

M.A. 3772/01

in

O.A. NO.382/95

10.12.01.

HON. MR. HAFIQUDDIN, J.M.

H.P. Pandey, Counsel for applicant and Sri A.V. Srivastava, Counsel for the respondents.

2. M.A. 3772/01 has been moved by the applicant for condoning the delay and in filing the application and to recall the order dated 7.9.2000, 28.7.2000 and 8.12.2000 and to restore the case to its original number and to decide the case on merits after hearing the case. The application has been submitted with an affidavit of the applicant.

3. It may be stated that this O.A. was dismissed vide order dated 7.9.99 and not vide order dated 7.9.2000 as mentioned in the application. The restoration application moved by the applicant was also dismissed vide order dated 28.7.2000 with the observation that the restoration application was beyond the period of limitation and there was no prayer for condoning the delay nor there was any explanation for condoning the delay. The applicant moved another application for setting aside the order dated 7.9.99 as well as order dated 28.7.2000 through which the restoration application was dismissed. This tribunal vide order dated 18.12.2000 again dismissed the aforesaid application with the observation that since only one application was moved for recalling two orders viz. dated 7.9.99 as well as 28.7.2000, the same was not maintainable because two distinct orders passed separately cannot be impugned which were passed under the different provisions.

4. Now the present application has again been moved for recalling the three orders mentioned above. Learned Counsel for the applicant has brought to my notice the order dated 3.9.01 which is as under :-

"Put up for orders on 27.9.01. Sri A.V. Srivastava for the respondents is directed to remain prepare on that date with service records of the applicant so as if the case is restored it may be finally heard also.

Copy of this order be given to Sri A.V. Srivastava."

It is urged that the order indicates that the case was to be decided on merits after restoring the same. However, I do not agree with this contention because there is no indication in the order that the O.A. will be restored. It merely mentions that in case the O.A. is restored, the case may be heard also. Obviously it was a conditional order.

5. As regards the merit of the application, it is clear that a joint application has been moved for recalling three orders as indicated above. Earlier, restoration applications have already been dismissed being not maintainable and barred by time. The present application is, therefore, misconceived and is dismissed.

*Ram Narayan*

J.M.

Asthana/