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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 21.01.2022

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W.P.(C) 631/2022**DEVENDRA**

..... Petitioner

Through

Mr Ujjwal Goel, Adv.

versus

NDMC, THROUGH ITS SECRETARY

..... Respondent

Through

Ms Sriparna Chatterjee, Mr
Soumitra Chatterje and Mr Piyush
Jain, Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TALWANT SINGH****[Court hearing convened via video-conferencing on account of COVID-19]****RAJIV SHAKDHER, J. (ORAL):-**

1. We had heard the matter at some length on the previous date i.e., 11.01.2022. After hearing Mr Ujjwal Goel, learned counsel for the petitioner, on the said date, the following was recorded:

"2. This is a writ petition directed against the order dated 07.09.2018, passed by the Central Administrative Tribunal [in short "the Tribunal"] in O.A.No.10/2016.

3. First and foremost, we are unable to gather as to why there has been a delay in bringing up the present writ petition.

3.1. Mr Ujjwal Goel, who appears on behalf of the petitioner, says that the writ petition was filed on 07.03.2019. There is, however, nothing on record to show that the writ petition was filed on 07.03.2019.

3.2. According to Mr Goel, upon filing the writ petition, diary no.211540 was allocated to the matter by the Registry.

3.3. The Registry will submit a report as to when the writ petition was filed, in the first instance.

4. That apart, the main grievance of the petitioner is that the respondent i.e., New Delhi Municipal Council (NDMC) wrongly did not grant compassionate appointment to him as a Beldar.

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4.1. *It is not in dispute that the father of the petitioner died in harness on 19.12.1999. It is also not in dispute that, at the relevant time, the petitioner had not attained majority. The petitioner attained majority in 2003.*

4.2. *The record also shows that the petitioner was, admittedly, recommended for compassionate appointment on 20.12.2007. The petitioner's name was put down at serial no.3.*

5. *The Tribunal has ruled against the petitioner, on the ground of delay and laches.*

5.1. *Unfortunately, the list of dates, both filed before the Tribunal and this Court, is woefully deficient. It is the lack of preparation in the matter, which has made it very difficult for us to ascertain the correct facts.*

5.2. *We have, repeatedly, asked Mr Goel as to, when were the representations filed seeking appointment to the post of Beldar on compassionate ground. This question was put to him as, according to list of dates filed, both before this Court and the Tribunal, the first representation appears to have been made on 18.08.2003.*

5.3. *Thereafter, there is no reference to any representation; instead a bald assertion is made that the petitioner visited the office of the respondent to ascertain the status of his appointment on compassionate ground.*

5.4. *It appears (and it is the assertion of the petitioner) that the Right to Information (RTI) route was accessed by him in September 2012. Pursuant to the RTI route accessed by the petitioner, it appears that, on 10.10.2012, the petitioner obtained the information that his name had been recommended by the competent authority for appointment on compassionate grounds.*

5.5. *The petitioner's claim is that, thereafter, he visited the office of the respondent for appointment on compassionate grounds. Concededly, after 10.10.2012, when the petitioner became aware of the fact that his name had been shortlisted for compassionate appointment on 20.12.2007, no steps were taken to initiate a legal process. The original application was filed with the Tribunal only on 18.12.2015. There is a gap of nearly three years, between 10.10.2012 and 18.12.2015.*



5.6. The record also shows that the petitioner sets up a case that he made representations, thereafter, on 31.10.2012, 27.02.2013/28.02.2013 followed by representations dated 20.09.2013, 23.03.2014, 12.08.2014, 25.08.2014 and 23.09.2014. Pertinently, representations dated 27.02.2013/28.02.2013, 25.08.2014 and 23.09.2014 are not even on record.

5.7. It is also the case of the petitioner that, once again, a RTI application was submitted on 03.12.2014. This RTI application received a response from the Public Information Officer (PIO), according to the petitioner, on 17.04.2015. Evidently, an appeal was filed by the petitioner with the Appellate Authority under the RTI Act in 2015, qua which response was received on 17.06.2015.

6. According to the petitioner, on 29.05.2015, the petitioner was called by the office of the Director of NDMC for a personal meeting for progressing the appointment on compassionate ground.

6.1. As per the petitioner, since the appointment was not made, a legal notice was served by his counsel on NDMC. The legal notice is dated 20.07.2015. As noticed above, the subject O.A. i.e., O.A.No.10/2016 was filed with the Tribunal on 18.12.2015.

7. Prima facie, according to us, there has been a delay and laches, if not between 2010 and 2012, certainly between 2012 and 18.12.2015 when the petitioner approached the Tribunal for the first time. However, before we take a final view in the matter, we wish to ascertain as to, whether there was a delay in approaching this Court as well.

8. List the matter on 21.01.2022.

9. The Registry will furnish a report to this Court, as indicated above.”

2. We had refrained from passing a final order in the writ petition on the previous date of hearing, as we wanted to satisfy ourselves as to whether or not there was any delay in the petitioner approaching this Court.



2.1. We have received the report from the Registry, which reads as under:

"

18.01.2022

Reference order dated 11.1.2022 passed by the Hon'ble Court wherein registry has been directed to submit a report as to when the Writ Petition has been filed, in the first instance.

In this regard, it is submitted that the writ petition was filed at the first instance on ordinary side on 26.04.2019 vide diary no. 211540/2019. The said petition was scrutinized by the dealing assistant on 29.04.2019 and returned to the counsel as there were some objections. The petition was never re-filed with the same diary number.

The counsel had filed a fresh writ petition with the same parties name on 18.02.2021 through e-filing on ordinary side. Thereafter, the petition was allowed on 1.3.2021 to be listed on urgent side, but as there were some objections, the petition was returned to the counsel on the same day for removal of the objections. The matter was re-filed on 15.11.2021 after a gap of 8 months but the objections were still not removed hence returned again. The matter was re-filed on 21.12.2021 with the old reference number and the registry had raised the objection for allowing the matter again as the old reference number had elapsed as the matter had been filed after a gap of 8 months.

The matter was re-filed again on 22.12.2021 after getting the matter allowed with the new reference number but the objection was still pending regarding filing better copies of dim annexures. The matter was finally passed for 11.1.2022 after removal of the objection regarding dim annexures by the counsel.

Report submitted.

s/d/-

AOJ (Filing)"



3. As is evident from a perusal of the report submitted by the Registry, the petitioner had approached the Court by way of a writ petition, in the first instance, on 26.04.2019.

3.1. The petition was returned to the counsel as it had defects. The petitioner instituted a fresh writ petition i.e., the instant writ petition, only on 18.02.2021.

3.2. However, this writ petition also contained defects; which were flagged by the Registry. The petitioner, thereafter, took eight months to remove the objections and re-filed the petition on 15.11.2021.

3.3. Since defects were noticed even after re-filing, the petition was returned by the Registry. It was re-filed only on 21.12.2021.

3.4. It appears that there were, once again, some defects noted, which led to the petitioner re-filing the petition on 22.12.2021, albeit with certain objections which had not been cured.

3.5. The petition was finally cleared by the Registry only on 11.01.2022.

3.6. As is evident from above, the petitioner sat over his case between 26.04.2019 and 15.11.2021, and took his own time to clear the defects.

4. Today, Mr Goel says that he wishes to file additional documents which would explain the delay. Concededly, these documents were neither filed before the Tribunal nor with the instant writ petition, despite several re-filings before this court.

5. According to us, given the foregoing circumstances, this writ petition
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cannot be entertained. It is, accordingly, dismissed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JANUARY 21, 2022/rb

Click here to check corrigendum, if any