

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

MISCELLANEOUS APPLICATION NO.170/00377/2020

IN

REVIEW APPLICATION NO.170/00040/2020

IN

ORIGINAL APPLICATION NO.170/01324/2019

ORDER RESERVED ON 16.06.2021

DATE OF ORDER: 13.08.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

P.G. Hadimani, aged 60 years,
S/o Gurushanthappa Hadimani,
(Retd. Station Superintendent)
Harihar Railway Station,
South Western Railway,
Mysore Division),
Residing at 1149, 2nd Main, 3rd Cross,
S. Nijalingappa Layout,
Near National Convent,
Davanagere 577 004

....Applicant

(By Advocate Shri T.C. Govindaswamy - through video conference)

Vs.

1. Union of India
Represented by the General Manager,
South Western Railways,
Headquarters Office, Hubli 580 020
Dharwar Dt., Karnataka.

2. The Senior Divisional Personnel Officer,
South Western Railway,
Divisional Office,
Mysore Division,
Mysore 570 001Respondents

(By Shri J. Bhaskar Reddy, Railway Standing Counsel - through video conference)

ORDER

PER: SURESH KUMAR MONGA, MEMBER (J)

The original applicant has filed the Review Application making therein a prayer for recalling the order dated 04.03.2020 vide which the Original Application was dismissed by this Tribunal. Along with the Review Application, a Miscellaneous Application has also been filed for condonation of delay of 116 days in filing the said Review Application. On 06.11.2020, notice was given to the respondents only in the said Miscellaneous Application.

2. The respondents by way of filing a joint reply to Miscellaneous Application have joined the defence and have opposed the prayer made therein.

3. Shri J. Bhaskar Reddy, learned counsel for the respondents, raised a preliminary objection and submitted that the Miscellaneous Application for condonation of delay in a Review Application cannot be maintained in view of the provisions of Rule 17 (1) of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter called as the '1987 Rules'). Learned counsel argued that no application for review of an order passed in the

Original Application can be entertained unless it is filed within a period of 30 days from the date of receipt of a copy of the order sought to be reviewed. To buttress his arguments, learned counsel further submitted that there is no provision in the Administrative Tribunals Act, 1985 (hereinafter called as the '1985 Act') read with the '1987 Rules' which may empower this Tribunal to condone the delay in filing the Review Application if it is not filed within the prescribed period of limitation. In order to strengthen his argument, learned counsel placed reliance upon a judgment of the Hon'ble High Court of Andhra Pradesh in **G. Narasimha Rao vs Regional Joint Director of School Education, Warangal** 2003 SCC Online AP 1068 wherein it has been held that this Tribunal has no power and authority to condone the delay in filing the Review Application. Learned counsel further relied upon a judgment rendered by the Principal Bench of this Tribunal on 27.11.2014 in RA No. 216/2014 in OA No. 3922/2013 **R.S. Sehrawat vs Union of India**. In the said judgment, it was held that this Tribunal has no power to condone the delay in filing the Review Application. To the same effect is another judgment dated 12.03.2019 cited by learned counsel for the respondents in MA No. 194/2012 in RA No. 16/2012 in OA No. 14/2005 **N.K. Purohit vs Union of India** rendered by Jodhpur Bench of this Tribunal. Learned counsel still further relied upon a recent judgment of Bangalore Bench of this Tribunal in the matter of **K. Chandrashekhar and others vs Union of India** (RA No. 170/41/2020 decided on 05.02.2021)

4. On the other hand, learned counsel for the review applicant submitted that this Tribunal has ample power and authority to condone the delay in

filings the Review Application. In support of his argument, learned counsel placed reliance upon the following judgments:

(a) A Full Bench of the Hon'ble High Court of Orissa at Cuttack in Writ Petition (C) No. 5738/2008 **Akshaya Kumar Parida (Dead) and after him Manoj Kumar Parida & Others vs Union of India & others** decided on 03.02.2015. In the said case, the Hon'ble High Court of Orissa has held that in view of the provisions of Section 29 (2) of the Limitation Act, 1963 (hereinafter called as the '1963 Act'), this Tribunal has the jurisdiction to entertain the application for condonation of delay filed under Section 5 of the said Act. Rule 17 of the '1987 Rules' does not take away the jurisdiction of the Tribunal to entertain and dispose of the application under Section 5 of the '1963 Act', since the applicability of the said Section has not been expressly excluded thereby.

(b) A Full Bench of the Hon'ble High Court of Kerala at Ernakulam considered the issue in ZIA. 210/2018 in O.P.(Kat) No. 87/2018 **Haris K.M. and Ors vs Jahfar K** 2021 (1) SCT 154. After elaborate discussions, their Lordships of the Hon'ble High Court of Kerala have held that an application under Section 5 of the '1963 Act' for condonation of delay in preferring a Review Application is maintainable before this Tribunal.

(c) A Full Bench of five Hon'ble Members of the Principal Bench of this Tribunal in the matter of **Raghava Reddy vs Union of India and others** 2010 (1) SLJ (CAT) has also held that in the light of the scheme of '1985

Act', this Tribunal has the power to condone the delay in filing the Review Application on sufficient cause being shown

5. We have considered the rival contentions of learned counsels for the parties on the issue of maintainability of the Miscellaneous Application for condonation of delay in filing the Review Application.

6. On perusal of the relevant provisions relating to filing of Review Application before this Tribunal, we find that Section 22 of the '1985 Act' provides for procedure and powers of this Tribunal. The relevant part of Section 22 is reproduced here as under:

"22. Procedure and powers of Tribunals –

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) xxxxx

(3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

(a) xxxxx

(b) xxxxx

(c) xxxxx

(d) xxxxx

(e) xxxxx

(f) reviewing its decisions;

(g) xxxxxxx

(h) xxxxxxx

(i) xxxxxxx"

7. For giving effect to the provisions of the '1985 Act', the Central Government has framed the '1987 Rules'. Rule 17 of the '1987 Rules' deals with the application for a review. Sub rule 1 of the said Rule provides that no application for review can be entertained unless it is filed within a period of 30 days from the date of receipt of a copy of the order sought to be reviewed. It is this provision which is sought to be heavily relied upon by the respondents in furtherance of their objection with regard to maintainability of the Miscellaneous Application for condonation of delay.

8. A bare perusal of the provisions of Section 22 of the '1985 Act' would show that this Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908 and shall be guided by the principles of natural justice subject to the provisions of the said Act. However, in so far as the power of review is concerned, it is specifically provided therein that it shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908. Meaning thereby, this Tribunal has the power and authority to condone the delay caused in filing the Review Application. In our considered view, Rule 17 of the '1987 Rules' cannot override the provisions of Section 22 (3) (f) of the '1985 Act' in any manner as it is in the nature of supplemental only and cannot supplant the nature and character of the basic provisions of the section itself.

9. According to the provisions of Section 5 of the '1963 Act', any appeal or application can be accepted even after the limitation period to file the same is over if the appellant/applicant assures the Court that he has a sufficient cause for not being able to file the appeal/application during the period of limitation. If the Court is otherwise satisfied, such a delay in filing the appeal/application can be condoned irrespective of the party being a State or a private party.

10. The question which arises for our consideration is as to whether the provisions of Section 5 of the '1963 Act' would apply for review proceedings before this Tribunal or not. A perusal of Section 22 (3) (f) of the '1985 Act' leaves no manner of doubt that there is no negative clause in the said Section which may indicate that Section 5 of the '1963 Act' would not be attracted to the proceedings relating to review jurisdiction exercisable by this Tribunal.

11. A Co-ordinate Bench of this Tribunal at Jodhpur in MA No. 290/00261/2016 in RA No. 290/00020/2016 in OA No. 159/2013 **Union of India and others vs Hukam Singh** decided on 23.07.2019 has clinched the issue by holding that this Tribunal can condone the delay if it is satisfied that sufficient cause for not preferring an application within the time has been supplemented. The relevant part of the observations made by the Bench are reproduced here as under:

"11. On the other hand, Mr K.S. Yadav, learned counsel for the respondents relied upon the Full Bench judgments of Hon'ble High Court of Kolkata and Hon'ble High Court of Orissa in the case of Union of India & Anr. (supra) and Akshaya Kumar Parida (Dead)

(*supra*) wherein direct question with regard to the jurisdiction of this Tribunal to condone the delay in the event an application for review is filed beyond the prescribed period of limitation has been answered. In the case of *Akshaya Kumar Parida (Dead) (supra)*, the Full Bench of Hon'ble High Court of Orissa distinguished the decision of the Apex Court in the case of *K. Ajit Babu (supra)*, which has been relied upon by Mr S.K. Malik, counsel for the respondents, in the following manner:

21. Before parting with the case, we would like to observe that in *Smt. Kanchana Badaseth (supra)*, the Bench relied upon a decision of the apex Court in the case of *K. Ajit Babu (supra)*. In *K. Ajit Babu (supra)*, the short question arose for consideration was whether the application filed by the appellants under Section 19 of the Act was maintainable. The apex Court held that often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. In that context, the apex Court held that ordinarily, right of review is available only to those who are party to a case. It was further held that right of review is available if such an application is filed within the period of limitation on the grounds mentioned in Order 47 of the Code of Civil Procedure. Thus *K. Ajit Babu (supra)* cannot be understood as laying a law that the Tribunal is dehors of its power in entertaining an application for review filed beyond the prescribed period of limitation, if the same is accompanied by an application under Section 5 of the Limitation Act.

After distinguishing the judgment delivered by Hon'ble Supreme Court in *K. Ajit Babu's* case, the Full Bench of Hon'ble High Court of Orissa in the case of *Akshaya Kumar Parida (Dead) (supra)* held that :

22. The logical sequitur on the analysis made in the preceding paragraphs is that neither Section 22 of the Act nor Rule 17 of the Rules expressly excluded the applicability of Section 5 of the Limitation Act. In the event an application for review is filed beyond the period of limitation along with an application for condonation of delay and the applicant satisfies the Tribunal that he had sufficient cause for not preferring an application within the time, the Tribunal can condone the delay.

12. Accordingly, judgments of Full Benches of Hon'ble High Court of Orissa and Hon'ble High Court of Kolkata cited by Mr K.S. Yadav, learned counsel for the applicants are relevant law on the issue. Hence, the preliminary objection of maintainability of application for condonation of delay in Review Application filed under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 raised by Mr S.K. Malik, learned counsel for the respondent is overruled. In view of judgment of Hon'ble High Court of Orissa in the case of *Akshaya Kumar Parida (Dead) (supra)*, it is held that this Tribunal can condone the delay if it is satisfied that sufficient cause for not preferring an application within the time has been supplemented.”

12. Not only that, a Full Bench of the Hon'ble High Court of Kerala at Ernakulam in **Haris K.M. (supra)** has also settled the issue by observing that Section 22 (3) (f) of the '1985 Act' enables this Tribunal to have the same powers as are vested in a civil court under the provisions of the Code of Civil Procedure, 1908 for reviewing its decision and there is no exclusion of Section 5 of the '1963 Act' in the statute. The relevant observations made in the said judgment are reproduced here as under:

“20. A Full Bench of the Calcutta High Court has in the decision in **Union of India & others v. Central Administrative Tribunal and Another** reported in [2002 SCC Online Cal 597] held that the Central Administrative Tribunal can entertain a review petition beyond the period of 30 days. In arriving at the decision, the Full Bench has relied on the decision of the Hon'ble Supreme Court in **Mukri Gopalan v. Cheppilat Puthenpurayil Aboobacker** reported in [(1995) 5 SCC 5], wherein the Apex Court had held that as long as the principle Act does not exclude the application of Section 5 of the Limitation Act, a petition for condonation of delay is maintainable. The Full Bench held that there is no specific exclusion of the application of Section 5 of Limitation Act, in the Administrative Tribunals Act. As a matter of fact, Section 21 of the Administrative Tribunals Act provides for condonation of delay, for the purpose of filing an original application before the Tribunal. We also note that the same view was taken by a Full Bench of the Orissa High Court in the decision in **Akshaya Kumar Parida (expired) and others v. Union of India & others** reported in AIR 2015 Orissa 49. On a reading of Section 21 and Section 22 of the Administrative Tribunals Act, we are in respectful agreement with the Full Bench decisions of the Calcutta

High Court and the Orissa High Court and are of the opinion that the Administrative Tribunals Act does not exclude the application of Section 5 of the Limitation Act.”

13. Their Lordships of the Hon'ble High Court of Kerala have also dispelled the doubts about the issue that this Tribunal has no power to condone the delay in filing a Review Application created in view of a judgment of the Hon'ble Supreme Court in **Union of India and others vs Chitra Lekha Chakraborty** in Civil Appeal No. 6213/2008. It has been clarified by holding that the relevant provisions of Section 22 (3) (f) of the '1985 Act' were not brought to the notice of their Lordships of the Hon'ble Supreme Court. The relevant observations made in para 22 of the report reads thus:

“22. In our humble opinion, with all the respect at our command, we are of the considered view that the said judgment cannot be treated as a binding precedent since it falls under both the exceptions viz. per incuriam and sub silentio. We have already indicated the statutory provisions which govern the filing of a review petition before the Tribunal. The Hon'ble Supreme Court, in the aforesaid decision was not apprised of the statutory provisions, which relate to the power of review available with the Tribunal. In fact the application for review is not one filed under Rule 17 but under Section 22(3)(f) of the Administrative Tribunals Act. Section 22 of the Act which says that the Tribunal shall have the same powers as that of a civil court for reviewing its decisions was not considered. The provisions of the Civil Procedure Code and that of the Limitation Act, which governs the power of review were also not considered. Even if Rule 21 is to be treated as the specific provision prescribing limitation, the fact that the said prescription is subject to Section 29 of the Limitation Act was also not considered.”

14. Insofar as the earlier judgment of this Bench of the Tribunal in the matter of **K. Chandrashekhar (supra)** is concerned, a perusal of the said judgment reveals that the Full Bench judgment of the Hon'ble High Court of

Orissa in **Akshaya Kumar Parida** (*supra*) and the Full Bench judgment of the Hon'ble High Court of Kerala in the matter of **Haris K.M.** (*supra*) were not brought to the notice during the course of hearing of the said case. Even the Full Bench of five Hon'ble Members of the Principal Bench of this Tribunal in the matter of **Raghava Reddy** (*supra*) was also not brought to the notice of this Bench. Therefore, the view taken in the matter of **K. Chandrashekhar** cannot be relied upon.

15. In the conspectus of discussions made hereinabove, the preliminary objection with regard to maintainability of the Miscellaneous Application for condonation of delay in filing the Review Application is overruled. It is thus held that this Tribunal can condone the delay in filing the Review Application if it finds the sufficient cause for not preferring the Review Application within the prescribed period of limitation.

16. Coming to the merits of the Miscellaneous Application No. 170/00377/2020 whereby the applicant is seeking condonation of delay of 116 days in filing the Review Application, admittedly the Review Application was required to be filed on or before 05.06.2020, the period during which the whole of the nation was reeling under the menace of COVID 19 pandemic which restrained the applicant to approach his counsel at Bangalore in order to prefer the Review Application before this Tribunal. We are, therefore, satisfied that there are sufficient grounds to condone the delay of 116 days in filing the Review Application.

17. Accordingly, the Miscellaneous Application No. 170/00377/2020 is allowed and the delay of 116 days in filing the Review Application is hereby condoned.

18. List the Review Application for hearing on 01.09.2021.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ksk/