

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 4411 of 2016

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ORDER: (per Hon'ble Sri Justice U. Durga Prasad Rao)

This writ petition is filed by the petitioner aggrieved by the order dated 05.11.2015 in M.A.No.2468 of 2015 in M.A.S.R.No.12073 of 2015 in O.A.No.9512 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

2. Brief facts of the case are as follows:

The petitioner-applicant joined Government service as Non-Medical Assistant on 27.04.1977 in the Directorate of Medical and Health Services, A.P., Hyderabad, and retired on 30.06.2011 as Deputy Para Medical officer. It is his case that while he was in service, he obtained extraordinary leave for a period of 4 years 11 months as per G.O.Ms.No.214 dated 03.09.1996 and went to USA. After his return, he was reposted as Assistant Para Medical Officer on 28.05.2005.

It is his grievance that while he was on leave, his juniors were promoted as Deputy Para Medical Officer and he was not informed of the same and that after he returned from USA, he made a representation on 07.07.2005, seeking to promote him with effect from the same date as that of his juniors, but the respondents promoted him on 18.04.2006 along with his

sub-juniors.

The applicant filed an appeal before the 1st respondent seeking notional promotion on par with his juniors but the 1st respondent rejected the same vide proceedings dated 02.12.2011. Aggrieved by the same, the applicant filed O.A.No.9512 of 2012 before the Tribunal.

The Tribunal, vide its orders dated 13.08.2015, dismissed the OA for non-prosecution.

The applicant filed a restoration petition before the Tribunal vide MASR No.12073 of 2015. Along with the restoration petition, he also filed an application viz., MA No.2486 of 2015, seeking condonation of delay, as there was a delay of one month 29 days in filing the restoration application.

The Tribunal, vide its orders dated 05.11.2015, dismissed the condonation application on the ground that no valid reasons were shown for the delay, except stating that for the mistake of the advocate, the applicant cannot be made to suffer. As a result of dismissal of the delay condonation petition i.e., MA No.2486 of 2015, the restoration petition i.e., MASR No.12073 of 2015 stood rejected. Aggrieved by the same, the present writ petition was filed.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner would submit that the advocate-on-record for the petitioner before the Tribunal was out of station on 13.08.2015 and by the time he returned and

verified, he came to know that the OA was dismissed for default, and immediately he filed a petition to set aside the dismissal order and in the process, there is a delay of one month and 29 days and the said delay was neither wilful nor wanton. Learned counsel further submits that for the laches on the part of the advocate, the party may not be made to suffer.

5. Having regard to the submission made by the learned counsel for the petitioner, and having regard to the fact that the delay condonation petition was dismissed solely on the ground that the applicant has not shown valid reasons for the delay except stating that for mistake on the part of the advocate, the applicant cannot be made to suffer, we deem it appropriate to dispose of the writ petition with a direction to the petitioner herein to file an affidavit of his counsel before the Tribunal explaining the cause for the delay of one month 29 days. On such filing of affidavit by the counsel for the petitioner-applicant before the Tribunal, the Tribunal shall consider the same and pass appropriate orders, in accordance with law.

6. The writ petition stands disposed of, accordingly. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

11th February, 2016

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THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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