
(2003) 05 CAL CK 0002

Calcutta High Court

Case No: C.O.S.T. No. 3 of 2001

Biswanath Adhikary

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: May 15, 2003

Acts Referred:

- Limitation Act, 1963 - Section 5

Citation: (2004) 2 CHN 458

Hon'ble Judges: Joytosh Banerjee, J; Alope Chakrabarti, J

Bench: Division Bench

Advocate: Kajol Kumar Bera, D. Chatterjee and Dhananjay Mukherjee, for the Appellant;
Joydeep Kar and Aparajita Rao, for the Respondent

Final Decision: Allowed

Judgement

1. Heard the learned Counsel for the petitioner as well as the learned Counsel for the respondents.
2. The writ petition was filed challenging the order dated 5.2.2001 passed in R.A. No. 11 of 2000 whereby the application in R.A. No. 11 of 2000 was allowed and the order passed on 10.3.1998 by the Tribunal was recalled.
3. Facts available in the writ petition are that the petitioner moved an application u/s 19 of the Administrative Tribunals Act, 1985 in respect of his relief relating to revised scale of pay along with admissible benefits, allowances and entitlements in terms of the Government Order dated 18th August, 1997 which was in turn issued in compliance with the judgment and order passed by the Administrative Tribunal in O.A. No. 162 of 1996.
4. After the service of notice upon the respondents a learned Advocate appeared and the matter was adjourned, from time to time. Although opportunities were granted, no reply was filed on behalf of the State-respondents. The original

application was ultimately allowed by the judgment and order dated 10th March, 1998 whereby the prayer of the applicant was allowed on a finding that facts and circumstances of the case of the applicant is similar to the applicant in O.A. No. 162 of 1996.

5. The said final order was also communicated to the respondents by a forwarding letter dated 23.3.1998 followed by a notice served upon the respondents on 25th September, 1998 whereby the respondents were called upon to implement the order dated 10th March, 1998. When the respondents failed to comply with an application was filed for initiating a contempt proceeding. In the contempt proceeding the learned Advocates appeared on 19.7.2000.

6. Review application was filed by the respondents which gave rise to R.A. No. 11 of 2000 and the same was fixed on 4.9.2000. When the Tribunal granted leave to the State-respondents to file a review application as affirmation of the application was found to be not correct, respondents were served with further copy of the review application along with another copy of the application for condonation of delay with a covering letter dated 18.9.2000.

7. By the impugned order, the delay was condoned and the review application was allowed.

8. The learned Counsel for the petitioner contended that the application for condonation of delay filed by the respondents was not affirmed application as appears from the review copy of the application and in the application itself no sufficient ground has been given for explaining the delay of two and half years in making the application for review, the impugned order is liable to be quashed.

9. The learned Counsel for the respondents contended that there are sufficient grounds for condoning the delay particularly in view of the fact that the delay occurred in the Government Departments and conduct of such respondents are to be considered in view of the settled law in respect of the condonation of delay occurring on the part of the Government respondents as decided in the case of [Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma](#), and [State of Haryana Vs. Chandra Mani and others](#), .

10. We have considered the contention of the respective parties and also we have perused the application for condonation of delay.

11. Though some case has been made out as regards as affirmation of the application for condonation of delay, but such fact could have been, brought to the notice of the Court upon obtaining certified copy of the application for condonation of delay and in absence of that, we are of the opinion that no satisfactory case has been made out for us to hold that the application for condonation of delay was not duly affirmed.

12. With regard to the explanation as regards the delay, the learned Counsel for the respondents relied on paragraph 5 of the application inviting us to approve the contention of the Advocate as has been done by the Tribunal. On a perusal of the said contention of the said paragraph 5, we do not find any fact has been disclosed on which we can hold that the respondents were taking step as required in the Government Departments and in such circumstances we do not find that the judgments relied upon by the respondents cannot help them enabling us to hold that though attempts were made bona fide but because of the procedural hazards and the formalities required to be complied with by the Government Departments there was delay either at one stage or at various stages of such procedural requirements. In such circumstances, we do not find that the view taken by the Apex Court in the judgments relied upon by the respondents can be followed for condonation of such delay. So far as the judgment of the Tribunal is concerned, we find the explanation of the delay has not at all been discussed in the judgment and still then the Tribunal came to a finding that there has been a delay for obvious reason. This, in our view, is not acceptable by us in absence of any discussion whatsoever as regards reasons.

13. Explanations given in the application have been considered by us and are not found sufficient. In such circumstances, the delay could not be condoned in making the review application. Therefore, the impugned order is hereby set aside and the writ petition is allowed. As we do not find that the delay could be condoned, the review application stands dismissed.