

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**FAO No.5629 of 2017
Decided on : 05.07.2018**

Kamaljit Singh

... Appellant

Versus

Union of India

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Atul Bhatia, Advocate
for the appellant.

Mr. P.C. Goel, Advocate
for respondent-UOI.

G.S. Sandhawalia, J. (Oral)

The present appeal has been filed under Section 23 of the Railway Claims Tribunal Act, 1987 (for short, 'the Act') against the order dated 04.01.2017 passed by the Railway Claims Tribunal, Chandigarh Bench. The Tribunal has dismissed the application filed under Section 17 (2) of the Act for condonation of delay of 559 days in filing the claim application on the ground that no proper affidavit was filed in support of the application under Section 17 (2) of the Act.

The Tribunal has held that the applicant had not filled up columns which are un-typed in the affidavit and, therefore, the injuries which the applicant-appellant had suffered are minor in nature and he may not be interested in claiming the compensation. It has further been noticed that the application has been filed without signatures of the applicant and of his counsel and it does not entitle a person to claim any compensation.

Resultantly, the application for condonation of delay has been dismissed.

The reasoning given as such by the Tribunal of course cannot be in any manner differed with to the extent that there is a negligence on behalf of the appellant as such and the Tribunal would have no other option but to dismiss the application.

The fact remains that the petition has been filed under the Act and the Tribunal is dealing with a beneficial piece of legislation where persons aggrieved on account of injuries or death approach the Tribunal and, therefore, little more sensitivity as such could have been shown by giving an opportunity to the appellant to make up the deficiencies. Even the office/Registrar of the Tribunal as such could have called upon the counsel before listing of the case, as at the end of the day, the Tribunal should decide the case on merits.

A perusal of the photocopy as such has also would go on to show that large number of documents as such are annexed to show that *prima facie* the incident as such happened on 14.04.2014 and the GRP recorded the statement as such and there is sufficient evidence to show that the appellant travelled on the train and it would require adjudication on the merits of the case. It is only on this account that the appellant has also been forced to approach this Court against the dismissal of the application on technical grounds and has also appeared in person to show his interest to pursue the litigation.

Counsel is, thus, well justified on placing reliance upon '**N. Balakrishnan Vs. M. Krishnamurthy**' (1998) 7 SCC 123, wherein the Apex Court has held that primary function of a Court is to adjudicate the

dispute between the parties and to advance substantial justice.

In the application filed under Section 17 (2) of the Act, it has been averred that the applicant got five stitches on his forehead on which he still has a scar of injury. The little finger of right foot was crushed and was amputated. The right arm was severely injured and it was operated and plastic surgery was done on it. The little finger of his right hand was also amputated. The details of the treatment taken from Private Hospital in Khanna, namely, Aggarwal Hospital has been mentioned. It has further averred that due to financial crisis he could not file the application and he is a simple poor villager.

The stand of the respondent is that each and every day's delay is to be satisfactorily explained to the Court and law of limitation has to be complied with. Reliance has been placed upon '**D. Gopinathan Pillai Vs. State Of Kerala & Anr**' 2007 (7) SCC 322. The said judgment would not be applicable in the facts and circumstances as there was a delay of 9 years in an arbitration case and the Civil Court had condoned the delay on the ground that the delay was on account of the official, which has been upheld by the High Court. The Apex Court had set aside the same on the ground that there was a gross negligence on part of the State and no case of sympathy was made out. Therefore, the said judgment would not be applicable.

Reliance can be placed upon the judgment of the Apex Court passed in '**Collector Land Acquisition, Anantnag & another Vs. Mst. Katiji & others**' (1987) 2 SCC 107 in which it has been held that

pedantic approach cannot be adopted by the Courts and each and every day delay is not to be explained.

In such circumstances, the present appeal is allowed. The Tribunal shall grant one opportunity to the appellant through his counsel to file additional application in proper manner and the Tribunal shall re-decide the application under Section 17 (2) of the Act on merits, subject to payment of costs of ₹2,500/- to be deposited with the Mediation & Conciliation Centre of this Court.

JULY 05, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No