

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Review Application No.332/00042 of 2014

with

M.P. Application No.332/02037 of 2014

with

M.P. Application No.332/02038 of 2014

with

M.P. Application No.332/02039 of 2014

in

Original Application No. 497 of 2012

Date of order : 29-09-2014

CORAM :

HON'BLE MS.JAYATI CHANDRA, MEMBER(A)

HON'BLE SHRI M.NAGARAJAN, MEMBER (J)

1. Secretary, Ministry of Road Transport and Highways, Transport Bhawan, Parliament Street, New Delhi.
2. National Highways Authority of India, G-5 & 6, Sector 10, Dwarka, New Delhi through its Chairman.
3. Regional Office/National Highways Authority of India, Gomti Nagar, Lucknow.**Applicants**

By Advocate: Shri Sudhir Pratap Singh

Versus

Mukul Saxena, Aged about 49 years, S/o. Sri SMS Saxena, resident of 121, Balaganj Railway Cooperative Colony, Jal Nigam Road, Balaganj, Lucknow, working as Manager (Technical), National Highways Authority of India at Lucknow.

....**Respondents**

ORDER BY CIRCULATION

Per: Hon'ble Shri M.Nagarajan, Member (J)

The present review application is filed by the applicant seeking review of the order dated 16-4-2014 in O.A. No.497 of 2012. The review applicants are the respondents in the said

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O.A.No.497 of 2012. The grievance of the applicant in the said O.A.No.497 of 2012 is as to the action of the respondents therein (applicants in the RA) denying absorption in NHAI and sought a writ of mandamus to absorb him in NHAI in the post of Manager (Technical) as per rules without taking into consideration downgraded entries in his service record for the part of the year 2011-12 with effect from the date the persons similarly situated were absorbed i.e. on 23-11-2012. The relief sought by the applicant in the said O.A.No.497 of 2012 was granted by the order under review. The operative portion of the order under review dated 16-4-2014 reads as under :

“27. We, therefore, come to conclusion that there is merit in the claim of the applicant that he is entitled to be absorbed in NHAI in the post of Manager (Tech.). Accordingly, the Original Application succeeds and is allowed. We direct the respondents to hold a review Selection Committee meeting to review the decision of the Selection Committee held on 25.10.2012 and consider the case of the applicant for absorption in the post of Manager (Tech.) in NHAI afresh in the light of the observations made and the findings given hereinabove. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Under the circumstances, there shall be no order as to costs.”

The order under review is dated 16-4-2014. The present review application was presented in the Registry of the Tribunal on 05-9-2014.

2. Section 22 of the Administrative Tribunal Act, 1985 deals with the procedure and powers of the Tribunal. As per sub-section (3) of section 22 of the Administrative Tribunals Act, the Tribunal shall have all the powers of a civil Court under the Code of Civil

Procedure, 1908 for the purpose of reviewing its decision. Sub-section (3) of section 22 reads as under :

"22. (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) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence of affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning and public record or document or copy of such record or document from any office;*
- (e) issuing commissions for the examination of witnesses or documents;*
- (f) reviewing its decisions;*
- (g) dismissing a representation for default or deciding it ex- parte;*
- (h) setting aside any order of dismissal of any representation from default or any order passed by it ex parte; and*
- (i) any other matter which may be prescribed by the Central Government."*

(underlining by us)

3. Rule 17 of the Central Administrative Tribunal (Procedure)

Rules, 1987 deals with an application for review. Sub rule (1) of the said Rule 17 prescribes the time limit within which an application for the review can be entertained by the Tribunal and the same reads as under :

"17. Application for review. – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

In view of the time limit prescribed under sub rule (1) of Rule 17, the review applicants ought to have presented the review application within thirty days from the date of receipt of a copy of the order dated 16-4-2014 in O.A. No.497 of 2012.

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4. We have perused the affidavit of the applicant in support of his prayer to condone the delay in filing this review application. The application for condonation of delay does not mention the total number of days which are required to be condoned in view of the time limit prescribed under the said Rule 17. The affidavit in support of the prayer for condonation of delay also does not contain the information as to the date on which the review applicants were in receipt of the order under review. On a perusal of the documents annexed to the application to condone the delay, we find that the certified copy must have been served on the counsel for the review applicants well in advance before 19-4-2014 for the reason in the letter dated 19-6-2014 (Annexure 4), it is mentioned that legal opinion was furnished on 19-4-2014. In view of this fact it is to be presumed that the said copy was served upon the applicant prior to 19-4-2014. Hence, in view of the time limit prescribed under sub rule (1) of Rule 17 of the CAT (Procedure) Rules, review application should have been presented on or before 19-5-2014, but as already observed review application was presented before the Tribunal on 05-9-2014. Thus, there is delay in preferring the review application and the fact is an admitted one.

5. Now the question before us is that whether the delay in preferring the review application can be condoned? On examination of the issue that whether the delay in filing the review

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application can be condoned, we are bound to refer to the full bench judgment of the Hon'ble High Court of Andhra Pradesh in the case of *G.Narasimha Rao v. Regional Joint Director of School Education, Warangal & Ors.* reported in 2005(4)SLR 720. The relevant portion of the said judgment is reproduced hereunder :

"The short question, which is of general importance, that arises for our consideration is whether the State Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 ('the Act' for brevity) has jurisdiction to condone the delay in filing the review petition, notwithstanding the negative language voiced in Rule 19 of A.P. Administrative Tribunal (Procedure) Rules, 1989....."

4. *Challenging the order in recalling the judgment in R.P.No. 22397 of 1989 dated 23-9-1993 petitioner filed the present writ petition. When the writ petition was taken up for hearing, the learned Division Bench of this Court comprising of Justice Bilal Nazki and Justice D.S.R. Varma referred the matter to the Full Bench in view of negative language voiced in Rule 19 of the Rules and the question had caught the attention of the Full Bench in which one of the learned Judges Justice S.B. Sinha, Chief Justice as he then was, was of the view that Section 5 of the Limitation Act would apply even in relation to matters which are not covered by Section 21 of the Act, but the two learned Judges Justice S.R. Nayak and Justice G. Raghuram though that it was not necessary in that case to consider the question as they found that the delay condoned by the Tribunal could have not been condoned.*

5. *That is how the matter is posted before the Full Bench....."*

The full bench of the Hon'ble High Court of Andhra Pradesh after referring to section 22(3)(f) of the Administrative Tribunals Act, 1985 and Rule 19 of the Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 answered the question before it as under :

"13. Rule 19 is couched in negative form and disables the person from seeking review under Section 22(e)(f) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay under Section 21 of the Act is applicable only to the applications filed under Section 19, but the same cannot be made applicable to the review sought under Section 22(3)(f). Sub-section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal, namely

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that the power of the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Government. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the premise that Limitation Act is made applicable in view of Sub-section (2) of Section 29 of the Limitation Act.

14. In the view we have taken, we answer the reference holding that the Administrative Tribunals Act and the Rules made thereunder are impliedly infer that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either Sub-section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act.”

6. Rule 17(1) of the CAT (Procedure) Rules, 1987 is in pari-materia with Rule 19 of the Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989. Rule 17(1) of the CAT (Procedure) Rules, 1987 reads as under :

“17. Application for review. – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.”

A reading of Rule 19 of Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 makes it clear that the same is nothing but reproduction of Rule 17(1) of CAT (Procedure) Rules, 1987. Both the rules are akin to each other. The only difference is from which date the period of thirty days requires to be computed. In the CAT (Procedure) Rules it is from the date of receipt of copy of the order, whereas in the Andhra Pradesh Administrative Tribunal (Procedure) Rules it is from the date of the order. Hence, the above decision of the Hon'ble Andhra Pradesh High Court is applicable to CAT (Procedure) Rules also.

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7. In view of the time limit prescribed under Rule 17 of the Central Administrative Tribunals (Procedure) Rules, 1987 and the law declared by the full bench of the Hon'ble High Court of Andhra Pradesh in *G.Narasimha Rao (supra)*, we have no jurisdiction to condone the delay in preferring the review application.

8. Since it is declared by the full bench of the Hon'ble High Court of Andhra Pradesh that the Tribunal has no jurisdiction to condone the delay in preferring the review application the question of examining whether the order dated 16-4-2014 in O.A.No.497 of 2012 requires to be reviewed or not and that the same requires to be stayed as prayed in M.P. Application No.332/02038 of 2014 does not arise.

9. For the foregoing reasons, M.P. Application No.332/02037 of 2014 is dismissed on the ground that the Tribunal has no jurisdiction to condone the delay and Review Application No.332/00042 of 2014 is rejected on the ground that the same is not filed within thirty days from the date of receipt of a copy of the order dated 16-4-2014 in O.A.No.497 of 2012.

10. Under the circumstances, there is no order as to costs.

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M.Nagarajan
Member(J)

J. Chandra
(Jayati Chandra)
Member(A)

copy to file
dated 29-9-14
prop card
09-10-14