

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Jagmohan Bansal****Date of Decision: 7th May 2024**

CWP-9903-2024

SURESH KUMAR BHARDWAJ ...PETITIONER**VERSUS****STATE BANK OF INDIA AND OTHERS ...RESPONDENTS****Legislation:**

Article 226 of the Constitution of India

Section 5 of the Indian Limitation Act, 1963

Subject: Writ petition challenging the disciplinary action of reduction to a lower grade and subsequent dismissal of appeal and review petition on grounds of delay.

Headnotes:

Service Law – Disciplinary Action – Petitioner challenged the reduction to a lower grade imposed by the Disciplinary Authority and subsequent dismissal of his appeal and review petition on grounds of delay – Petitioner argued that his delay in filing the review was due to being in judicial custody – Court held that delay should be condoned considering the principles of natural justice and the liberal approach towards condonation of delay in judicial matters [Paras 2-4, 7-11].

Condonation of Delay – Judicial Custody – Petitioner was in judicial custody from 01.09.2021 to 10.03.2023, causing delay in filing the review petition – Court referenced Supreme Court's guidelines on adopting a pragmatic and justice-oriented approach in condonation of delay – Found Reviewing Authority's dismissal on hyper-technical grounds unjust [Paras 9-12].

Decision: Writ petition allowed – Review order dated 29.08.2023 set aside – Matter remanded to Reviewing Authority to pass a fresh order on merits –

Petitioner directed to appear before the Reviewing Authority on 15.06.2024 [Paras 12-14].

Referred Cases:

- Collector (LA) v. Katiji (1987) 2 SCC 107

Representing Advocates:

Mr. Raghav Sharma for the petitioner

Ms. Madhu Dayal for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of:-
 - i. order dated 29.09.2020 (Annexure P-5) whereby Disciplinary Authority has awarded him major punishment of '*Reduction to lower grade of JMGS-I till retirement*'; ii. order dated 16.04.2021(Annexure P-7) whereby Appellate Authority has dismissed his appeal; and
 - iii. order dated 29.08.2023 (Annexure P-9) whereby Reviewing Authority has dismissed his review on the ground of delay.
2. The petitioner concededly was subjected to major punishment of '*Reduction to lower grade of JMGS-I till retirement*' by order dated 29.09.2020. He had remedy to file appeal before the Appellate Authority which he availed. He claims that Appellate Authority had decided his appeal without granting opportunity of hearing which amounts to violation of principles of natural justice. He preferred review before the Reviewing Authority which dismissed his application on the ground of delay.
3. Mr. Raghav Sharma, Advocate submits that Appellate Authority passed its order on 16.04.2021 and review could be filed within six months. The petitioner could not file review within prescribed period of limitation because he remained in judicial custody from 01.09.2021 to 10.03.2023. On account of judicial custody, he could not file review within prescribed period of limitation. The Reviewing Authority agreed to condone delay qua custody

period, however, review application has been dismissed on the ground that there is no explanation qua delay after his release from judicial custody. The petitioner, on account of mental agony and trauma which he suffered during incarceration, could not file review immediately after his release. There was no intentional delay on his part and the Reviewing Authority was quite competent to condone the delay.

4. Notice of motion.
5. Ms. Madhu Dayal, Advocate appeared and filed her Power of Attorney on behalf of the respondents. The same is taken on record. Registry is directed to tag at an appropriate place.
6. With the consent of both sides, the captioned petition is taken up for final adjudication.
7. *Per contra*, Ms. Madhu Dayal, Advocate submits that petitioner from judicial custody was released on 10.03.2023, thus, he was bound to file review at the earliest. He took four months to avail remedy of review after his release from judicial custody. The said period could not be condoned.
8. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.
9. It is a settled proposition of law that petitioner is not supposed to explain delay of each and every day and Courts are not supposed to take pedantic approach rather it should adopt pragmatic and justice oriented approach.
10. Supreme Court while adverting with an application seeking condonation of delay in **Collector (LA) v. Katiji, (1987) 2 SCC 107** has held that Courts should not adopt pedantic approach rather it should adopt pragmatic and justice oriented approach. The Court has held:

“3. The legislature has conferred the power to condone delay by enacting Section 5 [Any Appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making

the application within such period.] 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 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 of mala fides. 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."

11. In the present case, the period prescribed for filing review is six months. On account of judicial custody, the petitioner could not file review within prescribed period of limitation. The Reviewing Authority while dismissing the review petition filed by the petitioner has adopted hypertechnical and pedantic

approach. The law of limitation is based on public policy and some unintentional lapse on the part of petitioner would not be sufficient to deny condonation of delay as it would amount to miscarriage of justice.

12. In view of above discussion and findings, this Court is of the considered opinion that review order dated 29.08.2023 (Annexure P-9) deserves to be set aside and accordingly set aside. The matter is remanded back to Reviewing Authority with a direction to pass a fresh order on merits.
13. The petitioner, at the first instance, would appear before the Reviewing Authority on 15.06.2024 at 11:00AM and thereafter, as directed by Reviewing Authority.
14. Disposed of in above terms.

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