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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Misc.Appln.No.4 of 1987

In

Registration O.A. No.178 of 1986

Mukhtar Ahmad Ansari Applicant

Versus

Union of India through Development
Commissioner for Handicrafts, New
Delhi. Respondent

Hon.Mr.D.K.Agrawal, J.M.

Hon.Mr. K.Opayya, A.M.

(By Hon.Mr. D.K.Agrawal, J.M.)

This is a restoration application dated 3.3.87.

The prayer is that the order dated 9.7.86 passed in
O.A. No.178 of 1986 Mukhtar Ahmad Ansari Vs. Union of
India be set aside and case restored to its original
number and disposed of after hearing the applicant.

2. The facts are that the applicant or his
counsel was absent on 9.7.86. The Bench after perusal
of the record dismissed the claim petition on merits.
The claim petition was filed against the order of
termination dated 5.10.1982. No appeal was filed
against the order of termination. The claim petition
was filed on or about 6.5.1986. Therefore the petition
was dismissed on two grounds, firstly that the petition
was filed without exhausting the departmental remedy
as provided for under Section 20 of the Administrative
Tribunals Act, 1985 and secondly that the claim petition
was barred by time within the meaning of Section 21 of
the aforesaid Act. The application for condonation of
delay was also considered by the Bench but rejected on
the ground that the cause of action had ^{arisen} ~~a season~~ before
1.11.1985. Therefore the Tribunal had no power to

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condone the delay. On merits also, the condonation application was not found to contain sufficient reason for condonation of delay.

3. The question before us is whether the case can be restored after enactment of proviso to Rule 15 of the Central Administrative Tribunals (Procedure) Rules, 1987 which reads inter alia as follows :-

" Provided, however, where the case was disposed of on merits the decision shall not be reopened except by way of review".

The learned counsel for the applicant vehemently contended that the proviso was added on 15.1.87. Therefore the case is covered within the meaning of Rule 15 as it stood earlier. Agreeing with the proposition, we have carefully perused the provision of Rule 15 of Central Administrative Tribunals (Procedure) Rules, 1987 which reads as under :-

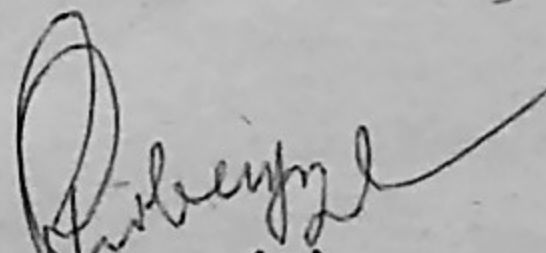
" Action on application for applicant's default-
(1) Where on the date fixed for hearing on the application or on any other date for which such hearing may be adjourned, the applicant does not appear when the application is called on for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

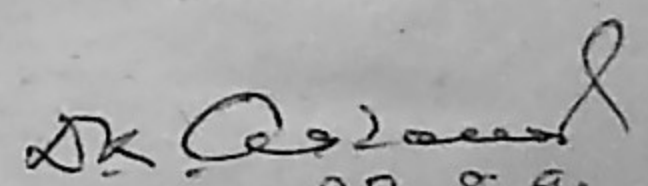
(2) Where an application has been dismissed for default and the applicant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called on for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same."

4. The above rule, as it stood earlier, contains a provision for restoration only when an application has

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been dismissed for default. It does not provide for restoration of application which has been decided on merits. Sub Rule 1 of Rule 15 quoted above only confers the discretion in the Tribunal to either dismiss the application for default or hear and decide on merits. It implies that once an application has been decided on merit, the judgement becomes final. Thus, where if an application has been decided on merit prior to introduction of proviso, the applicant has no remedy to seek a review of the final order. However, after the addition of the proviso an application for review is maintainable. Thus in our considered opinion, the order dated 9.7.86 has become final. The Tribunal has no jurisdiction to set aside the said order as prayed for. Consequently, this application is liable to be dismissed and is dismissed accordingly.


Member (A)


23.8.91
Member (J)

Dated the 23rd Aug., 1991

RKM