

THE GAUHATI HIGH COURT  
(The High Court Of Assam Nagaland Meghalaya Manipur Tripura  
Mizoram And Aruachal Pradesh)  
**ITANAGAR BENCH**

WP(C) No 278(AP) / 2009

PRESENT

THE HON'BLE MR JUSTICE H N SARMA

Shri Dimbeswar Pawe,  
Son of late Dhulia Miri,  
Resident of Ujan Mirigaon,  
PO- Pohumara, district- Lakhimpur,  
Assam.

...Petitioner

-VERSUS-

1. The State of Arunachal Pradesh,  
represented by the Commissioner, Health & Family Welfare,  
Government of Arunachal Pradesh,  
Itanagar.
2. The Director of Health Services, Government of Arunachal Pradesh,  
Naharlagun.
3. The Director of Housing, Government of Arunachal Pradesh,  
Itanagar.

...Respondents

Advocates for the petitioner	: Mr BL Singh, Advocate, Ms S Nag, Mr G Kato.
Advocates for the respondents	: Ms G Deka, Addl. GA, AP.
Date of hearing	: 30.11.2009
Date of judgement	: 30.11.2009

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JUDGMENT AND ORDER (ORAL)

The subject matter of challenge in this writ petition is the order dated 1.7.2009 passed by the Commissioner, Health & family Welfare, Government of Arunachal Pradesh, Itanagar, respondent No 1, refusing to condone the delay of 15 days in preferring the appeal filed by the petitioner against the order of termination from service dated 6.6.2007.

2. I have heard Mr BL Singh, learned counsel for the petitioner and Ms G Deka, learned Addl. GA, AP.

3. The facts in short, which are necessary for the purpose of disposal of this writ petition are as follows.

4. The petitioner while serving as UDC under the Director of Health & Family Welfare, Government of Arunachal Pradesh, respondent No 2, entrusted with the duty of Cashier for a certain period. During the aforesaid period the allegation of misappropriation of large amount of Government money was levelled against him. Consequently, a departmental proceeding was initiated against him and after conclusion of the said proceeding, the petitioner was awarded with the penalty of dismissal from service. Such an order being appellable one under Rule 23 of the Central Civil Services (Class, Control & Appeal) Rules, 1965, (for short "CCS (CC&A) Rules, 1965"), he preferred an appeal before the respondent No 1 who is the authority for entertaining such appeal under the CCS (CC&A) Rules, 1965. Under Rule 25 of CCS (CC&A) Rules, 1965, the said appeal of the petitioner being bared by limitation, he filed an application for condonation of delay in filing the appeal. But the appellate authority vide order dated 24.7.2008 rejected the prayer of the petitioner for condonation of delay and consequently the appeal stood dismissed on the ground of delay. The said order was challenged by the petitioner before this Court in WP(C) No 337(AP)/2008 and this Court vide judgment and order dated 24.3.2009 set aside the impugned order holding that the petitioner has sufficiently explained 53 days delay,

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which period he spent for his medical treatment and the petitioner is to file a fresh application explaining his delay in preferring the appeal for the remaining 15 days. In terms of the aforesaid order, the petitioner filed such application for condonation of remaining 15 days in preferring the appeal on 31.3.2009. But the respondent No 1 did not accept the ground set forth by the petitioner for condoning the delay of remaining 15 days and vide order dated 1.7.2009 rejected his prayer, which is the subject matter of challenge in this writ petition.

5. Mr BL Singh, learned counsel for the petitioner, submits that the petitioner by his application filed on 31.3.2009 has sufficiently explained the ground for delay of remaining 15 days in terms of the order passed by this Court in WP(C) No 337(AP)/2008. But the appellate authority by taking technical view refused the same. Mr Singh submits that an application for condonation of delay is to be construed in a liberal manner. But the instant case, the petitioner having sufficiently explained the cause of delay in preferring the appeal, the appellate authority rejected the same by taking hyper technical view. The learned counsel put in service the decision of the Apex Court in the case of Ram Nath Sao alias Ram Nath Sahu and others Vs Gobardhan Sao and others, reported in (2002) 3 SCC 195, in support of his contention.

6. Ms G Deka, learned Addl. GA, AP, however, supports the impugned order and confines her submission on the averments made in the counter affidavit. She reiterates that the appellate authority has not accepted the grounds to be the sufficient grounds for condoning the delay on the basis of the facts and the same is not to be disturbed by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

7. I have considered the rival submissions made by the learned counsel for the parties. In the instant case, the petitioner is suffering an order of dismissal from service after holding necessary enquiry. The relevant statute, namely CCS (CC&A) Rules, 1965, which governs the service condition of the petitioner provides statutory right to the petitioner to prefer an appeal against such an order of dismissal. Rule

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25 of the CCS (CC&A) Rules, 1965, provides the period of limitation for filing such an appeal within 45 days from the date of which the copy of the order of appealed against is delivered to the appellant. Proviso to Rule 25 provides that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time. The aforesaid proviso to rule is in tune with the section 5 of the Indian Limitation Act and empowered the authority to condone the delay on showing sufficient cause. In the instant case, the originally there was delay of 68 days in preferring the appeal against the order of dismissal dated 6.6.2007. Out of 68 days, 53 days were spent in medical treatment due to falling in certain ailments and in the earlier round of litigation this Court accepted the same. The petitioner not having explained the ground for delay for the remaining 15 days in filing the appeal, he was given liberty to file a fresh application before the appellate authority explaining the delay of 15 days. Consequently, the petitioner filed such application on 31.3.2009. The petitioner explained that after recovery from the ailment on 15.9.2007 immediately on the next day on 16.9.2007 started for Naharlagun and he reached. Two days time spent for collecting papers. On 18.9.2007 he went to his counsel for taking advice with the relevant papers. The learned counsel too five days to examine the papers and on 23.9.2007 the petitioner was advised to file appeal along with an application for condonation of delay before the appellate authority. The petitioner being a dismissed employee could not collect necessary expenses including fees of his counsel that was required for filing the appeal. He went from door to door seeking loan and ultimately he could collect an amount of Rs. 10,000/- from one of his friends, namely Shri Naren Namchoom on 26.9.2007 and upon collection of the aforesaid amount, he approached his counsel with the fees and expenses on 26.9.2007 in the evening and thereafter the learned Advocate took two days time to prepare the appeal which was filed on 28.9.2007. the appellate authority did not accept the aforesaid explanation. In paragraph 6 of the impugned order, it is observed that the petitioner has not been able to explain, which papers he needed to collected or sought to collect for the purpose of filing the appeal for which he spent two days

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time. Although he stated that he collected papers pertaining to a criminal case, he has not been able substantiate this claim with any documentary evidence, the petitioner has not filed any application before the authority praying for supply of copy of such document and there is no explanation regarding the nexus between the papers to be collected from a Criminal Court and the condonation of delay or the appeal application against the dismissal. It is further observed that the order of dismissal having received by the petitioner on 6.6.2007, the petitioner possessed such document to file the appeal and spending of five days time to examine the papers by the Advocate and thereafter further time to collect necessary money for preparing the appeal. Although the money receipt produced before the appellate authority, the said receipt does not disclose that the amount lent to the petitioner to pay fees to his counsel. There is no evidence to show whether actually the said amount has been paid to the counsel or not. It is further observed that although the petitioner has attempted to explain 53 days delay for taking treatment from 10.12.2006 to 15.9.2007 as an OPD patient, the appellate authority did not accept the same.

8. From the aforesaid findings it is found that although this Court accepted the cause shown by the petitioner for delay of 53 days in taking his medical treatment and the delay for remaining 15 days is required to be explained. The appellate authority even had gone to the extent not to accept these 53 days, which means that the appellate authority even sat over the judgment of this Court, which is not permissible under the law.

9. From the findings recorded by the appellate authority, as indicated above, it is seen that the appellate authority has not only taken technical but hyper technical view in the matter of consideration of the condonation of delay, as prayed for by the petitioner. In this connection, the decision referred to by Mr Singh is not misplaced. In the case of Collector, Land Acquisition, Anantnag and another Vs Mst Katiji and others, reported in AIR 1987 SC 1353, the Apex Court has held as follows:

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“ The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :-

- 1) Ordinarily a litigant does not stand to benefit by lodging an appeal late.
- 2) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when the delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
- 3) “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay every second’s delay ?The doctrine must be applied in a rational common sense pragmatic manner.
- 4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
- 5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
- 6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the ‘State’ which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in a even handed manner. There is no warrant for according a stepmotherly treatment when the ‘State’ is the applicant praying for condonation of

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delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the fact of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

10. Again in the case of Ram Nath Sao (supra), the Apex Court in paragraph- 12 of the judgment held as follows:-

" Thus it becomes plain that the expression "sufficient cause" within the meaning of section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependent upon fact of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly

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defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”.

11. Various judicial pronouncements make it clear that section 5 of the Indian Limitation Act and for that purpose provision of explanation of delay by showing “sufficient cause” is to be interpreted liberally and technical or hypertechnical views are to be avoided. The basic principle in condoning the delay is that when a litigant approach the authority in appeal, the appeal is to be heard on merit and not to be reject without entertaining into the merit and liberally construe the provision for condoning the delay, if there is any, in filing the appeal. The appellate authority while passing the impugned order totally lost sight of inherent inbuilt of the provisions of section 5 of the Indian Limitation Act in proviso to Rule 25 of the CCS (CC&A) Rules, 1965. Upon perusal of the explanation of the petitioner, I am of the considered view that the petitioner has sufficiently explained the cause of delay in filing the appeal challenging his dismissal order. Out of the total 68 days of delay, 53 days have been spent for his medical treatment, which was already accepted by this Court in earlier round of litigation. The appellate authority acted in a manner not authorised by law in rejecting the prayer for condonation of delay by no accepting the cause shown by the petitioner acting against the basic principle of construction “sufficient cause” as judicially interpreted, by following a hyper technical view.

12. In view of the aforesaid discussion, the impugned order stands set aside and quashed.

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13. The delay in filing the appeal stands condoned. The appellate authority is directed to take up the appeal filed by the petitioner on 1.10.2007 and dispose of the same on its own merit. Since the appeal is pending since 2007, it is further directed that the said appeal be disposed of as expeditiously as possible. It is submitted by Mr Singh that the petitioner is staying in the Government quarter allowed to him and he is directed to vacate the same. If that be so, the petitioner be allowed to stay in the said Government quarter till disposal of the appeal.

14. With the aforesaid observations and direction, this writ petition stands disposed of.

15. No costs.

  
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