CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

R.A. No.312 OF 2004
IN
O.A. No.904 OF 1993

New Delhi, this the 22nd day of July, 2005

HON'BLE SHRI V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Ranvir Singh (Teacher)
Near Mandir Ishwar Colony Bawana,
Delhi-110039. ....Applicant.
(By Advocate : Shri Baljit Singh)

VERSUS

1. Director of Education,
Delhi Administration (Govt. of NCT of Delhi),
Old Sectt., Delhi.

2. Controller of Examination,
Directorate of Education,
Delhi Administration (Govt. of NCT of Delhi),
Old Sectt., Delhi.

3. Chief Secretary,
Delhi Administration (Govt. of NCT of Delhi),
Sachivalaya IP Estate, New Delhi.

4. Union of India through Secretary Education,
Shastri Bhawan, New Delhi. .....Respondents.
(By Advocate : Shri Vijay Pandita)

1. To be referred to the Reporters or not? YES /~~NO~~ Yes

2. To be circulated to other Benches of the Tribunal? YES/~~NO~~ Yes

S. Raju
(Shanker Raju)
Member (J)

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ORDER

SHRI SHANKER RAJU, MEMBER (J) :

This RA is directed against the order passed by this Tribunal in OA 904/2003 on 30.4.2003.

2. MA 2430/2004 is for condonation of delay in filing the present RA which is basically on the ground that while being a

TGT applicant in the OA has sought appointment as Head Master (Middle) with consequential benefits resorting to the advertisement published by the respondents on 7.7.1990, wherein, in Column relating to PGT it has been quoted that applicant shall appear in one of the examinations and one of the subjects was Head Master (Middle). It is in this conspectus stated that Tribunal by its order dated 30.4.2003, at the admission stage, merely on the assumption that there is no post of Head Master (Middle) in the advertisement and as he was provisionally allowed to appear for the post of PGT not being qualified without ascertaining the fact of inclusion of post of Head Master (Middle) in PGT without issuing notices to respondents, Original Application was dismissed in limine.

3. Learned counsel for review applicant states that after coming into operation of the Right to Information Act, applicant has sought information from the department as to the issue whether post advertised included post of Head Master, he has been informed vide letter dated 27.4.2004 by the respondents that the post advertised on 7.7.1990 included the post of Head Master (Middle) as well. Accordingly, OA 2373/2004 filed by the applicant was disposed of on 1.10.2004 by this Tribunal, giving liberty to applicant to take recourse to review. Accordingly, placing reliance on a decision of the Full Bench of this Tribunal in ***Nand Lal Nichani and others*** Vs. ***Union of India and others***, CAT FBJ 1989-1991 Vol.II 85, it is contended that the Tribunal

has power to condone the delay on a sufficient cause. Accordingly it is stated by resorting to the decision of the Apex Court in the case of ***State of Bihar and others*** Vs. ***Kameshwar Prasad Singh and others***, JT 2000 (5) SC 389, that to prevent miscarriage of justice, on the explanation which does not smack malafide, Court should invariably condone the delay.

4. On the other hand, respondents counsel Shri Vijay Pandita opposed the Review Application and stated that after 11 years in the light of the decisions of the Apex Court in the case of **Harish Uppal** Vs. **UOI**, JT 1994 (3) SC 126 and **P.K. Ramachandran** Vs. **State of Kerala**, 1997 Vol. 7 SCC 556, order cannot be recalled at this belated stage.

5. On going through the rival contentions of the parties, it is no more res integra that this Tribunal has power to condone the delay. The decision of the Full Bench (supra) is binding on us.

6. To condone the delay it has to be shown that the delay is neither malafide nor intentional but bonafide with a sufficient cause. The applicant whose case had been dismissed in limine without issuing the notices, but respondents have demonstrated before this Tribunal earlier that the post of Head Master (Middle) was incorporated in the advertisement for which we was allowed to participate provisionally. Had notices been issued to the respondents, this point would have been clarified. Till the right to information had been come into being, there was no way out for

the applicant to get this information extracted. Once when the respondents were obligated in the wake of Right to Information Act have categorically admitted that the post advertised on 6.7.1990 included the post of Head Master (Middle), it is an admission to the fact that the post of Head Master (Middle) was rightly applied by the applicant and once he had been allowed to participate in the selection process even provisionally, he had a right to be considered in accordance with the rules.

7. Moreover in ***Kameshwar Prasad Singh's*** case (supra) while dealing with the discretion of the court to condone the delay, the following observations have been made:-

> "11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of mattes on merits. This Court in **Collector, Land Acquisition, Anantnag & Anr. V. Mst. Katiji & Ors.** [JT 1987 (1) SC 537 = 1987 (2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act 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 was further observed that 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 trine 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.

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."

12. After referring to the various judgments reported in **New India Insurance Co. Ltd. V. Shanti Misra** [1975 (2) SCC 840], **Brij Inder Singh v. Kanshi Ram** [AIR 1917 PC 156], **Shakuntala Devi Jain v. Kuntal Kumari** [1969 (1) SCR 1006], **Concord of India Insurance Co. Ltd. V. Nirmala v. A. Narayanan** [1969 (2) SCC 770], **State of Kerala v. E.K. Kuriyipe** [1981 Supp SCC 72], **Milavi Devi v. Dina Nath** [1982 (3) SCC 366] **O.P. Kathpalia v. Lakhmir Singh** [1984 (4) SCC 66], **Collector, Land Acquisition v. Katiji** [JT 1987 (1) SC 537 = 1987 (2) SCC 107], **Prabha v. Ram parkash Kalra** [1987 Supp. SCC 339], **G. Ramegowda, Major v. Spl. Land Acquisition Officer** [JT 1988 (1) SC 524 = 1988 (2) SCC 142], **Scheduled Caste Coop. Land Owning Society Ltd. V. Union of India** [JT 1990 (4) SC 1 = 1991 (1) SCC 174], **Binod Bihari Singh v. Union of India** [JT 1992 (Supp) SC 496 = 1993 (1) SCC 572], **Shakambari & Co. v. Union of India** [1993 Supp (1) SCC 487], Ram Kishan v. U.P. SRTC [1994 Supp (2) SCC 507] and Warlu v. Gangotribai [1995 Supp (1) SCC 37]; this Court in State of Haryana v. Chandra Mani & Ors. [JT 1996 (3) SC 371 = 1996 (3) SCC 132] held:

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed

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in this Court –be it by private party or the State – are barred by limitation and this Court generally adop0ts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the prt of the State is less difficult to understand though more difficulty to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at show pace and encumbered process of pushing the files from table to table and keeping it on table for consideration time causing delay – intentional or otherwise – is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what isn the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic app-roach in justice – oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorize the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed

prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

To the same effect is the judgment of this Court in **Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma** [JT 1996 (7) SC 204 = 1996 (10) SCC 634].

13. In **Nand Kishore v. State of Punjab** [JT 1995 (7) SC 69 = 1995 (6) SCC 614] this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In **N. Balakrishnan v. M. Krishnamurthy** [JT 1998 (6) SC 242 = 1998 (7) SCC 123] this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function o a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor. In this context it was observed:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much

> less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammeled by the conclusion of the lower court."

8. If one has regard to the above and also in the light of the decision of the Apex Court in **Rattan Singh v. Vijay Singh**, (2001) 1 SCC 469 and also **A.M. Lodh v. State of Tripura**, 2004 SCC (L&S) 10, it has been held by the Apex Court that though the power to condone the delay is discriminatory but is to be liberally construed. The case law cited by the learned counsel for respondents would not be an impediment to applicant's case as justice should be manifestly seen to be done and there cannot be miscarriage of justice.

9. In the above view of the matter, as we find that the delay in acquiring the information was neither malafide nor intentional, we allow the MA and condone the delay in filing the present RA.

10. As regards merits, it is trite law that review cannot be resorted as an alternate to appeal or to re-agitate the matter. The only scope for review under Section 22 (3)(f) of the Administrative Tribunals Act, 1985 as well as order XLVII, Rules (1) and (2) of Code of Civil Procedure is where

there is an error apparent on the face of the record, requiring no probe or discovery of new material or evidence which was not available with the contending party even after due diligence.

11. As regards the information, which has been disclosed on the right of applicant to get information by respondents on 27.4.2004, was not available with him, as at the time of initial hearing of the case without notice applicant has established inclusion of post of Head Master (Middle) by showing the relevant stipulation in the advertisement. However, as the notice had not been issued to respondents this matter was not probed into and was dismissed only on perusal of the advertisement. However, as the reply by respondents clearly reflects that the advertised post included Head Master (Middle), great injustice has been caused to applicant. Right to Information Act led to filing of this document, which, even after exercise of due diligence, was not in the possession of applicant and as no explanation, by way of notice, had been sought from respondents in the OA, a legitimate right of applicant, which is a legal right available to him, has been defeated, which, in our considered view, has resulted in miscarriage of justice. To uphold the majesty of law we have no hesitation to exercise our jurisdiction to recall the order.

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12. In **A.T. Sharma v. A.P. Sharma**, AIR 1979 SC 1047, the Apex Court has observed as under:

> "3. The Judicial Commissioner gave two reasons for reviewing the predecessor's order. The first was that his predecessor had overlooked two important documents Exhibits A/1 and A/3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single Writ Petition, 'settlement' made in favour of the different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important mater or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is on; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of the court of appeal. A power of review is not to be confused with appellate power, which may enable an Appellate Court to correct all manners of errors committed by the subordinate court."

13. In **Lily Thomas vs. Union of India**, 2000(6) SCC 224, the following ration has been laid down by the Apex

Court:-

> "56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."

14. In **Union of India vs. Tarit Ranjan Das,** 2004 SCC (L & S) 160, following observations have been made:-

> "13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court."

15. In **Ajit Kumar Rath vs. State of Orissa,** 1999(9) SCC 596, following observations have been made:

> "30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a r4eason sufficiently analogous to those specified in the rule."

16. A cumulative reading of the above shows that a review can be successfully entertained when there is a discovery of new and important material, which, after exercise of due diligence was not within the knowledge of the contending party and could not be produced at the time when the order had been made.

17. An important piece of evidence is order dated 27.4.2004 passed by respondents, which clearly shows inclusion of the post of Head Master (Middle) in the advertisement issued on 7.7.1990. Applicant who had been provisionally allowed to participate in the selection was not considered for appointment

on the premise that the post of PGT did not include the post of Head Master (Middle). This has prejudiced applicant and substantially marred his promotional avenues and consideration thereof, as he is still stagnating on the post of TGT.

18. In the result, for the foregoing reasons, RA is allowed. Earlier OA-904/1993 is restored back to its original position. Respondents are directed to file reply to the OA within four weeks from the date of receipt of a copy of this order. Two weeks thereafter for rejoinder.

19. List on 12.09.2005.

S. Raju
(SHANKER RAJU)
MEMBER (J)

V.K. Majotra
(V.K. MAJOTRA)
VICE CHAIRMAN (A)

'San.'