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

+ **W.P.(C) 4077/2017**

AMAN GUPTA

..... Petitioner

Through: Mr. Sonal Anand and Mr. Khitij
Gupta, Adv.

versus

UNION OF INDIA

..... Respondent

Through: Mr. P.C. Yadav, Sr. Panel Counsel

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

15.05.2017

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1. The petitioner has preferred the present writ petition to assail the order dated 20.03.2017 passed by the Central Administrative Tribunal (CAT) in MA 1709/2016 in RA 335/2015 arising out of OA 1824/2012. By the impugned order, the tribunal has rejected the aforesaid application preferred by the petitioner to seek condonation of delay in filing the review application. Condonation of delay was sought in respect of 893 days delay in filing the review application.

2. The petitioner had approached the tribunal by filing the aforesaid application i.e. OA No.1824/2012 to seek a direction to the respondents to

draw up the IAS reservation roster keeping in view the OMs providing reservations, inter alia, to the visually handicapped candidates. He also sought a direction to the respondents to allocate and appoint the petitioner to the IAS on the basis of his 3rd rank in CSE 2010 in the visually impaired category on the ground that six vacancies (backlog and fresh) were in existence at the relevant point of time. He also sought other consequential directions from the tribunal.

3. The petitioner was a candidate for the CSE 2010 in the category of visually impaired persons. He had given his options - the first option being for the Indian Administrative Service (IAS), the second option for the Indian Foreign Service (IFS), and the third for the Indian Corporate Law Service (ICLS). He qualified in the said examination and secured third rank in the category of visually impaired. He was allotted ICLS, which he joined. He claimed that he should have been allotted the IAS, which was his first preference, or IFS, which was his second preference.

4. The respondents filed their counter affidavit before the tribunal, inter alia, disclosing that between 1996 and 2010, there were in all 1298 appointments made to the IAS (counsel for the respondent, who appears on advance notice, states that there is a typographical error in the order dated 18.04.2013 passed by the tribunal, and the actual number of appointments made to the IAS of the said period was 1296). 1% of the said appointments translated to 13 vacancies for the visually impaired category. The respondent also explained how 13 visually impaired candidates had been appointed during the said years. It was explained that 1 candidate was appointed on the basis of CSE 2005, 4 on the basis of CSE 2006, 2 on the basis of CSE

2007, 3 on the basis of CSE 2009 and 1 on the basis of CSE 2010. Similarly, the respondent explained that there were 3 vacancies for the visually handicapped category in respect of CSE 1996-2010, as 281 appointments were made to the IFS, and the said 3 vacancies had been filled up in the year 2008 (2 vacancies) and 2009 (1 vacancy). The tribunal, accordingly, dismissed OA on 18.04.2013.

5. The petitioner then preferred W.P.(C.) No. 8540/2015 before this Court. The petitioner withdrew the said writ petition on 09.09.2015 after some hearing of the matter and stated that he wishes to file a review petition before the tribunal. The petitioner eventually filed the review application on 16.11.2015 under objections, which were removed on 21.12.2015. The petitioner also moved an application to seek condonation of delay of 893 days, which the tribunal has rejected by the impugned order.

6. The submission of learned counsel for the petitioner is that after the OA had been dismissed on 18.04.2013, and before the order was dispatched by the registry of the tribunal, the petitioner cleared the CSE 2012 by securing 57th rank. He had joined the Lal Bahadur Shastri Academy at Mussorie on 01.09.2013 and was not available to file the writ petition. Consequently, he could file the writ petition before this Court to assail the order dated 18.04.2013 passed in his O.A. No., only on 11.07.2014. The said writ petition remained under several office objections and the office objections were removed on 03.09.2015. Thereafter, it was listed before this court on 09.09.2015 when the same was dismissed as withdrawn. Learned counsel submits that the petitioner preferred the review application on 16.11.2015 and after removing the objections, the same was listed before the

tribunal on 22.12.2015. Learned counsel submits that during this period the petitioner was not in town and, therefore, the same cannot be counted towards delay in filing the writ petition. The review application was preferred within a reasonable time of the writ petition being dismissed as withdrawn.

7. Learned counsel for the petitioner during the course of his submission has sought to justify the delay in filing the writ petition, and further delay in removing the objections (of about 14 months) by contending that the delay was on account of the counsel, then engaged, not taking steps for removal of the objections. The petitioner, who is present in Court, states that he had sent communication to his counsel through email and SMS messages. However, none of the said mails/ messages were placed before the tribunal along with the application seeking condonation of delay in filing the review application.

8. The further submission of learned counsel for the petitioner is that apart from considering the aspect of delay in filing the review application, the tribunal in the impugned order has also considered the review application on its merits, even though no arguments were advanced or heard on the review application.

9. We have heard learned counsel for the petitioner as well as the petitioner. Merely because the petitioner was not in town for some part of the period after the dismissal of O.A. No., is no explanation for the delay in filing the review application. Even according to the petitioner, he had received the order of the tribunal dated 18.04.2013 on or about 09.05.2013 when the same was dispatched by the registry. He joined the IAS academy

only on 01.09.2013. There is no explanation forthcoming as to why the petitioner did not prefer the review application during the said four months period, even though limitation prescribed for preferring a review application is 30 days. Apart from making a bald assertion that the erstwhile counsel of the petitioner defaulted in removing the objections in the writ petition, there is absolutely no material brought on record to support this allegation. It is very convenient for a party to put the blame on the counsel at his back, while he may himself be responsible for the delay in removal of objections. On a query by the Court, it was informed that no steps were taken by the petitioner to make any complaint against the erstwhile counsel before the Bar Council for the alleged negligence on his part in not removing the objections and pursuing the writ petition. Pertinently, the writ petition remained under objections for good 14 months. This itself shows that the petitioner was not serious about pursuing his rights. Even when it came to filing of the review application and pursuing the same, the petitioner took his own sweet time. Though the writ petition was dismissed as withdrawn on 09.09.2015, he filed the review application only on 16.11.2015, which remained under objection for over a month as the objections were removed only on 21.12.2015. The admitted position is that the reliefs sought by the petitioner would have the effect of displacing the seniority of others, vis-à-vis the petitioner. That being the position, the petitioner should have acted without any delay in preferring the review application.

10. In these circumstances, in our view, the tribunal rightly dismissed the petitioner's application to seek condonation of delay in filing the review application.

11. So far as the submission of learned counsel for the petitioner that the tribunal should not have dealt with the review application on merits is concerned, the same is neither here nor there in view of dismissal of the condonation of delay application. The tribunal has taken note of several decisions on the aspect of the scope of review proceedings while observing that the petitioner was - under the garb of review, seeking to reargue the OA on its own merits and re-urge the submissions which had earlier been considered and rejected by the tribunal.

12. In any event, since the review application was preferred with a substantial delay for which there was no satisfactory explanation furnished by the petitioner, we are of the view that the order of the tribunal does not call for interference on any aspect.

13. Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 15, 2017

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