

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

M.P.No.1 of 2010

in

C.M.A.SR.No.64708 of 2010

The Union of India owning  
Southern Railway rep.by  
Its General Manager,  
Chennai – 600003.

.. Petitioner

Vs.

1.Kommu Sumathi  
2.Kommu Anthoni  
3.Kommu Babu  
(R2 & R3 being minor rep.by their  
mother and natural guardian R1)

4.The Assistant Registrar,  
Railway Claims Tribunal,  
Chennai Beach,  
'FRESH FORD'  
50, Mc Nichols Road,  
Chetpet, Chennai – 600 031.

.. Respondents

**PRAYER: M.P.No.1 of 2010** is filed under Section 23(3) of Railway Claims Tribunal Act, to condone the delay of 264 days in filing the above Civil Miscellaneous Appeal/

**C.M.A.SR.No.64708 of 2010** is filed 23 of the Railway Claims Tribunal Act, to call for the records culminating in the order dated 6.8.2009, passed in O.A.No.121 of 2008 by the Railway Claims Tribunal, Chennai Bench and set aside the same.

For Petitioner : Mr.V.Haribabu  
For Respondent : No appearance

**ORDER**

The Civil Miscellaneous Petition on hand is filed under Section 23(3) of Railway Claims Tribunal Act, to condone the delay of 264 days in filing the Civil Miscellaneous Appeal, to call for the records culminating in the order dated 6.8.2009, passed in O.A.No.121 of 2008 by the Railway Claims Tribunal, Chennai Bench and set aside the same.

2. The Southern Railway is the appellant and the miscellaneous petition is filed to condone the delay of 264 days in filing the appeal.

3. The learned counsel appearing on behalf of the petitioner states that the delay occurred due to the fact that there was a delay in getting the opinion for filing an appeal.

4. Such a administrative delay is unacceptable. The Southern Railway is having establishment to lookafter the legal affairs. If the officials working in the legal section is not vigilant, they must be held

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responsible and they are accountable for the lapses, negligence and dereliction of duty. Administration of Southern Railway is bound to ensure that the establishment functions properly and in the event of any lapses, negligence and dereliction of duty in pursuing the legal cases, the officials, who are responsible, must be prosecuted under the Discipline and Appeal Rules and the financial loss is to be recovered from those officials by conducting an enquiry. Contrarily, the Court cannot condone the long delay in the absence of any acceptable reason.

5. This being the factum, this Court is of the opinion that the reasons stated in the affidavit are unacceptable and mere administrative reason or delay in getting an opinion, would not be a valid point for the purpose of condoning the long delay of 264 days in filing the appeal.

6. This Court has to consider whether such a long administrative delay can be condoned in a mechanical manner or not. Undoubtedly, there is a possibility of some administrative delay in certain unavoidable circumstances. However, such administrative delay, if exceeds and the

delay is enormous, then it cannot be condoned in a mechanical manner. Small amount of delay can be condoned by taking a lenient view. However, long delay cannot be condoned in the absence of any valid and acceptable reasons.

7. In recent years, these public authorities are found to be frequently negligent and committing dereliction of duty in respect of dealing with such appeals and other cases. There is a general trend that the public authorities are having lack of sincerity and committing dereliction on duty. These negligence and dereliction of duty are serious misconducts and therefore, the higher authorities are bound to ensure that the officials are performing their duties and responsibilities with utmost care and with devotion to duty. Any such lapse or dereliction of duty is to be enquired into properly and all appropriate actions are to be initiated to ensure initiations of appropriate disciplinary proceedings. Therefore, the authorities cannot approach the Court in a routine or mechanical manner with a huge delay in filing an appeal. Every such delay is to be explained in a proper manner and the Courts are also to ensure that unexplained

delay is not condoned in a routine manner.

8. Perusal of the affidavit shows that there is absolutely no acceptable reason for the purpose of condoning the enormous delay of 264 days in filing the appeal. The reasons stated in the affidavit must be convincing, enabling this Court to consider the condonation of delay. Huge delay cannot be condoned in a routine manner. Law of Limitation is substantive. Condonation of delay is an exception. Only on genuine reasons, delay can be condoned by exercising the power of discretion.

9. Mechanical way of condoning delay is undoubtedly impermissible. The condonation of delay can never be a mechanical affair and the High Court cannot condone the delay in a routine manner. Courts are bound to ensure that the reasons for condoning such delays are recorded, so as to set out a precedent and to avoid mechanical way of condonation of delay. When the law provides limitation for preferring an appeal and the proviso clause as contemplates the power of discretion to the Court to condone the delay, then such discretionary powers are to be

exercised judiciously and by recording reasons. It is not as if, the High Courts can condone the delay in a routine manner, so as to dilute the law of limitation as contemplated under the Statutes. Thus, in all cases, where there is an enormous delay in filing an appeal, the Courts are bound to ascertain the reasons and its genuinity and the acceptability of such reasons. Every litigant is expected to prefer an appeal within the period of limitation stipulated in the statute. On account of certain unavoidable reasons, if the appeal is filed with some delay, then the Courts are vested with the discretionary power to condone such a delay. Rule is to file an appeal in time and condonation is an exception, which is to be exercised discreetly and by recording reasons. Recording of reasons are of paramount importance in order to maintain consistency in the matter of condonation of delay.

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10. Discretionary powers are expected to be exercised by the Courts judiciously. Any reasonable delay or the reasons, which all are valid and acceptable alone can form an opinion for exercising the power of discretion in the matter of condonation of delay. Thus, uncondonable

delay cannot be condoned and what all are the condonable delay and the reasons stated and its validity, which all are important, so as to exercise the power of discretion. The very purpose and object of providing discretionary powers to the Courts are to ensure that the justice is done in an appropriate manner. Because of some genuine delay, the rights of the litigants cannot be neutralized and they should not be deprived of remedy from the Court of law. Therefore, the power of discretion, which is provided with genuine intention, cannot be diluted nor be neutralized by condoning the delay in a casual manner. Thus, while exercising the power of discretion, Courts are expected to be cautious and the reasons for condonation must be recorded and in the absence of recording any reasons, the Courts are not considering the substantive law of limitation. Therefore, the law must prevail in all circumstances and discretion must be exercised discreetly and with caution.

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11. Unconardonable delay cannot be condoned. Law expects that every such delay is to be explained. Unexplained delay cannot be condoned. Such unexplained delay is to be construed as unconardonable.

Thus, delay under what circumstances, would be condonable is the relevant point to be considered by the Courts, while condoning such enormous delay.

12. Parties are expected to file their respective appeals within the period of limitation stipulated in the statute. Undoubtedly, certain unforeseen circumstances may be the reason for delay. However, such unforeseen circumstances or reasons, which all are genuine, must be clearly and truthfully explained in the affidavit filed in support of the miscellaneous petition. In the present case, reading of the affidavit reveals that there is no valid and acceptable reason for the purpose of condoning the enormous delay of 264 days in filing an appeal. In the event of condoning such a long delay, undoubtedly, the same will set a wrong precedent and every such delay is to be condoned in other circumstances. Therefore, in the absence of any valid reasons, the Courts would not condone such an enormous delay. Undoubtedly, meagre delay can be condoned by taking a lenient view. Even to condone such a small delay, Court has to find out, whether there is any sensible reason for such



delay. Therefore, the Courts have to adopt a liberal approach only in small delays and certainly not in the cases of enormous delay. Thus, this Court has no hesitation in arriving a conclusion that the reasons stated in the affidavit filed in support of the miscellaneous petition are neither candid nor convincing and therefore, the delay is to be construed as uncondonable.

13. In view of the reasons stated above, this Court has no hesitation in arriving a conclusion that the reasons stated by the petitioner for condoning the long delay of 264 days are neither candid nor convincing and consequently, the Civil Miscellaneous Petition in M.P.No.1 of 2010 stands dismissed and consequently, C.M.A.SR.No.64708 of 2010 is rejected at the SR Stage itself. No costs.

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Index: Yes  
Speaking order

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**S.M.SUBRAMANIAM, J.**

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M.P.No.1 of 2010 in  
C.M.A.SR.No.64708 of 2010

To

1.The Railway Claims Tribunal,  
Chennai Bench.

2.The Sub Assistant Registrar,  
A.E.Section,  
High Court, Madras.



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in  
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