

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 13.11.2017****Delivered on 23.11.2017****WA No. 365/2017**

(Arising out of order dated 7-2-2013 in WP. No. 2016/2004)

Ajeet Kumar S/o Shri Mahendra Choudhary Aged About 45 Years
 Ex . Maanagement (Mining) Sohagpur Area Subhas Mines South
 Eastern Coalfields Limited District Shahdol (Madhya Pradesh)
 R/o Sector 4 F Quarter No. 3077 Borkaro Steel City Bokaro
 District Bokaro Jharkhand

---- Appellant**Versus**

1. Union Of India Through The Secretary Ministry Of Coal New Delhi.
2. Coal India Limited , Through Its Chairman Office At 10 T H Netaji Subhash Road Kolkota (West Bangal)
3. The Chairman Cum Managing Director, South Eastern Coalfields Limited Head Quarter Seepat Road Bilaspur Chhattisgarh.
4. The General Manager, Sohagpur Area South Eastern Coalfields Ltd District Shahdol Madhya Pradesh .

---- Respondents

Appellant	:	In person
For Respondent No. 1	:	Shri R.K. Kesharwani, Standing Counsel
For Respondent No. 2 to 4:	:	Shri Vaibhav Shukla, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Sharad Kumar Gupta, Judge****CAV JUDGMENT****Per Sharad Kumar Gupta, Judge**

1. In this writ appeal, challenged is levied to the order dated 7-2-2013 passed by learned Single Judge in WP No. 2016/2004 whereby and whereunder he dismissed the writ petition.
2. It is admitted by respondents that the appellant was appointed as Management Trainee (Mining). He was absent from his duties since 1-

8-1999. They issued a show cause notice on 18/19-11-1999. The appellant requested the General Manager, Sohagpur area for extension of sick leave upto December, 1999. The respondents issued a charge sheet dated 2-5-2000 vide Annexure A-5. Final order imposing major penalty of removal from service was passed on 14-12-2000 vide Annexure A-7. Being aggrieved by order dated 14-12-2000, the appellant preferred departmental appeal before competent authority which was dismissed.

3. In brief, appellant's case is that he was appointed by the respondent No. 1. After getting sanction of 4 days Casual Leave from 31-7-1999, he went to Bokaro Steel City. There he became seriously ill. The respondents repeatedly issued him notices to resume duties. He replied them. Departmental inquiry was proceeded exparte against him.

4. In brief, respondents' case is that appellant was appointed by respondent No. 2. He was unauthorizedly absent from 1-8-1999 from his duties.

5. Being aggrieved by order Annexure A-7 dated 14-12-2000, the appellant preferred the writ petition which was dismissed as aforesaid.

6. From the admitted facts, the case of the appellant, notices collectively Annexure A-3, and Annexure A-5, it is quite clear that the respondents had given notices to appellant for immediately joining his duties.

7. It would be pertinent to mention relevant portion of para 5.9 of the reply of respondents which is quoted below:-

“.....I could not leave my father alone in the mid of

treatment and I had to arrange for the marriage of my sisters, which was my responsibility after the illness of my father. I could not take any step on this issue at that time. As of now, I have finished my entire obligation and got my sisters married which was my responsibility.

8. There is no such material on record on the strength of which it could be said that the aforesaid portion is not genuine or fictitious or weightage should not be given to it.

9. Moreover, the peculiar fact in this case is that the appellant has not challenged the order of dismissal of his appeal by the Board in any other forum. It has also not been challenged before the learned Single Judge.

10. Looking to the abovementioned facts and circumstances of the case, this Court finds that the order Annexure A-7 does not suffer from any illegality or infirmity.

11. Looking to the aforesaid facts and circumstances, we agree with the reasoned impugned order passed by the learned Single Judge on 7-2-2013 vide Annexure A-1 and we affirm the same.

12. There is a delay of 1612 days in filing this appeal. The appellant has filed an application I.A. No. 1/2017 for condonation of delay in filing the writ appeal on the ground that earlier he was residing at Sohagpur, from there he shifted to Bokaro city. He was not acquainted with the impugned order Annexure A-1 till 2016. In the year of 2016 he came to know about Annexure A-1. He had filed an application under the Right to Information Act, 2005 to the office of respondents. After receiving the copies, he filed this writ appeal.

13. The reply of the respondents, in brief, is that the delay is not

bonafide and not inadvertent in nature. The reasons of delay are not sufficient.

14. It is noticeable that the appellant has preferred this appeal delayed by 1612 days.

15. In **Ajit Singh Thakur Singh -v- State of Gujarat (AIR 1981 SC 733)**, Hon'ble Supreme Court has held that in case of an appeal against acquittal filed beyond period of limitation, the sufficient cause must be shown for condonation of delay. The cause shown must refer to the period prior to the expiry of the Limitation. Events or circumstance arising after the expiry of limitation cannot be termed to be sufficient cause for condoning delay.

16. In **Esha Bhattacharjee -v- Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649]**, Hon'ble Supreme Court while dealing with the matter relating to condonation of delay has laid down the following principles :-

“(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate

causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

Some more guidelines taking note of the present day scenario are:

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

17. In **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another** [2010) 5 SCC 459], Hon'ble Supreme Court has observed that :-

“Section 5- Application for condonation of more than four

years' delay in filing of appeal by respondents against judgment and decree passed by trial Court in Special Civil Suit No. 32 of 2001. Appeal was allowed by High Court. Plea of appellants that appeal against judgment and decree dated 30.10.2004 was filed on 24-11-2008 i.e. after more than four years, but by scoring out the figures and words "4 years and 28 days" in paragraphs 2 and 3 of the application and substituting the same with figure "1067", the respondents misled the High Court in believing that delay was of 1067 days. A reading of the impugned order shows that the High Court did make a bald reference to the application for condonation of delay filed by the respondents but allowed the same without adverting to the averments contained therein and the reply filed on behalf of the appellant. Not only this, the High Court erroneously assumed that the delay was of 1067 days, though, as a matter of fact, the appeal was filed after more than four years. Another erroneous assumption made by the High Court was that the appellant had not filed reply to controvert the averments contained in the application for condonation of delay. It may have been possible for this Court to ignore the first error in the impugned order because by deleting the figures and words "4 years and 28" in paragraphs 2 and 3 of the application and substituting the same with the figure 1067, the respondents misled the High Court in believing that the delay was of 1067 days only but it is not possible to fathom any reason why the Division Bench of the High Court omitted to consider the detailed reply which had been filed on behalf of the appellant to contest the prayer for condonation of delay. Notwithstanding this, case could have been remitted back to High Court for fresh disposal of application filed by the respondents under Section 5 of the Limitation Act but, adoption of that course held not proper, as respondents did not approach High Court with clean hands. Even though Law Department of respondent No. 1 was very much aware

of the proceedings of the first as well as the second suit but none of the officers is shown to have personally contacted either of the advocates for the purpose of filing written statement and preparation of the case and none bothered to appear before the trial Court on any of the dates of hearing. High Court committed grave error by condoning more than four years' delay in filing of appeal ignoring the judicially accepted parameters for exercise of discretion under Section 5 of the Limitation Act. Impugned order of High Court set aside and application for condonation of delay filed by respondents dismissed. Appeal allowed.”

18. In the case in hand it is noteworthy that there is 'inordinate delay' in filing the appeal.

19. It is not the natural human conduct that a person would not intimate his advocate the new address and does not inquire about his case from his counsel. Thus, the aforesaid reasons given by the appellant are not normal and plausible. In other words, these reasons are not acceptable. Thus, we hold that the appellant has failed to show sufficient cause for aforesaid delay. Thus, the aforesaid judicial precedent laid down by the Hon'ble Apex Court go against the appellant.

20. Looking to the aforesaid facts and circumstances of the case, we find that the appeal is devoid of merit and also there is no sufficient cause for aforesaid delay.

21. Consequently the appeal is dismissed and I.A. No. 1 is also rejected. No order as to costs.

Sd/-
(Thottathil B. Radhakrishnan)
Judge

Sd/-
(Sharad Kumar Gupta)
Judge