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OA No. 218/2009

A.K.Bhoi Applicant
Versus
Union of India and Ors Respondents

1. Order dated 28.05.2009.

In the present Original Application, the Applicant who was working as Upper Division Clerk under the Income Tax Department at Rourkela Circle, Rourkela was proceeded with disciplinary action due to his unauthorized absence from duty for which he was dismissed from service by the order of the Additional Commissioner of Income Tax, Rourkela Range Rourkela vide order under Annexure- A/1 dated 11.8.2006. It is the case of the Applicant that on account of his suffering he could not prefer the appeal on time. However, he preferred the appeal to the Commissioner of Income Tax, Sambalpur being his Appellate Authority under Annexure-A/2 dated 08.09.2008, along with an application for condonation of delay under Annexure-A/3. But the Appellate Authority without taking note of the grounds taken in his petition for preferring the appeal belatedly rejected his appeal on the ground of delay in making such appeal under Annexure-4 dated 23rd October, 2008 in an unreasoned order even without going to the merit of the matter. This he challenges in this Original Application filed under section 19 of the A.T.Act, 1985 seeking the following relief.

- “(i) This Hon’ble Tribunal may graciously be pleased to allow the Original Application and upon hearing the parties to may be set aside the order dated 23.10.2008 under Annexure-4 passed by the respondent No.2.
- (iii) And the respondent No.2 may be directed to reconsider the appeal memo filed under rule 23 of

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Central Civil Services (CC&A) Rules, 1965 on merit after condoning the delay.”

2. Having heard rival submission of the parties perused the materials placed on record. Learned Counsel appearing for the Respondents submitted that as per the rules appeal ought to have been preferred by the applicant within a period of 45 days of the order of punishment. Since the appeal was preferred by the applicant after near about two years of the order of punishment, it was rightly rejected by the Appellate Authority which needs no interference.

3. I appreciate the submission made by the Learned Counsel for the Respondents. But this submission would have been accepted in law had the Appellate Authority taken into consideration the grounds taken by the Applicant and then rejected the appeal on the ground it has been done. It is seen that the appellate authority rejected the appeal of the Applicant vide order under Annexure-4 dated 23rd October, 2008 stating as under:

“Please refer to your application dated 02.09.2008 received in this office on 08.09.2008 on the above subject. After careful consideration it seems that your petition for condonation of delay is more than two years and is not found to be satisfactory.

Hence, your petition is hereby rejected. This is for your information.”

4. Similar question came up for consideration in the Division Bench of this Tribunal in OA No. 736 of 2006 (Pranab Kumar Jena v Union of India and others). The Division Bench of this Tribunal held as under:

“7. In the light of the above discussion, since merit of the matter has not been considered by the authorities on the revision/mercy petition filed by the


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Applicant especially when the applicant has been visited with the punishment of removal from service which has direct nexus with Article 21 of the Constitution of India, the order under Annexures-A/3 & A/4 are hereby quashed and the matter is remitted back to the Respondent No.2 to consider and dispose of the revision/mercy petition of the applicant on merit, without being influenced by the stand taken in the counter, in a reasoned order within a period of 90(ninety) days from the date of receipt of this order and communicate the result thereof to the applicant within a period of 15(fifteen) days thereafter. There shall be no order as to costs."

5. In view of the above, I find that the order of rejection of the appeal of the Applicant under Annexure-4 dated 23rd October, 2008 is not sustainable in the eyes of law. Hence issuing of notice may cause more delay which would go against the interest of both sides. Therefore, as agreed to by both the Counsel, without expressing any opinion on the merit of the matter, the order under Annexure-4 is hereby quashed. The matter is remitted back to the Appellate Authority for considering the appeal of the Applicant **on merit** within a period of 60 (sixty) days from the date of receipt of this order and communicate the result thereof to the Applicant.

6. OA is accordingly disposed of at the admission stage. No costs.

7. Send copies of this order along with OA to all the Respondents. Free copies of this order be given to Learned Counsel for both sides.


(C.R. MOHAPATRA)
MEMBER (ADMN.)