

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2296 of 2016

1. The Union Of India
2. The General Manager (E), Western Railway, Mumbai.
3. The Divisional Railway Manager, Mumbai Central Western Railway, Mumbai.
4. The Divisional Railway Manager (E), Mumbai Central, Western Railway, Mumbai. null null
5. The Assistant Personnel Officer (G), Mumbai Central Western Railway, Mumbai.

... .. Petitioner/s

Versus

Rishikesh Tewari S/o Shri Sidheshwar Tewary, Resident of At back of
Amirchand Kothi, Pakri, Arrah, District - Bhojpur Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2990 of 2016

The Union Of India, through the General Manager, HQ Western Railway,
Churchgate Mumbai – 400020. Petitioner/s

Versus

Rishikesh Tiwari S/o Shri Sidheshwar Tiwari, Resident of At Back of
Amirchand Kothi, Pakri, Arrah, District - Bhojpur Bihar. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 2296 of 2016)

For the Petitioner/s	:	Mr. Pradeep Kumar, Advocate
For the Respondent/s	:	Mr. M.P. Dixit, Advocate
		Mr. S.K. Dixit, Advocate
		Mr. S.K. Choubey, Advocate
		Mrs. Swastika, Advocate

(In Civil Writ Jurisdiction Case No. 2990 of 2016)

For the Petitioner/s	:	Mr. Pradeep Kumar, Advocate
For the Respondent/s	:	Mr. M.P. Dixit, Advocate
		Mr. S.K. Dixit, Advocate
		Mr. S.K. Choubey, Advocate
		Mrs. Swastika, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-07-2022

In the instant petition, the petitioner has prayed the following reliefs :-

“For issuance of writ in the nature of a writ of certiorari or any other appropriate writ/order/direction for quashing the judgement and order, dated 27.09.2011 (annexure-7 to this writ), passed by the learned Central Administrative Tribunal, Patna Bench, Patna in OA No. 656 of 2008, whereby the learned Tribunal has quashed and set aside the order dated 29.05.2008 issued by the respondent Railways, and has further directed the respondent Railways to reconsider the case of the applicant for alternative appointment even in lower category if no vacancy exists in the category for which the applicant was found qualified and pass a speaking order in this regard within a period of six months from the date of receipt/production of a copy of the order.”

2. The petitioner-Department has assailed the order of the Tribunal dated 27th of September, 2011 and presented the present petition on 2nd of February, 2016. The respondent's claim is for alternative appointment with reference to B-2



Medical category instead of A-3 category. The Tribunal has allowed Respondent's application on 27th of September, 2011 whereas the present petition is presented on 2nd of February, 2016. There is enormous delay and laches on the part of the petitioner-Department in presenting the petition. The Apex Court in the case of **State of Jammu Kashmir Vs. Zatpuri and Others** reported in **AIR 2016 Supreme Court 3006** of paragraph 20, it is held as under:-

“ Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

This Court while exercising its jurisdiction under Article 226 is duty bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;



(d) person invoking the jurisdiction is guilty of unexplained delay and laches:

(e) ex facie barred by any laws of limitation:

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

3. The Apex Court in the Case of State of **Madhy Pradesh & Ors Vs. Bherulal** reported in **(2020) 10 SCC 654** of paragraph nos. 3 to 10, it is held as under :-

“3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (LAO v. Katiji). This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. Wherein the Court observed as under: (Postmaster General case, SCC pp. 573-74, paras 27-30)

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for



taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern



technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the



Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In para 4, a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme



Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process their seems to be no improvement the purpose of coming to this court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that is non of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers



responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider it appropriate to impose costs on the petitioner. State of Rs 25,000 (Rupees twenty-five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the offices responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in the terms aforesaid.

10. We make it clear that if the aforesaid order is not complied within time, we will be constrained to initiate contempt proceedings against the Chief Secretary. A copy of the order be placed before the Chief Secretary, State of Madhya Pradesh.”

4. One of the principle laid down in the aforesaid decision is to examine whether the writ petition is within the reasonable period of time or not, like delay and laches on the part of the petitioner.



5. In the present case, petitioner is a department and they must be having experience officials in order to file a petition within the reasonable time limit and it is not that they are not aware of the limitation issue.

6. In the light of the aforesaid facts and circumstances, the present writ petition stands dismissed on the ground of delay and latches.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.07.2022
Transmission Date	

