

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.12245 OF 2015**

Motilal L. Sharma

...Petitioner

*Versus*

Chief Signal and Telecommunication  
Engineer & Ors.

...Respondents

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Mr. Ashutosh Gole for the Petitioner.

Mr. T. J. Pandian for the Respondent.

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**CORAM : SMT.V.K. TAHILRAMANI, Acting Chief, J.  
M.S. SONAK, J.**

**DATE : 27<sup>th</sup> FEBRUARY 2018**

**P.C.**

1. Heard Mr.Ashutosh Gole, learned counsel for the petitioner and Mr.T.J. Pandian, learned counsel for respondent.

2. Rule. By consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. The challenge in this petition is to the judgment and order dated 03.10.2013 made by Central

Administrative Tribunal, Mumbai (CAT) dismissing the petitioner's Original Application No.192/2011 in which, the petitioner, had raised grievance with regard to the non-acceptance of his request for voluntary retirement.

4. Mr.Gole, the learned counsel for the petitioner submits that the CAT has non-suited the petitioner on the ground that the OA was instituted after delay of more than two years. He points out that the petitioner along with OA had filed an application for condoning of delay and such delay had in fact been condoned by the CAT by its order dated 20.10.2011. Mr.Gole, therefore submits that in the impugned judgment and order finally disposing of OA No.192/2011, the petitioner, could not have been non-suited on the ground of delay.

5. Mr.Gole, submits that the CAT has purported to address the merits after holding that the OA is liable to be dismissed on the ground of delay. He submits that such consideration is quite cursory and all the contentions raised by the petitioner have either not been considered or, in any case, not considered in proper perspective.

Mr.Gole, submits that once CAT held that the OA was liable to be dismissed on the ground of delay, no proper consideration was bestowed upon the remaining contentions urged by and on behalf of the petitioner. Mr.Gole, submits that there is no consideration of the import of Rule 67 of the Railway Rules (Pension) Rules, 1993, including in particular the proviso to Rule 67(2) of the said Rules. He submits that there is no proper consideration of the decision of the Hon'ble Supreme Court in ***Tek Chand Vs. Dile Ram [(2001) 3 SCC- 290]***. For all these reasons, Mr.Gole submits that the impugned judgment and order of the CAT be set aside and the matter be remanded to the CAT for reconsideration of OA No.192/2011.

6. Mr. Pandian, the learned counsel for the respondent submits that the CAT has not dismissed the OA No.192/2011 only on the ground of delay but also on merits. He submits that all the contentions of the petitioner have been duly considered and since, no merit was found in them, the OA No.192/2011 came to be dismissed. He submits therefore that there is no case

made out to interfere with the impugned judgment and order made by the CAT.

7. There is substance in the contentions of Mr.Gole that the delay in the institution of OA No.192/2011 had already been condoned earlier and therefore, the CAT, was not justified in dismissing the OA on the ground of delay.

8. From the record it is seen that the petitioner had filed Miscellaneous Petition No.147/2011 along with OA No.192/2011 seeking for condonation of delay. The Miscellaneous Petition No.147/2011 was taken up by the CAT on 20.10.2011 and after hearing the counsel for both the parties, the Miscellaneous Petition was allowed and the delay was condoned. By the same order, the OA No.192/2011 was admitted and time was granted to the respondents to file affidavit in reply and thereafter to the petitioner to file rejoinder. The order made by the CAT of Miscellaneous Petition No.147/2011 condoning the delay in the institution of OA No.192/2011 is annexed to the paper book at Exh-P, at page 77. The fact that such an order was actually made after hearing the learned counsel for the

parties has not been disputed by Mr. Pandian. In the light of such order, there was no question of the CAT dismissing OA No.192/2011 on the ground of delay.

9. The CAT, in the impugned judgment and order dated 03.10.2013 has made reference to the merits of the petitioner's case as well. However, on perusing the impugned judgment and order, we find that the requisite consideration has not been bestowed upon all the contentions raised by the petitioner before the CAT. We also find that though there is reference made to Rule 67(2) of the said Rules in paragraph 18 of the impugned judgment and order, the application of the said Rules to the facts and circumstances of the present case, does not appear to have been considered. It does appear that the CAT, after holding that the OA was liable to be dismissed on the ground of delay, not deem it necessary to further consider the contentions on merits in some details. In such circumstances, it will only be proper if the impugned judgment and order dated 03.10.2013 is set aside and the matter is remanded to the CAT for fresh consideration of OA No.192/2011 on its own merits and in accordance with

law.

10. Accordingly, we set aside the impugned judgment and order dated 03.10.2013 and remand the OA No.192/2011 to the CAT for fresh consideration in accordance with law and on its own merits. We make it clear that we ourselves have not adverted to the merits of the matter and therefore, all contentions of all parties are left open for adjudication by the CAT. We further clarify that none of the observations in this order may be taken as even a remote reflection on the merits of the matter. The CAT to decide OA No.192/2011 on its own merits and in accordance with law.

11. The Rule is made absolute to the aforesaid extent. There shall however be no order as to costs.

12. We direct the parties to appear before the CAT on 02.04.2018 at 10.30 a.m. and produce authenticated copy of this order.

**(M. S. SONAK, J.)**

**(ACTING CHIEF JUSTICE)**