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

+ **W.P.(C) 244/2018 & CM Nos.1044-45/2018**

AJAY MANIRAM YADAV

..... Petitioner

Through: **Mr.Vijay Pal Sharma, Advocate**

versus

BHARAT SANCHAR NIGAM LIMITED & ORS

..... Respondents

Through: **None**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER
15.01.2018

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1. The present petition has been filed by the petitioner assailing an order dated 19.08.2017 passed by the Central Administrative Tribunal, dismissing his OA No.1685/16 along with the miscellaneous application for seeking condonation of delay in filing the said OA wherein he had challenged the order dated 17.05.10 passed by the respondents/BSNL, rejecting his request for compassionate appointment on the ground that on an evaluation made by the Committee constituted by the BSNL for recommendation of compassionate appointments, it did not find the family of the deceased employee in a state of financial crisis.

2. By the impugned order, the Tribunal had dismissed Miscellaneous Application No.166/2016 filed by the petitioner along-with the OA for seeking condonation of delay by observing that the explanation offered by

the petitioner is extremely vague and unsatisfactory.

3. As per the fact position, Sh.Maniram Yadav, father of the petitioner, who had joined the respondent/BSNL on 29.08.1983, was serving at Ahmadabad as a class-IV employee till he expired on 20.01.2007, while still in service. On 13.12.2007, the petitioner had filed an application seeking compassionate appointment which was rejected by the Competent Authority on 08.04.2010. The aforesaid order dated 08.04.2010 was communicated by the respondent/BSNL to the petitioner on 17.05.2010. Instead of immediately seeking legal recourse against the said rejection order, the petitioner waited for three years upto 03.06.2013, when he submitted a representation to the Lieutenant Governor, GNCT of Delhi for reconsideration of his case.

4. The petitioner states that the aforesaid representation remained pending in the office of the Lieutenant Governor, GNCT of Delhi and after about 5½ years reckoned from 17.05.2010, he filed the OA before the Tribunal raising a grievance in respect of the rejection order dated 08.04.2010 passed by the respondents/BSNL. The Miscellaneous Application for condonation of delay filed along with the said petition has been disposed of by the Tribunal by passing the impugned order declining to condone the delay holding that the OA is barred by delay and laches.

5. On examining the averments made by the petitioner in the application for condonation of delay filed along with the OA, it transpires that the first ground taken by him for explaining the delay is that he was facing financial hardship due to which he could not seek legal recourse and the second plea is that he was attending to his elder brother who was suffering from some disease and had to undergo a surgery.

6. On a perusal of the medical documents related to the petitioner's

brother, filed at Annexure A-8 (Colly) with the petition, it transpires that the same relate to July, 2008 when the impugned order had not even been passed. Therefore, the health condition of the petitioner's brother could not be taken to explain the prolonged delay in filing the OA.

7. As far the financial hardship expressed by the petitioner, except from a one line bald statement, nothing at all has been stated by him to explain the nature of financial constraints faced by him. One would have thought that his penurious condition would have propelled the petitioner to act with alacrity and seek legal recourse expeditiously.

8. Given the fact that the petitioner has been extremely ambiguous in explaining such an inordinate delay of five and a half years in filing the OA, the Tribunal cannot be faulted in making an observation that the petitioner has miserably failed to explain the delay satisfactorily. In this context, we propose to reproduce para nos.2 to 5 of the order passed by the Tribunal which are self explanatory and read as under:-

“2. The applicant has further stated that as he was facing financial hardship, therefore, some time had elapsed before approaching this Tribunal. An added ground mentioned by the applicant is that his elder brother was suffering from some diseases and was also operated upon, and on this count also the applicant was under immense mental pressure as well as monetary hardship. All these have led to delay in approaching this Tribunal.

3. The respondents in their reply have strongly opposed the Misc. Application filed by the applicant seeking condonation of delay. They have stated that the applicant has challenged the impugned order dated 17.05.2010, which was admittedly received by him on 03.06.2010. The present OA has been preferred only on 17.12.2005 i.e. after a lapse of more than 5½

years without giving any cogent reasons in the accompanied MA for condonation of delay.

4. The issue before me is whether the applicant has been able to satisfactorily explain the delay in filing the OA. It is an admitted fact that the impugned order was passed on 17.05.2010 and it was received by the applicant on 03.06.2010. It is also on record that the OA has been filed on 17.12.2015.

5. I have carefully considered the grounds taken by the applicant in the MA for this long delay of 5½ years. A significant part of this delay the applicant has tried to explain, is attributable to his pending representation before the Ministry of Information & Broadcasting which was referred to by the former Governor Sh.Romesh Bhandari. This reference by Sh.Romesh Bhandari made on 03.06.2013, which is a good three years after the applicant had learnt about the impugned order, can by no stretch of imagination be treated as a formal representation. But even if one were to take a lenient view in the matter, one would have to bear in mind Section 21 (3) of the Administrative Tribunals Act, 1985 which provides as under:-

“21(3). Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

Therefore, seeing from whatever angle, this plea of the applicant for explaining the delay is clearly unacceptable. His other plea that the delay had taken place on account of his elder brother's illness, his mental stress and financial hardship can also not be accepted. Firstly they are vague and, secondly they

have not been explained in terms of the time taken by the applicant in dealing with these problems. It is undisputed that the law requires that each day's delay in filing the OA needs to be explained, which the applicant has failed to do."

9. Having regard to the settled law on making compassionate appointment which requires the aggrieved family members of the deceased employee who dies in harness to approach the Court at the earliest for succour so as to overcome their immediate financial crises and tide over their penurious condition which they would have to face on the demise of the sole earning members of the family, we find no reason to entertain the present petition when the petitioner has taken five and a half years to approach the Tribunal for relief.

10. If the petitioner's claim of financial hardship was genuine and he wanted to challenge the order dated 17.5.2010 passed by the respondents/BSNL, he ought to have been prompt in seeking legal recourse. Instead, he elected to approach the Tribunal only in the year 2015, and that too without offering any satisfactory explanation for such an excessive delay.

11. We, therefore, do not find any merit in the present petition which is accordingly dismissed *in limine* along with the pending applications.

HIMA KOHLI, J.

REKHA PALLI, J.

JANUARY 15, 2018

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