לעילוי נשמת **יואל אפרים בן אברהם עוזיאל זלצמן ז"ל**

Tashlumin for Person Involved in Mitzva

Question: If a person was involved for quite some time in a *mitzva* that could not be pushed off so that he was unable to *daven Mincha*, should he *daven* an extra *Ma'ariv* for *tashlumin*?

Answer: The *gemara* (Berachot 26a) says that *tashlumin* (a makeup *tefilla*) is for those who missed a *tefilla* as *ta'ah* (made a mistake) and not for *meizid* (missed the *tefilla* on purpose). The latter does not deserve the opportunity to make up the *tefilla* he missed.

The Shulchan Aruch (Orach Chayim 108:1) adds another case which is remedied by *tashlumin* – *ne'enas* (he did not *daven* due to extenuating circumstances). At first, this looks obvious, as one who had an *oness* is more deserving of the opportunity for *tashlumin* than one who made a mistake. However, there are precedents of one who is prevented from *tefilla* in a way that there is no **need** for *tashlumin*, as follows.

The Shulchan Aruch (Yoreh Deah 341:2) rules that if an *onen* (a mourner from the time of death to the time of burial, who is not supposed to perform *mitzvot*) missed a *tefilla*, he does not do *tashlumin* in the next *tefilla* after the funeral. This is because *tashlumin* does not apply when one was not obligated in the *tefilla* he missed (ibid.).

Most *Acharonim* (Magen Avraham 93:8; Sha'ar Hatziyun 93: 9) reason that one who is exempt from *davening* due to involvement in a *mitzva* (*osek b'mitzva patur min hamitzva* – see Sukka 25a) is not a candidate for *tashlumin*. This powerful exemption makes the *mitzva* doer like one who is not obligated in the second *mitzva*, at least when the first *mitzva* does not allow for fulfillment of the second (see Tosafot Sukka 25a), in which case it can be wrong to stop the first *mitzva* (see Shulchan Aruch, OC 70:4).

On the other hand, in many cases of *mitzvot*, it can even be encouraged to take a break from the first to do the second (Mishna Berura 70:18). It is common for people intensely involved in important

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mitzvot to still *daven*, often in *shul*, despite the delay this may cause. In any case, the second *mitzva* is not totally suspended to the extent that if one performed it, he would not have fulfilled the *mitzva* (ibid.). Because the exemption of *osek b'mitzva patur min hamitzva* is not as absolute or sweeping as that of an *onen*, the Taz (OC 108:1) argues that a *mitzva* exemption from *davening* is considered only like an *oness*, and one should do *tashlumin* on the missed *tefilla*.

Despite the Taz being a minority opinion, the Mishna Berura (108:2) encourages doing *tashlumin* after missing a *tefilla* due to important communal work, but as a *nedava* (voluntary *tefilla*). Indeed, when we are torn whether to recite *Shemoneh Esrei* or not, the solution is often to do it, but to do it with a condition that if it is not called for according to regular *halachic* rules, it should count as a *nedava* (Shulchan Aruch 107:1; 108:11).

There are two possible reasons to do the *nedava tashlumin* in your case, despite it apparently not being called for. One is because of the chance that the Taz is correct that *tashlumin* is required. The second is that even if it is definitely not needed, it is still positive to add a *tefilla* in a permitted way to make up for the missing *tefilla*. The Pri Megadim (Mishbetzot Zahav 108:1) says that it is proper to do the *tashlumin* as *nedava* with a *chiddush* (to add something to the *tefilla* beyond the standard text). He explains that the Taz's opinion is rejected by too many *poskim* to create a doubt as to whether it is needed, which would justify *nedava* without a *chiddush*. Rather it is done because it is a shame to not have recited the *Shemoneh Esrei*. The halachic logic of that justification does not rise to the level to allow it without a *chiddush*.

In many cases, though, *tashlumin* will be fully required. If at some point during the time for *Mincha*, the person was not involved in the *mitzva* in a way that creates an exemption, then the obligation to *daven* took hold, and when it turned out later that he was in a situation that prevented him from *davening*, this is like the case of *oness* that requires *tashlumin* (Mishna Berura 71:4). ■

Having a dispute?

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