

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

W.P.C.T No. 88 of 2022

Ananda Gopal Roy & Anr.

Vs.

Union of India & Ors.

Appearance:

For the Petitioners : **Mr. Dinobandhu Dan, Adv.**

For the Respondents : **Mr. D. N. Roy, Adv.**

Judgment On : **30.09.2022**

Prasenjit Biswas, J.

The short question that falls for determination in this appeal is whether the Tribunal was right in rejecting the prayer of the petitioners for condonation of delay in preferring the O.A being No. 350/00547/2018.

The appellants' case is that their father namely Prabhat Kumar Roy acted as an extra Departmental Branch Post Master of Perua Gopalpur in the year 1969 and while discharging duties he was impleaded as an accused

in a criminal case being Special Court Case No. 5 of 1987 for committing criminal breach of trust in respect of sum of Rs.250/- He was tried before the First Special Court, Birbhum, Suri and exonerated from that case in the year 1991.

On account of accusation of criminal breach of trust the service of Prabhat Kumar Roy, father of the applicants was terminated. However, despite the acquittal from the criminal complaint he was not reinstated into his service. Upon not being allowed to re-join, father of the petitioners made a representation to the authority and the representation was disposed of vide order dated 4th February 1992 *inter alia* stating that the service of Prabhat Kumar Roy had already been terminated. Thereafter Prabhat Kumar Roy sent a letter to the Respondent No. 3 through his Advocate for providing him all service benefits with retrospective effect from the date of his termination, but there was no response on the part of the Respondent No. 3.

After the death of Prabhat Kumar Roy these petitioners once again made representation before the Respondent No. 3 through their Advocate but this time also there was no response on the part of the concerned Respondent. Thereafter these petitioners made an application being No. O.A/350/00547/2018 before the Tribunal.

After hearing of both sides Tribunal passed the following order *inter alia* that-

“We are also of the opinion that this is not a fit case for condonation of delay of 50 years, and, that such delay could not be explained suitably by the

applicant except to refer to paucity of time, resource crunch and an accidental fire, which had admittedly occurred during the lifetime of the purported ex-employee. Hence, this O.A as hopelessly barred by limitation under section 21 of the Administrative Tribunal Act, 1985”

It appears from the materials on record that alleged termination of services of Prabhat Kumar Roy was on 01.08.1969 and the application was preferred before the Tribunal by the petitioners on 19.04.2018 causing delay of 50 years. The appellants took plea that alleged termination order dated 01.08.1969 was never received by their father Probhat Kumar Roy and on account of an accidental fire on 05.10.1996 relevant documents relating to said Probhat Kumar Roy had been damaged.

Per contra respondents denied the existence of any Probhat Kumar Roy as their Extra Departmental Branch Post Master of Perua-Gopalpur, Extra Departmental Branch, Post office. There is nothing on record to show that the said Probhat Kumar Roy attempted to re-join his services after exonerated from the criminal case in the year 1991.

We are of the view that for condoning the delay, the Courts/Tribunals are required to take into account the conduct of the parties, bona fide reasons and whether such delay could easily be avoided by the applicant acting with normal care and caution.

In the present case, we have no hesitation to mention that, the delay could have been avoided by the applicants, had they taken the normal care and caution at appropriate time. The applicants displayed total negligence in asserting their rights in the matter and hence contributed in defeating the

same. It is expected that the applicants would pursue their rights and remedies and claim its enforcement before the appropriate forum well in time and would not sleep over it. Delay itself deprives a person from his remedy available in law.

The said Probhat Kumar Roy during his lifetime displayed total negligence in asserting his rights in the matter and hence contributed in defeating the same. It is trite principle of law that power of discretion, to condone the delay, is to be exercised cautiously. In the absence of any valid reason, unexplained delay cannot be condoned. Power of discretion is undoubtedly to be exercised judiciously. If a claim is barred under the Act, unless there are exceptional' circumstances, *prima facie* it is a stale claim and should not be entertained by this Court. But even if it is not barred under the Act, it may not be entertained by this Court if on the facts of the case there is unreasonable delay.

Moreover, we are of the opinion that the exoneration in the departmental proceeding *ipso facto* would not result into the quashing of the criminal prosecution it is hasten to add, the prosecution against an accused is solely based on a finding in a proceeding by the competent court and that finding will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further they are not in the same hierarchy.

Therefore, the applicant has miserably failed to furnish sufficient cause for the inordinate delay of fifty years in filing the application.

In view of the above this Court is of the view that the Tribunal, in the impugned order, was perfectly justified in rejecting the prayer of the applicants for condonation of delay. There is absolute no legal infirmity in the impugned order of the Tribunal.

The petition is accordingly dismissed.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)