

Central Administrative Tribunal Lucknow Bench Lucknow

R.A. 14/2006 in O.A. No. 52/1998

This, the ^{7th} 04 day of January, 2009

Hon'ble Mr. M. Kanthaiyah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

Motilal aged about 46 years son of Sri Sekhai, resident of Village Dhaurahara, Pargana- Kothua Khurd, District- Sultanpur.

Applicant.

By Advocate : Sri D.Sinha

Versus

1. Union of India through Secretary, Ministry of Telecommunication, Department of Posts, New Delhi.
2. Superintendent of Post Offices, Sultanpur Division, Sultanpur.
3. Sub- Divisional Superintendent of Post Offices, South Sultanpur.
4. Chandra Bhawan Gupta, son of Jamuna Prasad Gupta, resident of Village and Post - Narharpur (Lambhua), District- Sultanpur.

Respondents.

By Advocate : Sri K.K.Shukla

ORDER

By Hon'ble Mr. M. Kanthaiyah, Member (J)

The applicant has filed the petition under section 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for review of judgment and order dated 12.7.2005 passed in O.A. No. 52 of 1998 on the ground that there was error on record by holding that the post of EDMP was meant for S.C. category candidate without referring to the requisition as contained in Annexure No. 9 and the Tribunal dismissed the O.A. on wrong presumption that the post in question was EDBPM but the fact remains that the post in question is EDMP and the essential qualification for appointment on the post of EDMP/EDDA is class VIII. He filed the application along with an M.P. 588/2006 for condonation of delay in filing the review on the ground that there was delay in filing the review application. The applicant filed the review application along with M.P. on 3.3.2006.

2. The respondents have filed counter denying the claim of the applicant and for dismissal of the same.

3. Heard both sides.

4. The admitted facts of the case are that the applicant filed Original Application seeking direction to the respondents for appointing him on the post of Extra Departmental Mail Peon (EDMP) , Narharpur, Sultanpur giving him preference as he belong to Scheduled caste and also questioned the validity of selection and appointment of Respondent No.4 vide order dated 24.12.1997 but the O.A. was disposed of on 12th July, 2005 by invoking rule 15 of the CAT (Procedure) Rules, 1987 as none appeared on behalf of the applicant. The O.A. was dismissed on merits. Thereafter, the applicant has filed the present review application on 3.3.2006 i.e. after more than 7 months of the order of the Tribunal. He also filed the application for condonation of delay on the ground that there was delay in filing the review application without assigning any reason.

5. As per rule 17 of the CAT (Procedure) Rules, 1987, time stipulated for filing the review application is only 30 days from the date of supply of copy of the order and there is no provision for extension of time by way of condonation of delay.

6. This Bench has consistently taken the view, following the judgment of Andhra Pradesh High Court (Full Bench) in the case of G. Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others reported at 2005 (4) SLR page 720 that it did not have the powers to entertain an application filed beyond the limitation period. The Hon'ble Andhra Pradesh High Court has cited the decision of Hon'ble Supreme Court in K. Ajit Babu and others Vs. Union of India and others reported at (1997) 6 Supreme Court Cases, 473 in which it was held that the right of review is only available to the aggrieved persons on restricted grounds mentioned in Order

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47 of the Code of Civil Procedure if filed within the period of limitation.

The relevant extract of this judgment is given below:-

“.....The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the Tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted then proceedings in a case will never come to an end. We, therefore, find that a right of view is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation.”

After examination of the entire issue with reference to the relevant provisions including Section 5 and 29 (2) of the Limitation Act, the Hon'ble A.P. High Court has held as under:-

“13. Rule 19 is couched in negative form and disables the persons 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 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.

7. The Andhra Pradesh High Court examined Rule 19 of the Andhra Pradesh State Administrative Tribunal's Rule 1989 which is analogous to provisions of Rule 17 of CAT (Procedure) Rules, 1987 under consideration in the present case. The Hon'ble High Court of Andhra Pradesh took the following view:-

“In the view we have taken, we answer the reference holding that the Administrative Tribunal Act and the Rules made there

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under 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.

8. In view of the above circumstances, the application for review of the order dated 12.7.2005 is not at all maintainable in view of the delay in filing the review application. Thus, the M.P. No.588/2006 for condonation of delay in filing the review application is dismissed as not maintainable and as such review application is rejected.

A.K. Mishra 4/2/09
(DR. A. K. Mishra)
Member (A)

HLS

M. Kanthaiah
(M. Kanthaiah)
Member (J)

04.02.2009