

14 **25.03.
2022**

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 22 of 2022

Masud Karim Alam
Vs.
The State of West Bengal and others.

Mr. K. M. Hossain,
Mr. Ratikanta Pal.

... for the petitioner.

Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly.

... for the State.

The writ petition has been taken out against an order dated 20th September 2019 passed by the West Bengal Administrative Tribunal in OA 424 of 2016 by which the tribunal application was dismissed on the ground of limitation.

The matter pertains to a compassionate appointment. The father of the petitioner died while in service on 21st August 2011 and an application seeking compassionate appointment was taken out on 4th November 2011. The said application was dismissed on 7th October 2013 by the authorities holding that the family income of the dependent members of the family is sufficient enough to cater their needs and the family cannot be said to be in financial distress.

The said order of 2013 is sought to be challenged in the tribunal application filed in the year 2016. It is specifically pleaded in the tribunal application that the order dated 7th October 2013 was never communicated and the knowledge of such order can be imputed to a

communicating letter dated 22nd May 2015 in response to the information sought under the Right to Information Act.

According to the petitioner, the tribunal was moved within a statutory period of one year from the date of communication and, therefore, the tribunal has proceeded on a wrong premise that the application is palpably barred by limitation.

Our attention is drawn to Section 21 of the Administrative Tribunal Act, 1985, which provides a period of limitation for filing an application before the tribunal in the following:

“21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(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.”

Both the learned Advocates appearing for the respective parties echoed that the instant case comes within the purview of Section 21(1)(a) of the said Act wherein the limitation period of one year is provided. The language employed in the said clause manifest that the period of limitation would reckon from the date on which the final order has been made and not from the date when the final order is communicated to the petitioner.

Had it been the intention of the legislature that the period of limitation would start from the date of communication, the language would have been couched in such fashion. Since the limitation period would start from the date of the final order and not from the date of communication of the said final order, there is no difficulty in holding that the said application was filed beyond the period of limitation. However, we find that sub-section (3) of Section 21 confers power upon the tribunal in condoning the delay in filing the said application provided sufficient cause is shown in this regard.

The moment the petitioner has pleaded that the order dated 7th October 2013 was not communicated until 22nd May 2015, the plea relating to the limitation becomes the mixed question of fact and law and, therefore, mere banking upon the language engrafted under Section 21(1)(a) of the said Act should not have been warranted. The tribunal ought to have given an opportunity to the petitioner to make an application for condonation of delay when the misconception perceived in the mind of the petitioner regarding the applicability

of Section 21(1)(a) of the said Act.

Time and again the Court has encouraged the litigation to be decided on merit and not on the technicalities, more particularly, on the anvil of the limitation. We feel that an opportunity should be given to the petitioner to make an application for condonation of delay in filing the tribunal application beyond the statutory period provided under Section 21 of the said Act.

Accordingly, the order impugned is set aside.

Liberty is granted to the petitioner to file the application for condonation of delay within two weeks from date. In the event such application is filed within the time indicated herein above, the tribunal after affording an opportunity of hearing to the other side shall dispose of the same within one month therefrom in accordance with law.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

