

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-4059-2022 (O&M)

Date of decision : 05.05.2022

Union of India and others

...Petitioners

V/s

Davinder Nath and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Ashish Rawal, Advocate for the petitioners.

Mr. K.B. Sharma, Advocate for the caveator-respondents.

G.S. SANDHAWALIA, J. (ORAL)

The challenge in the present writ petition is to the order dated 01.11.2019 (Annexure P-1) passed by the Central Administrative Tribunal, Chandigarh, wherein it had directed to grant the benefit of 3rd MACP under the said Scheme, at par with other counter parts in Postal Department from the date the private respondents became entitled, after verification of the facts.

The Tribunal followed the earlier view in Original Application No.3204/2011 titled as *Madhu Sudan and others vs. Union of India and others*, decided on 26.10.2015 (Annexure A-12), in which MACP benefit had been given by the Department of Posts and Telegraph in case of Drivers, whereas in the present case, the applicants were stated to be working as Tele/Switch Board Supervisor, Civilian Switch Board Operator (CSBO) Grade-I and Grade-II.

On 09.03.2022, the following order was passed by this Court :-

“A perusal of the paper-book would go on to show that against the impugned order dated 01.11.2019 (Annexure P-1), the applicant-respondents have filed execution proceedings (E.A.No.424-2020) dated 12.03.2020 (Annexure P-4). Apparently on 03.01.2022 (Annexure P-6), the Tribunal noticed that compliance was not made as no reply was being filed to the Miscellaneous

Application and accordingly, directed respondent No.2 (Director General of Signals) to appear in person with records of the case.

Woken from the slumber, present petition was filed on 28.01.2022. It is thus, apparent that there is a considerable delay in filing the writ petition and prima facie opinion of this court is that the petitioners were never interested in contesting the litigation. It is only on account of the enforcement of the orders, the petitioners were constrained to file the present writ petition.

Mr. Rawal, learned counsel for the petitioners has endeavoured to orally justify the delay. Accordingly, he is given one opportunity to file the necessary affidavit to justify the delay.

To come up on 18.04.2022.”

In pursuance of the same, Civil Miscellaneous Application No. 6246-CWP-2022, has been filed for placing on record the additional affidavit to explain the delay. Copy of the additional affidavit dated 22.04.2022 of Colonel Naveen Dagar, Commanding Officer, Western Command, Signal Regiment, Chandimandir, Panchkula, Haryana has been perused. The said affidavit confirms the factum of the inordinate delay which had taken place and the fact that in principle, the petitioners were not interested in pursuing the litigation.

Mr. Rawal, counsel for the petitioners has vehemently contended that an opinion was taken from the Ministry of Law and Justice, Department of Legal Affairs on 13.01.2022 (Annexure A-12), that it was a fit case to file the writ petition before the High Court against the order of Central Administrative Tribunal. Thus, it is submitted that there was no such delay on the part of the petitioners. The relevant paras of the said affidavit read as under:-

“2. That it is humbly submitted that while passing impugned order dated November 1, 2019 (Annexure P-1) the learned Tribunal below relied upon its earlier order dated October 26, 2015 passed in *OA No.3204 of 2011* titled as *Madhu Sudan & others Vs. Union of India & Others*. The petitioners-Union of India filed CWP No.3974

of 2017 impugning order dated October 26, 2015 before the Hon'ble High court of Delhi which was dismissed vide order dated May 9, 2017. The petitioners then preferred SLP No. 32936 of 2017 titled as *Union of India & others Vs. Madhu Sudan & others* before Hon'ble Supreme Court which was also dismissed vide order November 15, 2019 (**Annexure A-1**).

3. That petitioner No.6 being Local Defending Unit (LDU) forwarded the copy of order Annexure P-1 to petitioner No.2-Signal Directorate vide its letter dated November 9, 2019.

4. That since impugned order Annexure P-1 is based on decision of Madhu Sudan Case (*supra*) and proposal for issue of Government sanction letter with respect to implementation thereof was under progress, it is humbly submitted that the decision to implement or to challenge order Annexure P-1 was held up by the Signal Directorate awaiting implementation of Madhu Sudan Case (*supra*) as the Directorate was expecting that a uniform decision for all CSBOs would be taken. Thus, the Signal Directorate vide its letter dated January 21, 2020 (**Annexure A-2**) informed petitioner No.6 that matter is under consideration and once it is finalized on the basis of same the implementation of order Annexure P-1 will be decided.

5. That the respondent-employees approached the learned Tribunal below by way of *EA No.423/424 of 2020* titled as *Davinder Nath & others vs. Union of India & others* seeking execution of order Annexure P-1 which came up for hearing on July 31, 2020 (**Annexure A-3**) and notice was issued to the petitioners for September 21, 2020. The Signal Directorate vide its letters October 27, 2020 and January 14, 2021 requested the Local Defence Unit (LDU), i.e. Western Command Sig Regt. to apprise learned Tribunal below that once decision in matter of implementation of Madhu Sudan Case (*supra*) is finalized, the same may be implemented in present case also. The learned Tribunal below was accordingly apprised in proceedings of aforesaid MA. Copies of aforesaid letters are attached herewith as **Annexure A-1** and **A-5** respectively for kind perusal of this Hon'ble Court.

6. That in compliance of directions given in Madhu Sudan Case (*supra*), the Government issued sanction vide letter dated March 3,

2021 (**Annexure A-6**) to grant financial up-gradation only to applicants of Madhu Sudan Case (*supra*) and not for all CSBOs of the Department.

7. That thereafter, vide its note dated June 9, 2021 (**Annexure A-7**), the Directorate processed the matter and relying upon decision taken in Madhu Sudan Case(*supra*) recommended that order Annexure P-1 be complied with and forwarded the same to the Ministry of Defence, Department of Military Affairs (DoMA) on June 12, 2021 for seeking approval of competent authority for implementation of order Annexure P-1.

8. That the DoMA examined the matter and, vide its note dated July 9, 2021 (**Annexure A-8**), observed that case be referred to the Legal Adviser (Defence)\Ministry of Law and Justice for opinion with respect to implementation of order Annexure P-1. The observations of DoMA was placed before the then Joint Secretary (Army) who approved the observations of DoMA on July 13, 2021 and the file was sent to LA (Defence) seeking opinion.

9. That the Ministry of Law & Justice, O/o Legal Adviser (Defence) examined the matter and observing that matter is a policy matter of DoP&T for which contrary view has been taken by learned Tribunal below based on matter of Madhu Sudan Case (*supra*), opined on July 26, 2021 (**Annexure A-9**) that views of DoP&T be obtained and thereafter, administrative Ministry/Department may take a conscious administrative decision accordingly.

10. That thereafter, vide note dated August 23, 2021, the matter/file was referred to the Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training (DoP&T) seeking its views with respect of implementation of order Annexure P-1.

11. That, after considering the matter, the DoP&T vide its note dated November 30, 2021 (**Annexure A-10**) advised to re-examine the matter. In the said note, DoP&T also made observations regarding delay in not deciding course of action immediately and as to why DoMA recommended to implement order Annexure P-1. Further, the DoP&T reiterated that Time Bound Promotion Scheme and MACP cannot run concurrently and it is for the

administrative Ministry to decide whether to implement MACP in respect of its employees or to continue with the TBPS.

12. That thereafter, the Signal Directorate, vide its note dated December 15, 2021 (**Annexure A-11**), *inter alia*, clarified that the main file of instant case was held up awaiting decision by the Government for implementation order passed in Madhu Sudan Case (*supra*) as the Directorate was expecting that a uniform decision for all CSBOs would be taken. However, the MACP was sanctioned only in respect of Applicants in Madhu Sudan case vide letter dated March 3, 2021. In said note, it was further stated that learned Tribunal had directed that order Annexure P-1 should be implemented in favour of all similarly situated CSBOs so that all are not forced to approach Court for the benefits. In pursuance thereof, Ministry of Defence has sought a consolidated proposal in respect of all serving and retired CSBOs for grant of MACP benefits duly vetted by IFA with approval of PSO and the said proposal is under preparation. The aforesaid note with clarification was forwarded to the Ministry of Defence, Department of Military Affairs for consideration as deemed appropriate regarding implementation of order Annexure P-1 or for taking up the matter for further litigation as advised by DoP&T.

12. That thereafter, the DoMA vide its note dated December 22, 2021 sought approval of the then Joint Secretary (Army) for referring the matter to LA (Defence) seeking opinion with respect to implementation of order Annexure P-1. On December 25, 2021, the then Joint Secretary (Army) directed to seek view of LA (Defence) and the matter was referred to LA (Defence), Ministry of Law & Justice.

13. That the Ministry of Law & Justice, Department of Legal Affairs O/o Legal Adviser (defence) vide its opinion dated January 13, 2022 (**Annexure A-12**) opined that the case appears to be fit to file writ petition before the Hon'ble High Court against order Annexure P-1."

Thus, it is apparent that after receiving the order dated 01.11.2019

(Annexure P-1), a decision was taken on 21.01.2020 (Annexure A-2) that since the

SLP had been dismissed by the Apex Court on 15.11.2019 (Annexure A-1), in Madhu Sudan's case (*supra*), the matter was under consideration and once it was finalized on the basis of same, the implementation of the instant judgment would be decided.

A perusal of the additional affidavit would go on to show that the execution application was preferred by the employees and, thereafter, no decision was taken that it was a fit case to file the writ petition. Rather, a perusal of the letter dated 27.10.2020 (Annexure A-4) would go on to show that the correspondence was made to the Records Signals with regard to implementation of judgment of the Tribunal in Madhu Sudan's case (*supra*) and efforts were being made to implement the said judgment as early as possible. Keeping in view the pressing circumstances of rampant COVID-19 and its financial and other implications involving various Departments apart from the Ministry of Defence for which the two Nodal Departments of the Government viz. DoP & T and DoE/Ministry of Finance were involved, the Department was earnestly trying to remove the barriers coming in the way in complying the order in the matter. Rather, a similar letter was also addressed on 14.01.2021 that the judgment in OA No.3204/2011 was finalized and implemented very soon. Similarly, on 03.03.2021 (Annexure A-6), sanction was granted to the applicants of Madhu Sudan's case (*supra*) for the benefit of MACP scheme and in view of the contempt petition filed by the petitioners, reference of which was made in the said letter.

It was only, thereafter, on 09.06.2021, the Directorate had processed the matter and forwarded the same to the Ministry of Defence, Department of Military Affairs (DoMA) on 12.06.2021 seeking approval for the implementation of the order, which was the subject matter of challenge in the present petition. It is

only thereafter, the Ministry of Law and Justice, Department of Legal Affairs

opined that it was a fit case to file the writ petition before the High Court. Thus, it is apparent that for a period of 1 year and 2 months, the petitioners in principle had decided that they would implement the order of the Tribunal. It is only subsequent to that on account of opinions taken from the different departments, they thought it necessary to file the present writ petition.

We are of the considered opinion that the latitude which was to be given to the State is to a certain limit and it cannot be given unfettered free play and there is no much discretion available for them. Sufficient cause has to be shown and there has to be a bona fide explanation as such, which in the present case is lacking at all levels. We are, thus, of the considered opinion that the matter is squarely covered by the principles laid down in *Esha Bhattacharjee vs. Managing Committee of Reghunathpur Nafar Academy and others* (2013) 12 SCC 649. In the said case, there was delay of 2449 days and the Division Bench of Calcutta High Court had entertained the appeal beyond the period of limitation. Relevant portion reads as under:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
- vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.
- vii) The concept of liberal approach has to encapsule 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) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.
- b) 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.
- c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
- d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

It is clear that once recourse had not been taken and the petitioners have acted in a leisured manner in seeking remedy of legal recourse in spite of being well versed with the legal procedure which has been prescribed, we are of the considered opinion that the petitioners cannot be given the latitude which it expects. They have not been vigilant enough and unnecessarily forced the other side to await the fruit of litigation. In such circumstances, we do not deem it a fit case to exercise the extra ordinary writ jurisdiction of this Court considering the fact that there has been inordinate delay and there was intent not to challenge the order. Though, counsel for the petitioners submits that it was only at the

Directorate level, it is not for us to decide whether it was on the right level or on the wrong level. Rather, it is for the petitioners to fix the responsibility at its own level.

Accordingly, the present writ petition is dismissed on the ground of delay and laches. However, we leave the issue in question open to be decided by this Court in an appropriate case.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

May 05, 2022
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No