

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

WRIT PETITION NO. 5624 OF 2022

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| 1. Santosh S/o Maroti Deshmukh, Age : 62 years, Occu.: Pensioner, | Petitioners |
| 2. Kiran S/o Santosh Deshmukh, Age : 34 years, Occu.: Unemployed,
Both the petitioners R/o: House No.187,
Ward No.3, Post : Gumgaon, Wadara,
Nagpur-441122. | |

-Versus-

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| 1. Union of India, Through the General Manager, Central Railways, Ministry of Railways, New Delhi-01. | Respondents |
| 2. Divisional Railway Manager, Personnel Branch, Central Railway, Jaistambh Square, Nagpur-01. | |

Ms Sonal Badge, counsel for the petitioners.
Mr. Nitin Lambat, counsel for the respondents.

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 3RD JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

The petition challenges the order dated 19/01/2021
passed by the Central Administrative Tribunal, Circuit Bench,

Nagpur (hereinafter referred to as “CAT”) in Miscellaneous Application No.2074 of 2020 in Original Application No.2287 of 2017, whereby the miscellaneous application filed by the petitioner is rejected for want of prosecution.

2. The application for grant of compassionate appointment to the petitioner was rejected by the respondent No.2. The petitioner filed Original Application No.2287 of 2017. The pleading was complete and the matter was listed on 23/01/2020 for final hearing. The petitioner could not appear before the CAT. The original application came to be dismissed in default for want of prosecution on 23/01/2020.

3. The petitioner filed Miscellaneous Application No.2074 of 2020 for restoration of Original Application No.2287 of 2017. The said application was listed on 19/01/2021. The proceedings were conducted through video conference by the CAT, Mumbai. The CAT by its order dated 19/01/2021 rejected the miscellaneous application. Feeling aggrieved with the said order of dismissal of miscellaneous application, the present writ petition came to be filed.

4. Heard learned counsel for the petitioner as well as the respondents.

5. It appears from the impugned order dated 19/01/2021 that the Miscellaneous Application No.2074 of 2020 came to be rejected on the ground that no satisfactory reason has been explained and no effort was made by the applicant to file restoration application during sitting of the Tribunal in February, 2020.

6. We have perused the miscellaneous application. The explanation given by the petitioners that they failed to notice the listing of the original application on 21/01/2020 and consequently on 23/01/2020. It is only when they went to Circuit Bench for collecting orders passed in other matters, they received the order dated 23/01/2020.

7. It appears that the application has been filed on 24/02/2020 immediately after one month. It is settled principle of law that the matter should be decided on merits. The substantial justice cannot be denied on the technical grounds. Just because the petitioner could not get matter

circulated for restoration during February when the Circuit Bench was having sitting at Nagpur, the petitioner cannot be non-suited particularly when the application for restoration has been filed by the petitioner in February 2020 itself. Since the Principal Seat is sitting at Mumbai and only Circuit Bench is sitting at Nagpur intermittently and not regularly may be one of the causes, whereby the learned counsel for the petitioners could not attend the matter.

8. Considering the fact that miscellaneous application has been filed immediately after a month from the dismissal of the original application, we are of the view that the CAT ought to have restored the original application on its file and the matter should have been heard on merits.

9. Therefore, the writ petition is allowed. We quash and set aside the order dated 19/01/2021, passed by the CAT and allow the Miscellaneous Application No.2074 of 2020. The Original Application No.2287 of 2017 is restored on the file of the CAT, Nagpur.

10. Rule is made absolute in the aforesaid terms. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)