

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00045/2014 in O. A. No.4/2008

This the 13th day of October, 2014.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. Director General of Posts, Govt. of India, Ministry of Communication, Department of Posts, New Delhi.
3. Chief Post Master General, U.P. Circle, Lucknow.

Applicant

By Advocate: Sri Rajendra Singh

Versus

Nand Lal Kushwaha son of late Sri Ram Badan resident of village and Post office Kanta, District- Chandauli.

Respondents

ORDER (Under Circulation)

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

1. The present Review is preferred by the applicant under Section 22 (3)(f) of the A.T. Act, 1985 for reviewing of order dated 31.3.2014 passed in O.A. No. 4/2008 whereby the Tribunal disposed of the O.A. with direction to the respondents that in pursuance of the direction of the Hon'ble High Court, the respondents have already passed an order dated 21.12.2006, as such, it is expected that the respondents will pass an order giving notional promotion to the applicant to P.A. Group 'B' cadre w.e.f. 29.11.1995 with all consequential benefits admissible to him under the law. The learned counsel for the applicant has also indicated that order for fixing of pay of applicant w.e.f. 1.2.1996 instead of 29.11.1995 was modified vide office order dated 15.3.2007 at the request of the applicant himself as such, the pay cannot be refixed as per extant instructions and

guidelines of DOP&T on the subject. Apart from this, it is also indicated by the learned counsel for the applicant that the order for fixing of pay of the applicant on adhoc appointment/promotion are made only in rare cases and for exigency of work where the post cannot be kept vacant until regular candidate becomes available and for adhoc promotions at a particular time. While deciding the O.A., it is indicated by the learned counsel for the applicant that the applicant was working in the respondents organization superannuated on 31.5.2006 and the applicant was served with the charge sheet which was challenged before the coordinate bench of this Tribunal at Allahabad and the Tribunal issued a direction to convene a meeting of review DPC to consider the applicant for promotion in Group B along with his juniors and if he is found fit, he should be given promotion w.e.f. the date his juniors were promoted and the Hon'ble High Court modified the said orders and after the said modification by the Hon'ble High Court, the respondents have passed the order on 21.12.2006 whereby it is categorically indicated by the respondents that the applicant may be promoted to the post of P.S. Group 'B' notionally w.e.f. 29.11.1995. Learned counsel for the O.A. applicant has categorically submitted while arguing the O.A. that the respondents have not passed any orders giving the benefit to the applicant notionally to the post of P.S. Group 'B' w.e.f. 29.11.1995 as per the orders issued by the respondents themselves.

2. The facts and grounds which are mentioned in the present Review Application has already been adjudicated by the Tribunal in the O.A. , as such by means of the present Review

Application, the applicant wants to re-open the present O.A., which is not permissible.

3. The said review application is preferred by the applicant on 12.9.2014 and as per the judgment receipt register of the judicial Section of the Tribunal, the copy of the aforesaid order was obtained by the review applicant (respondent in O.A.) on 3.4.2014. Therefore, it is clear that the O.A. was decided on 31.3.2014 and copy of the order was obtained by the respondents on 3.4.2014 whereas the review was filed on 15.9.2014 as such, same has been filed beyond 30 days from the date of receipt of certified copy of order sought to be reviewed as prescribed under Rule 17(1) of the CAT (Procedure) Rules, 1987 which is as under :-

"Rule 17(1):- No application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed."

4. In the case of **K.Ajit Babu Vs. Union of India 1997 (6) SCC 473 (para 4)**, while examining the provisions of Section 22(3)(f) of the AT Act and Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, the Hon'ble Apex Court laid down that right of review is available to the aggrieved person on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came up before the Full Bench of Andhra Pradesh High Court in the case of **G.Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others -2005(4) SLR 720.** The matter was also examined by the Full Bench with reference to Section 22(3)(f) of the AT Act, 1985 and other relevant provisions of the CAT (Procedure) Rules, provisions of the Limitation Act etc. and it was held that a Tribunal has no

jurisdiction to condone the delay in filing the Review Application. It was laid down 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. It may be mentioned here that provisions of Rule 19 of A.P. Administrative Tribunal (Procedure) Rules, 1989 which are similar to above Rule 17(1) of CAT (Procedure) Rules, 1987 were also considered which are as under:-

" No application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed."

5. The significant paragraphs of the above case law are extracted herein below:-

"11. Even assuming that the Limitation Act is not expressly excluded by the Administrative Tribunals Act or the Rules made thereunder, we have to see whether the scheme of the special law i.e. in this case Administrative Tribunals Act/Rules and the nature of remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern all the matters provided by it. If on an examination of the relevant provisions, it is found that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act and the Rules made thereunder. In our view, even in case the Act/ Rules do not exclude the provisions of Section 4 to 22 of Limitation Act by an express reference, it would nonetheless has to be examined whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the Act/ Rules exclude their operations. The provisions of Section 3 of the Limitation Act envisage that a suit instituted appeal preferred and application made after the prescribed period shall be dismissed. Whereas Rule 19 of the Rules which gives an pre-emptory command that no application for review shall be entertained unless it is filed

within thirty days from the date of the date is of which the review is sought.

12. Even otherwise the provisions of the Limitation Act which unless expressly excluded would be attracted can be made applicable to the nature of the proceedings under the Act/Rules, but the same is not what Section 29(2) of the Act says because it provides that Section 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. If none of them are excluded all of them are applicable whether those sections are applicable or not is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. Section 6 of the Limitation Act, which provides for the extension of the period of limitation till after the disability in the case of a person who is either minor or insane or an idiot, is inapplicable to the proceedings under the Act/ Rules. Similarly, section 7 to 24 are in terms of inapplicable to the proceedings under the Act, particularly in respect of filing of applications and the procedure to be followed under the Act/Rules. The applicability of those provisions has, therefore, to be judged not from the terms of Limitation Act but by the provisions of the Administrative Tribunals Act, 1985 and the Rules made thereunder relating to the filing of original applications and review applications and their disposal to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of the Act.

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 shall be guided by the principles of natural justice and of any rules made by the Central Govt. 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 Tribunal 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. Thus, 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 without any limitation then no decision would be final because 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. Therefore, the public policy demands that there should be an end of legal cases.

7. In view of the above, this Tribunal finds itself handicapped in condoning the delay and entertaining the review application. It is therefore, rejected.

J. Chandra
(Jayati Chandra)
Member (A)

U. R. Agrawal
(Navneet Kumar)
Member (J)

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