

Central Administrative Tribunal
Principal Bench

RA No.292/2015
MA No.3814/2015

in
MA No. 2005/2013 and MA No.1193/2014
In
OA No.2640/2001

New Delhi, this the 30th day of November, 2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B. K. Sinha, Member (A)

Shri Harish K. Dogra,
House No.71, Sector 15-A,
NOIDA – 201 301.
Distt. Gautam Budh Nagar (UP).
Applicant

...Review

Versus

Union of India through
The Foreign Secretary,
Ministry of External Affairs,
Government of India,
South Block, New Delhi.

...Respondent

ORDER (By Circulation)

By Hon'ble Dr. B.K. Sinha, Member (A):

By means of this Review Application accompanied with MA No.3814/2015 seeking condonation of delay in filing the instant RA, the review applicant has sought review of the Tribunal's order dated 01.09.2015 passed in MA Nos. 2005/2013 and 1193/2014 with the following main relief(s):-

- (a). *Hear the Review Application in open court after issuing notice to the respondents.*
- (b). *Quash and Expunge from the orders dated 01/09/2015 of the Hon'ble CAT, the sentences in para 14 & 15 starting from "Here we are also swayed.....are compelled to take adverse note of*

the same.", as also the sentences in para 16 starting from "what has dismayed us more....measure up to his stature."

- (c). Since the Hon'ble Tribunal was "also swayed by the fact that...." (para 14 & 15 of the order) by the erroneous impressions and assumptions of the continuing separation of the wife of the applicant (which is not fact), the Hon'ble Tribunal may kindly review its order and allow the application for condonation of delay in filing the Execution MA."

MA No.3814/2015

2. For the reasons recorded in the MA seeking condonation of delay in filing the instant RA, the same stands allowed.

RA No.292/2015

3. The ground taken by the review applicant is that in paras 14 & 16 of the order under review, the Tribunal has mentioned that the applicant had not disclosed full facts which he was bound to do and an adverse note had been taken of the same. For the sake of clarity, paras 14 & 16 are being reproduced hereunder:-

"14. In that case also, the sole issue was whether the application seeking implementation of earlier order of the Tribunal was barred by limitation. The relevant part of the decision is being reproduced hereunder:-

"5. The only question is : whether the application seeking implementation of the earlier order of the Tribunal was barred by limitation? S. 27 of the Administrative Tribunals Act, 1985 (for short, 'the Act') envisages thus:

"27. Execution of orders of a Tribunal.- Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any Court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in Clause (a) of sub-section (2) of Section 20 (whether or not

such final order had actually been made) in respect of the grievance to which the application relates would have been executed."

6. Relevant part of sub-section (2) of Section 20 of the Act postulate that :

"(2) For the purposes of sub-section (1) of Section 20, a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance;"

7. Section 21 prescribes limitation in that behalf. Sub-section (1) (a) of Section 21 postulates that

"(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made."

8. Thus it could be seen that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Admittedly, the final order was passed on March 13, 1992. Consequently, the appellant was required to file the execution application within one year from the said date unless the order of the Tribunal was suspended by this Court in a special leave petition/appeal which is not the case herein. Admittedly, the application came to be filed by the appellant on December 13, 1994 which is well beyond one year. Under these circumstances, the Tribunal was right in its conclusion that the application was barred by limitation."

Here we are also swayed by the fact that the applicant had pleaded illness of his wife as one of the grounds for waiving the clause of limitation. However, it appears from the counter affidavit filed by the respondents that the applicant had not been living with his wife and produced a letter from his wife addressed to the Pension Cell of the Ministry of External Affairs informing that she was legally separated and had been granted

maintenance which the applicant had not been paying to her. She had also requested the Pension Cell that maintenance amount should be reduced from his pension and paid directly into her account. For the sake of greater clarity, we reproduce the said letter as under:-

"Sub: Request for attachment of maintenance amount from pension of Shri H.K. Dogra.

Dear Sir,

I have been living separately from my husband, Shri Harish Kumar Dogra since August 07. I had filed for maintenance under Sec. 125 Cr.P.C. in the Court of S.J.M. Durgapur, West Bengal.

The decision of the court has reached its final conclusion. The order has been delivered to Shri H.K. Dogra, but unfortunately he has not followed the courts order. He has not paid the amount due to me for my maintenance. Kindly find the attached court order.

It is my humble request to your office that the maintenance awarded to me by the court may be deducted from his pension and paid to me directly in my account at Union Bank of India, Sunder Nagar, New Delhi a/c no. 344902010104443.

I also wish to further clarity that due to the ongoing separation and legal proceedings, I have not signed or taken any family photograph for clearing of my husbands pension funds."

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16. In conclusion, we find that while the discretion rests with the Tribunal to condone delay, we take note of the decision of the Honble Supreme Court in *Hukum Raj Khinvsara versus Union of India & Ors. (supra)* which clearly provides that the final order passed by the Tribunal is executable under Section 27 of the Act within one year from the date of its becoming final. Therefore, the execution petition should have been filed within one year from the said date. Apparently, the applicant has omitted to do so. What has dismayed us more is that in his anxiety to get the limitation condoned, he has pleaded incorrect facts before us which certainly does not measure up to his stature. Hence, we do not find any merit whatsoever in the application seeking condonation of delay and in view of the afore facts, we dismiss the same."

4. The review applicant has also stated that he had a temporary separation from his wife, though it was not a legal

separation. He further submitted that he and his wife were living separately only for a period of two months following which his spouse had re-joined him and thereafter they started living happily. The applicant also refers to an affidavit filed by his wife namely Neeta Dogra in MA No.1193/2014 to the effect that she was alive in good health only because of excellent and timely care by her husband i.e. the applicant. Hence, it has been pleaded by the applicant that this is an error apparent on face of the record which the Tribunal has failed to take note of and dismissed the earlier MAs. He has, therefore, pleaded that the instant review application may be allowed for this reason alone.

5. The applicant has further submitted that the observations of the Tribunal amount to a stigma attached to his name, which is otherwise a fair and impeccable.

6. We have considered the plea of the applicant. We take note of the fact that the applicant had filed MA No.1193/2014 seeking condonation of delay in filing MA No.2005/2013 for execution of the Tribunal's order dated 30.07.2002 passed in OA No.2640/2001. We also take note of the fact that the respondent has also filed a copy of the judgment dated 16.04.2009 passed by the Additional Chief Judicial Magistrate, Durgapur, Burdwan in case of **Neeta Dogra V/s. Shri Harish Kumar Dogra** filed under Section 125 of Cr.P.C.

The facts of that case are that the petitioner (wife of the applicant herein), who had been living in separation from the applicant since August, 2007, filed the petition for adjustment of maintenance amount from the pension of her husband as he was not following the court's orders and had not paid the amount due to her towards maintenance. The said petition culminated in her favour vide order dated 16.04.2009 wherein the learned Additional Chief Judicial Magistrate mentioned that the petitioner's husband (applicant herein) had leveled certain allegations against his wife that she had sufficient income from landed property, but failed to substantiate them. The Court finally ordered payment of maintenance money each month within 10 days of its succeeding month. For the sake of clarity, the operative part of the court's order is reproduced hereunder:-

"That the petitioner Smt. Neeta Dogra is entitled to get monthly maintenance money from the O.P. Sri Harish Kumar Dogra. The O.P. is directed to pay monthly maintenance to the petitioner of Rs.15,000/- from the date of this order and he is directed to go on paying maintenance money each month within 10 days of its succeeding month and on failure to comply the order, the petitioner is at liberty to execute the order through the court."

7. From the above decision, it appears that the Court has not accepted the plea of the petitioner's husband (applicant herein) about the income of the petitioner from any landed property and passed a stringent order against him. We are still of the opinion that it would be a matter of shame for an

officer of the status of the applicant to have his plea turned down by court's orders, and this further lends support to our point that the applicant had not been truthful in his disclosure. It is incorrect on the part of the applicant to state that he and his wife were estranged only for a period of two months and were reconciled soon thereafter. The facts as we have stated, the order of the court of the Additional Chief Judicial Magistrate, Durgapur and the prayer made by the wife of the applicant, speak otherwise.

8. The point to be pondered here is that it is not the matrimonial status of the applicant which is in doubt, but the order of the Tribunal in OA No. 2640/2001 was passed on 30.07.2002, whereas the MA No.2005/2013 seeking execution of the aforesaid order was admittedly filed late by 717 days.

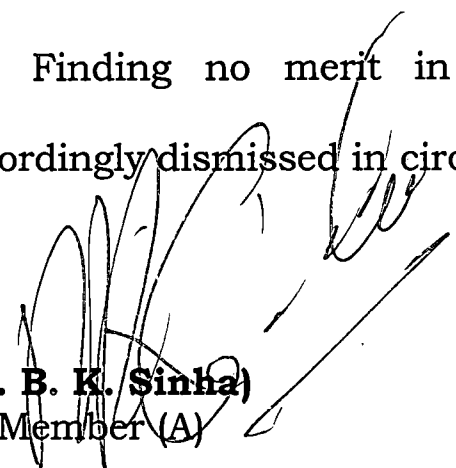
We further find that the applicant has not been able to convince us as to what he had been doing to pursue execution of the Tribunal's order for such a long time.

9. Considering the high office which the applicant had occupied, it is to be reasonably expected that his words should carry the weight of truth in themselves. Here, we find that the plea of the applicant regarding properties owned by his wife getting rejected by the court, and his making statements even in the RA and otherwise in the OA, are also not totally corroborated by facts.



10. On the basis of the above facts, we find that the statements of the applicant are getting contradicted by orders of the court and the plea of his wife. We further find that the decision to invoke the law of limitation has been taken not only on the basis of relationship between the applicant and his wife but also on the basis of other facts, which have not been sufficiently explained by the applicant. In any case, the plea of the applicant regarding his wife and himself living together, as stated in MA No.1193/2014, had already been considered in the order and found unsustainable. Thus, we find no ground to interfere with the order under review.

11. Finding no merit in the instant RA, the same is accordingly dismissed in circulation.


(Dr. B. K. Sinha)
Member (A)

/naresh/


(Syed Rafat Alam)
Chairman