



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.771/2023

Yogesh S/o Baburao Deshmukh,
aged 37 Yrs., Occ. Nil,
R/o Akruti Nagar, Malkapur,
Dist. Akola (M.S.) 444 001.

... Appellant

- Versus -

The Union of India,
through its General Manager,
Central Railway, C.S.M.T. (Mumbai)

... Respondent

Ms. Sumesha Choudhari, Advocate for the appellant.
Ms. Neerja G. Chaubey, Advocate for the Respondent.

CORAM :- MRS. VRUSHALI V. JOSHI, J.

DATE OF RESERVING THE JUDGMENT :- 8.11.2023

DATE OF PRONOUNCING THE JUDGMENT :- 21.12.2023

JUDGMENT

Being aggrieved by the order passed by the Railway Claims Tribunal rejecting the application for condonation of delay in filling the claim petition the claimant has filed this appeal before this Court.

2. The claimant had filed the application for condonation of delay of 2410 days in filing the claim petition before the Railway Claims Tribunal. The incident took place on

17.2.2013 and claimant has filed the claim petition along with application for condonation of delay on 7.9.2022 after a period of 2410 days.

3. The reason given by the claimant is that the claimant was in shock after the incident and it took time to collect documents from the police. Moreover, due to accident he became disable person. He has further stated that he came to know in the month of October 2016 about provisions for compensation. He was informed that the claim petition is required to be filed within one year from the date of incident. As already three years were passed he has left thought of filing of the claim petition at that time. As he was not aware about the procedure and due to illiteracy there is delay which is not deliberate hence prayed to condone it.

4. The application was opposed by the respondent Railway stating that the reasons given are not convincing and reasonable as day to day delay is not explained. The claimant cannot get benefit of his own wrong. No documentary evidence is filed on record for the reasons given for delay. Though the

claimant was having knowledge about the claim in the year 2016 no steps are taken by him. He had not approached the Advocate even after receiving the phone number of Advocate for approaching the Tribunal, he had not taken any steps till 2018. Hence prayed to reject the application.

5. By relying on the judgment of Hon'ble Apex Court the Tribunal has rejected the application stating that the inordinate delay cannot be condoned without sufficient ground.

6. Heard both sides. Perused the record.

7. The incident took place on 17.2.2013 and the petitioner filed the claim petition along with application for condonation of delay on 7.9.2022 i.e. after 2410 days. The period of pandemic though considered, there is delay of more than six years which is not properly explained. The reason given by the claimant for delay that he was not aware about the relief cannot be considered. In the year 2016 he came to know about the remedy of claiming compensation but thereafter he has not taken any steps to contact the Advocate. Even in 2018 he came to know about the name of Advocate who used to practice before

the Tribunal still he had not taken any steps. The claimant slept over his legal right for a period of 8 years. The applicant relied on judgment in the case of Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and others reported in (2013) 12 S.C.C. 649 the principles are laid down in said judgment while considering the delay application. The relevant principles are as follows:-

“(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

(viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

(ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in*

respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii)

(xiii)

(xiv)

(xv) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(xvi)

(xvii)"

8. Considering the principles (vii) (ix) the conduct and attitude of party is also required to be considered. Here in the case in hand the applicant had showed a very casual approach. Though he was suffering from disability has not taken any efforts even after he came to know about the remedy. No documents are

filed on record. Considering the ratio laid down in the case of Nishant S/ Deorao Wasnik V/s. Union of India reported in **2022**

(6) Mh.L.J. 160 it is held that if the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause then it would be a legitimate excuse or discretion not to condone the delay. From the reasons given by the applicant it is clear that “sufficient cause” is not made out in this case. The Tribunal has rightly considered that as no acceptable reasons for condoning the inordinate delay of 2410 days in filing the claim petition are given, the delay cannot be condoned in routine manner. The casual approach of the applicant towards his legal right cannot be considered while condoning the delay. Hence the appeal stands dismissed with no orders as to costs.

(MRS. VRUSHALI V. JOSHI, J.)