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

% *Date of decision: November 11, 2022*

+ W.P.(C) 5704/2013

CT/GD SANTOSH KALE Petitioner

Through: Mr.N.L. Bareja, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC
with Mr. Kushagra Kumar and Ms.
Aakriti Roy, Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T (oral)

CM APPL.48132/2022 (for condonation of delay in filing review petition)

1. The present application has been filed by the applicants/respondents seeking condonation of delay of 1054 days in filing the review petition.
2. Notice issued.
3. Learned counsel for non-applicant/petitioner accepts notice and submits that there is no explanation given in the present application for filing the review petition with delay.
4. On perusal of the present application wherein it is stated that due to the pandemic for Covid-19, process of the case examination along with Court order dated 18.09.2019 has been delayed at various levels/Ministries/

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Administrative grounds unintentionally.

5. Except the aforesaid reasons, no other reasons are given in the present application. The fact remains that the order dated 18.09.2019 was passed much before pandemic for Covid-19 which came into effect in the month of March, 2020. Thus, there is no explanation regarding delay in filing the review petition, therefore, on this ground itself, the present application deserves to be dismissed. However, keeping in view the issue raised in the review petition, which needs consideration, we hereby condone the delay of 1054 days in filing the review petition subject to payment of Rs.50,000/- towards cost by the respondents in favour of the petitioner within four weeks from today.

6. Accordingly, the present application is allowed and disposed of.

REVIEW PET. 284/2022

7. Vide the present review petition, the review petitioner/respondents are seeking review of order dated 18.09.2019 passed by a Co-ordinate Bench of this Court.

8. Notice issued.

9. Mr. N.L. Bareja, learned counsel has accepted notice on behalf of writ petitioner and has strongly opposed the present review petition by submitting that the writ petitioner is a poor person who has suffered due to wrong decisions of the respondents whereby the writ petitioner was declared unfit for colour blindness which has been quashed by a Co-ordinate Bench of this Court vide impugned order dated 18.09.2019 and since the respondents did not comply with the said order, the writ petitioner had filed the CONT.CAS(C) 54/2021 and on 18.01.2021, notice was issued in the said petition and the same is pending adjudication.

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10. The relevant portion (para 3) of impugned order dated 18.09.2019 is reproduced as under:

“3. Consequently, the impugned orders, declaring the Petitioner unfit due to colour blindness are set aside. A mandamus is issued to the Respondents to consider the case of the Petitioner for promotion to the posts where his colour blindness would not be a disqualification. If for any of those posts, the Petitioner is required to be detailed for any training course, he would be so detailed. However, consistent with the directions issued in P. Suresh Kumar v. Union of India (supra), it is directed that consequential promotion orders will be given effect from the date that the Petitioner's juniors were promoted with all other benefits including pay fixation.”

11. In para 11 of the present review petition, it is stated as under:

“11. That as per Standing Order- 7/2000, following stages/processes were required to be completed for selection to the post of SI/GD through SI/LDCE-2006:

Stage: 1 Checking of service records

Stage: 2 Physical Measurement & Physical Efficiency Test

Stage: 3 Written Test: 600 Marks

Qualifying marks will be 45% in each paper and 50% in aggregate for SC/ST 40% in each subject aggregate 45%.

Stage: 4 Personality Test: 300 Marks

Stage: 5 Medical Test

Stage: 6 Interview (100 Marks)

Total 90 posts of SI/GD (Male) (Genl-45, SC-14, ST-7 and OBC- 24) were notified for SI/GD LDCE 2006.

Since petitioner was declared Unfit in medical examination due to colour blindness at stage-V of recruitment process, therefore he had not been called for appearing in interview and not undergone stage-VI.”

12. It is not in dispute that the impugned order dated 18.09.2019 was passed in the writ petition filed in the year 2013, however, during pendency of the writ petition, the writ petitioner took voluntary retirement on 31.07.2016. The said fact was not disclosed by the respondents when the impugned order dated 18.09.2019 was passed, even after filing of the CONT.CAS(C) 54/2021. The present review petition has been filed

belatedly due to which the writ petitioner suffered and could not eat the fruit as was granted by this Court vide impugned order dated 18.09.2019.

13. Since the writ petitioner had appeared and cleared Stage 4, i.e. Personality Test: 300 Marks, and was declared unfit due to colour blindness at Stage 5: Medical Test, as such, he could not appear for the interview at Stage 6 for the fact that he took voluntary retirement on 31.07.2016. Had the said fact been disclosed to this Court while passing order dated 18.09.2019, the order would not have been passed in the manner as has been passed.

14. Accordingly, since the writ petitioner had already retired on 31.07.2016 and could not appear in the interview which is followed by training, therefore, the directions passed vide impugned order dated 18.09.2019 could not be implemented.

15. In view of above, we hereby set aside the order dated 18.09.2019 and allow the present review petition with direction to the review petitioners/respondents to pay an amount of Rs.1,50,000/- to the writ petitioner towards cost within four weeks from today.

16. Present review petition stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

(TALWANT SINGH)
JUDGE

NOVEMBER 11, 2022

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