

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Administrative Member.

Case No. –MA 203 of 2018 (OA 847 of 2018)

Indra Bahadur Rai. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. D. K. Mukherjee, Advocate.
<u>13</u> 17.05.2022.	For the State Respondents	: Mr. S. N. Ray, Advocate.

In the present Miscellaneous Application, the applicant has prayed for condonation of delay in filing the Original Application, being OA-847 of 2018. The same has been filed on 14.12.2018.

In the present application for condonation of delay, the applicant has stated, *inter alia*, that Tirman Rai was a “Resham Karmee” under Group-D cadre attached to B.P.H.C., Pedong, Kalimpong who died-in-harness on 18.09.1999 leaving behind his wife Smt. Tara Devi Rai and only son Indra Bahadur Rai (the applicant) as his legal heirs and representatives.

An application for appointment on compassionate ground had been made before the Development Officer and In-Charge, Superintendent of Sericulture, Kalimpong. Later, an Enquiry Committee enquired the case of the applicant and intimated their decision to the Joint Director (Sericulture), North Zone, Siliguri on 11.09.2008. At the time of death of the father, the applicant was only five years old. By memo. no. 2008-Cot (II) / 2S – 75/99 dated 06.07.2000, C&SSI Department intimated the Director, Sericulture, West Bengal that the post of “Resham Karmee” was supernumerary and the said post would cease to exist after the death of an employee. The applicant made a fresh prayer for compassionate appointment on 30.01.2018 on account of death of his father while in service.

Form No.

Indra Bahadur Rai.

Case No. **MA 203 of 2018 (OA 847 of 2018)**

Vs.

The State of West Bengal & Others.

The State respondents do not file any reply against the application for condonation of delay for filing OA-847 of 2018.

Having heard the counsel for the parties and having gone through the materials on record, it appears that the father of the applicant died-in-harness on 18.09.1999 as “Resham Karmee”, the applicant did not disclose when he made the application for compassionate appointment at the first occasion and no receipted copy of such application is enclosed herein. This particular fact indicates lack of *bonafide* of the applicant.

The applicant made a representation on 30.01.2018 after the death of his father on 18.09.1999. The applicant waited for a long time of 19 years for filing the representation as indicated above. However, no reason has been assigned as to why he was sufficiently prevented to make such application within three years after attaining his majority in the year 2012.

Section 5 of the Limitation Act, 1963 as well as Section 21 (3) of the Administrative Tribunals Act, 1988 permits the applicant to file an application after the statutory period of limitation subject to assigning sufficient cause.

The word ‘cause’ has been categorised as ‘sufficient’ not good or otherwise, therefore, the parameter to judge the case as to whether the applicant has made out a sufficient cause or not is a primary condition to condone the same.

Form No.

Indra Bahadur Rai.

Case No. **MA 203 of 2018 (OA 847 of 2018)**

Vs.
The State of West Bengal & Others.

“Sufficient cause” must be a cause which is beyond the control of the party invoking the aid of the section. A cause for delay which a party, could have avoided by the exercise of due care and attention cannot be a sufficient cause. The test whether or not a cause is sufficient is to see whether it is a bona fide cause, inasmuch as nothing can be considered to be bona fide which is not done with due care and attention.

In the present case, I do not find any cause which prevented the applicant to file the application before authority concerned in time and approach this Tribunal within the period of limitation as envisaged under Section 21 (1) and (2) of the Administrative Tribunals Act, 1988, even if, day to day delay is not necessary to be explained. So, in absence of any denial by the State, the situation cannot be altered. Overall consideration of the pleading, no cause has been assigned which affected the applicant personally in committing inordinate delay to ventilate his grievance which was beyond his control.

Considering the aforesaid principle of law, the applicant has failed to make out a sufficient cause in filing the Original Application (OA-847 of 2018).

Accordingly, the Miscellaneous Application (MA-203 of 2018) is liable to be dismissed and the same is dismissed accordingly. However, there is no order as to cost.

In view of dismissal of MA-203 of 2018, the Original Application (OA-847 of 2018) is also dismissed.

S.M.

(SAYEED AHMED BABA)
MEMBER(A)

ORDER SHEET

Form No.

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Case No. **MA 203 of 2018 (OA 847 of 2018)**

Vs.

The State of West Bengal & Others.

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