

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-28797-2018

Date of Decision: 15.11.2018

Amarjeet Singh

...Petitioner

Versus

Central Administrative Tribunal and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Karnail Singh, Advocate for the petitioner.

**AJAY KUMAR MITTAL, J.**

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 12.9.2018 (Annexure P-1) passed by respondent No.1-Central Administrative Tribunal (in short “the Tribunal”) dismissing the Original Application (OA) of the petitioner being time barred.

2. A few facts necessary for adjudication of the present petition as narrated therein may be noticed. The petitioner appeared in the written examination for the promotion from Group C to Group B service and as such cleared the said examination. Thereafter, he appeared for viva voce on 13.11.2013 and was shown to have obtained 237.1 marks out of 350 marks. However, the name of the petitioner did not figure in the list of successful candidates as declared vide order dated 16.12.2013 (Annexure A-1). On 27.12.2013, the petitioner moved an application under the Right to

appeals to the Chief Information Commissioner, New Delhi for supplying the relevant information including the Model Answer Key, but no information was supplied. On 7.12.2014, the petitioner engaged a counsel to file OA before the Tribunal. The said counsel had not filed the OA and had assured that the OA had been filed. However, OA-60/916-2016 was filed which was withdrawn due to technical defects with liberty to file a fresh one. Again a fresh OA along with Misc. Application for condonation of delay was prepared by the counsel for the petitioner and got the signatures of the petitioner but it was not filed till 23.12.2016 for the reasons best known to the counsel for the petitioner. Ultimately, the OA along with application for condonation of delay was filed on 13.2.2017. However, the Tribunal vide order dated 12.1.2018 (Annexure P-1) dismissed the OA as well as the application for condonation of delay in filing the OA. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The primary question that arises for consideration in this petition is whether there was sufficient cause for condonation of delay of 760 days in filing the OA before the Tribunal which was belated.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short “the 1963 Act”), it may be observed that the Supreme Court in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

“14. We have considered the respective submissions.

The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.

15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.”

6. It was further noticed by the Apex Court in **R.B. Ramlingam v.**

**R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

“.....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”

It was also recorded that:-

“For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see

that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in **Oriental Aroma Chemical Industries Ltd.** and **R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. According to the learned counsel for the petitioner, after passing of the order dated 16.12.2013, the petitioner moved an application dated 27.12.2013 under the 2005 Act followed by the reminders and appeal to the Chief Information Commissioner, New Delhi for supplying the relevant information including the model answer key. Thereafter, the petitioner engaged a counsel on 7.12.2014 to file the OA before the

Tribunal. The said counsel had not filed the OA in time and had given false assurance that the OA had been filed. However, OA-60/916-2016 was filed which was withdrawn with liberty to file a fresh one. Again the OA along with application for condonation of delay was filed. However, on 19.2.2017, the application for condonation of the delay was withdrawn with liberty to file a fresh one. Ultimately, the Tribunal vide order dated 12.9.2018 (Annexure P-1) dismissed the said OA as well as the application for the condonation of delay in filing the OA. Due to the mistake of the counsel for the assessee, the OA could not be filed in time. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the OA before the Tribunal. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the petitioner.

10. Adverting to the factual matrix in this case, we do not find any merit in the appeal. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. In the present case after appreciating the matter it cannot be said that there was sufficient cause for condonation of delay. Respondent No.4 vide order dated 16.12.2013 (Annexure A-1) made selection of respondents No.6 to 12 but the petitioner was not selected. However, the OA before the Tribunal was required to be filed within the stipulated period of limitation of one year. But the petitioner filed the OA before the Tribunal on 13.2.2017, after a delay of 760 days. The plea of the petitioner as mentioned above, thus, would not satisfy the test of sufficient cause. The explanation of the petitioner is bereft of details of delay caused in filing the

OA and, therefore, the Tribunal has rightly rejected the OA on the ground of limitation keeping in view the totality of facts and circumstances of the present case. The findings recorded by the Tribunal read thus:-

“7. We observe that there is no doubt that the O.A. is time barred. The cause of action, without dispute arose on 16.12.2013 when vide Annexure A-1 the result was declared. There is not much force in the plea put forth by the applicant that he was unable to approach the Tribunal due to non receipt of information from the respondent department to substantiate his case. In case he was not able to obtain information under RTI Act, he should have exhausted all the levels of appeals under the RTI Act within the time prescribed there under and thereafter he should have been approached the Tribunal within the time lines prescribed under the Central Administrative Tribunals Act, 1985. This has obviously not been done in the instant case. Further, even as per his own pleadings, though the information based on which he has now approached the Tribunal has been received by him vide letter dated 8.2.2016 from the respondents, he has filed the instant O.A. only on 13.2.2017. This involves of delay over 1 year even after the receipt of information from the respondents. No good and sufficient grounds have been made out by the applicant to explain this portion of delay. The case is, therefore, clearly time barred and thus not admissible under Section 21 of the

Administrative Tribunal Act, 1985.

8. Besides, it is observed that the process of selection was initiated in 2013 and was also completed with the declaration of result and promotion of successful candidates in December 2013. For the applicant to approach the Tribunal more than 3 years thereafter is not appropriate as it disturbs settled issues including promotion and seniority.

9. We further observe that the applicant has gone through his answer sheet and then has himself assessed the marks that should be awarded to him. He has produced Annexure A-12 of 'discrepancies' wherein he has indicated the marks already awarded and what should have been awarded to him. Based on this, he has stated that 39.5 more marks need to be awarded to him. Given these marks, he would be included in the revised merit and would be selected. We have gone through this discrepancy list and find that most of the assessments that the applicant is making for himself are not based on objective assessment like a correct answer being given full marks and incorrect answer being given zero in case of objective type questions. The chart made by him mostly relates to descriptive questions where marks awarded to him are already found beyond 50% and he is seeking increase by 1 or 2 marks in questions of maximum 10 marks. For instance, in a question of 10

marks, 7 or 8 marks have already been awarded and he is claiming that he should get 1 mark additional and so on. In fact, there is only one case where he is claiming full marks against zero mark awarded to him and this question is of 2 marks only. We find that there is no way that such subjective type of assessment can be made the basis for ordering revaluation- that too on an assessment made by the applicant himself. The applicant has not been able to prove any valid ground to question the evaluation done by the evaluator. If any reevaluation is allowed, not only his but everybody's answer script would need to be reevaluated and that would mean reopening the whole selection process. As indicated above, no ground has been made out for any interference by this Court in the matter.

10. In view of above observations, we are of the view that no inference by this Court is required. The O.A. being time barred and also devoid of merit deserves dismissal.”

11. No illegality or perversity could be pointed out by the learned counsel for the petitioner in the aforesaid findings recorded by the Tribunal which may warrant interference by this Court. Learned counsel for the petitioner could not furnish any satisfactory explanation for not approaching the Tribunal in time except to urge that he had been getting information under the 2005 Act from the official respondents, but that by itself could not be a ground to entertain the OA by the Tribunal at the belated stage.

12.           Accordingly, finding no merit in the writ petition, the same is hereby dismissed.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**November 15, 2018**  
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**(MANJARI NEHRU KAUL)**  
**JUDGE**

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|----------------------------------|------------|
| <b>Whether Speaking/Reasoned</b> | <b>Yes</b> |
| <b>Whether Reportable</b>        | <b>Yes</b> |