

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1633 OF 2020

Shailesh S/o Mulchand Khobragade
Aged about 38 years, Occu. - Nil,
R/o. C/o Gandhi Ward,
Nangi Chouk, Tumsar,
District Bhandara.

.... **PETITIONER**

// VERSUS //

- 1) Union of India,
Ministry of Post & Telecommunication
Department, New Delhi,
Through its Secretary.
- 2) Assistant Director,
Post Services (Recruitment),
Maharashtra Circle,
Mumbai – 400001.
- 3) Senior Superintendent of Post Office,
Nagpur Mofussile Division,
Nagpur-2.
- 4) The Post Master General,
Nagpur Region, Nagpur.

.... **RESPONDENTS**

Mr. D.M. Surjuse, Advocate for petitioner.
Mr. N.S. Deshpande, Deputy Solicitor General of India for
respondents.

CORAM : ROHIT B. DEO AND Y.G. KHOBRADE, JJ.

DATED : FEBRUARY 07, 2023

ORAL JUDGMENT : (Per Rohit B. Deo, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally by consent of the parties.

2. The challenge is to the order dated 20.05.2019 rendered by the learned Member, Central Administrative Tribunal, Nagpur (CAT) refusing to condone the delay in filing Miscellaneous Civil Application 2158 of 2018 which sought restoration of Original Application 2034 of 2013.

3. The petitioner approached the learned CAT assailing the order dated 04.03.2010 rendered by respondent 3 whereby the petitioner was refused appointment on compassionate ground.

4. The learned CAT dismissed the Original Application 2034 of 2013 in default vide order dated 11.08.2017.

5. We are not required to delve deeper in the circumstances in which the Original Application came to be dismissed in default. The limited issue is whether the application seeking condonation of delay in filing restoration application could have been allowed.

6. The petitioner preferred an application seeking restoration, which was accompanied by an application for condonation of delay of

178 days. We may extract paragraphs 3, 4 and 5 in the application seeking condonation of delay :-

“3. It is submitted that the applicant on account of genuine, pressing and compelling circumstances could not attend the aforesaid matter before this Hon’ble Tribunal, for the reasons that the applicant has handed over the matter to the learned Counsel appearing on behalf of the applicant. The applicant was not aware about the various dates on which the matter was listed before this Hon’ble Tribunal and the applicant was all the while assured by the learned Counsel appearing on his behalf, on earlier occasions that the matter is subjudice for final adjudication before this Hon’ble Tribunal and the applicant would be informed about the aforesaid matter, whenever would be listed before the Hon’ble Tribunal.

4. It is submitted that the applicant for the first time on 03.02.2018 came to know that the aforesaid matter came to be dismissed in default and therefore the applicant immediately applied for the certified copy of the order passed by this Hon’ble Tribunal on 11.08.2017. It is pertinent to note here that the applicant received the certified copy of order on 05.02.2018 passed by this Hon’ble Tribunal. Thereafter the applicant contacted his earlier counsel and the applicant came to know the aforesaid matter came to be dismissed in default on 11.08.2017. The earlier counsel assured the applicant that he would file an application for restoration of the aforesaid matter before this Hon’ble Tribunal. However, the applicant has taken away the file from the earlier counsel and the applicant happened to be the layman is not aware about the legal procedure and the niceties and therefore, could not engage the counsel in this regard.

5. *It is submitted that the applicant has got a good prima facie case in his favour and there are every chances to succeed in the aforesaid original application. There was no deliberate intention on the part of the applicant not to attend the matter before this Hon'ble Tribunal. The applicant undertakes to attend the aforesaid matter on each and every date, in the event of restoration of the aforesaid matter to its original position in the interest of justice."*

7. The learned CAT has however found, after referring to several decisions cited at the Bar, that the statements in the application seeking condonation do not make out genuine, pressing and compelling circumstances.

8. The learned CAT has further observed that the applicant-petitioner herein ought to have explained delay of every day of the 178 days.

9. In our considered view, the requirement that every day delay must be explained cannot be applied *de hors* the circumstances. Considering that the issue was the refusal to appoint the petitioner on compassionate basis, the approach of the learned CAT could have been more liberal. While we do record the objection of the learned Deputy Solicitor General of India Mr. N.S. Deshpande to granting the relief

prayed in the petition, we are satisfied that the petitioner is entitled to demonstrate that the Original Application needs to be restored to file.

10. We therefore, direct that the delay in condoning the application for restoration of Original Application 2034 of 2013 be condoned, and the application for restoration be considered by the learned CAT on its own merits, as expeditiously as possible.

11. The Writ Petition is disposed of in the aforesaid terms.

Rule accordingly. No costs.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO, J.)

Kirtak