to how many applications he made before various authorities virtually seeking mercy. He also mentioned that he was advised to do so. As said above, the finality to his cause was given by the Order dated 03/03/1999. Thereafter, the

petitioner had no other remedy but to go to the Tribunal. The petitioner did not go to the Tribunal, because apparently he did not receive proper legal advice. The petitioner had lost his job. In such situation, the petitioner mostly depended on his superior officers. The delay was caused because of these actions on the part of the petitioner. In the facts and circumstances of this case, the steps that the petitioner took after 03/03/1999, can not be said to be malafide. He had no reason to go belatedly before the appropriate forum, which was Central Administrative Tribunal. Therefore, we are of the view that the Tribunal ought to have condoned the delay utilizing powers u/s 21 of the Act.

5. The learned counsel for the respondents placed reliance on the Judgment of Supreme Court in the case of **S.S.Rathore Vs. State of Madhya Pradesh – 1990 AIR (SC) 10**, to contend that the power of condonation of delay given to the Tribunal under sub section (3) of Section 21 is limited to the extent of six months only. On the face of it, the submission is defective. The provision does not mention that the Tribunal's powers to condone delay is limited to six months.

6. Reliance is also placed on the Judgment of the Supreme

Court in the case of **State of Karnataka & Ors. Vs. S.M.Kotrayya & Ors. - 1996 (6) SCC – 267.** This time, the Supreme Court clarified that the decision of Constitution Bench in S.S.Rathore's case [cited supra] did not consider the question as to whether Administrative Tribunal has power to condone delay after the period prescribed under the provisions of Section 21. The Supreme Court then explained in this Judgment that having regard to the provisions of Section 21, specially of sub section (3), the Tribunal is required to satisfy itself as to whether explanation offered by the petitioner for delay was proper or otherwise. If the explanation is not found proper, the Tribunal would be able to reject the application seeking condonation of delay.

7. In this case, as mentioned above, we found that the explanation offered by the petitioner was sufficient and convincing. On the other hand, we expressed our opinion that the Tribunal brushed aside such explanation rather casually.

8. This Writ Petition, therefore, should succeed. We allow this Writ Petition by setting aside the impugned order. We condone the delay in filing the Original Application. The Central Administrative Tribunal is requested to decide the Original

Application on merits as early as possible. Record be sent to the Tribunal. The parties shall appear before the Central Administrative Tribunal on 16/11/2015.

9. Rule is made absolute in above terms.

[V.K.JADHAV, J.]

[A.V.NIRGUDE, J.]