

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHR.A.NO.: 4 OF 2007

[Arising out of OA 342 of 2005]

[Patna, this Thursday, the 5th Day of April, 2007]C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

1. Smt. Lalita Mishra, W/o Late Bhuvan Mohan Mishra, resident of House No. 1/E-107, New Patliputra Colony, Patna-800 013.
2. Vijant Kumar Mishra, S/o Late Bhuvan Mohan Mishra, resident of House No. 1/E-107, New Patliputra Colony, Patna-800 013.

.....APPLICANTS.By Advocate :- Shri A.N.Jha.

Vs.

1. Union of India through the Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi-110 001.
2. The Controller General of Defence Accounts, West Block-5, R.K.Puram, New Delhi-110 066.
3. The Central Defence Accounts, Office of C.D.A., Patna-800 019 [Bihar].
4. The Senior Accounts Officer [AN], Office of CDA, Patna-800 019 [Bihar].

.....RESPONDENTS.By Advocate :- N o n e.ORDER PASSED BY CIRCULATION

Justice P. K.Sinha, V.C.:- This is an application for review of the order recorded by this Tribunal in M.A. 258 of 2005 relating to OA 342 of 2005, dated 08.05.2006. The applicants had filed application for appointment on compassionate ground of applicant no.2, Vijant Kumar Mishra, whose father is said to have taken voluntary retirement w.e.f. 16.10.1998 on medical



grounds. This Tribunal not only considered the M.A. for condonation of delay in filing the OA but in that context also considered in brief the facts as brought out in the OA. This was so because in a number of cases the Courts/Tribunals have allowed an application for condonation of delay even for a considerable period, if the facts of the OA/petition were such as rejecting the OA/petition on the technical ground of limitation would have resulted in miscarriage of justice.

2. While mentioning that in the M.A. no cogent ground was provided for such a long delay, this Tribunal also had observed, in the order under review, about merits of the case, that under rules an employee who had been declared medically incapacitated and retired on that ground had the privilege of his dependent being considered for appointment on compassionate ground, but a case in which an employee had taken voluntary retirement though basing that on medical ground, without facing a medical board, the situation was altogether different. It was noticed that the employee with such voluntary retirement would get all his retiral benefits and would also enjoy pension. If such an employee expired while under retirement, that would also not entitle his ward to seek employment on compassionate ground.

3. This Tribunal also had observed that by delaying the filing of application for a longer period the applicants also had been guilty of laches. Appointment on compassionate ground has to be sought immediately on death in harness of an employee as such an appointment is meant to bring immediate succour to the bereaved family. Even if an employee in case of being declared medically unfit by the department on his medical examination, then also such

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an application has to be made in right earnest.

4. This Tribunal also had pointed out in the order that subsequent correspondences to, and in between, Central Ministers in that regard would not extend the period of limitation which is guided only by the provisions of Section 21 of the Administrative Tribunals Act.

5. Some decisions were cited at the time of hearing of the M. A. along with OA aforesaid, but this Tribunal had noted that in such cases if compassionate appointment was ordered to be considered or if limitation was condoned, those were under the specific circumstances appearing in each individual case and could not be taken to be laying down a ratio to be followed in every case. In the R.A. also, on behalf of the applicant certain decisions of the Tribunal have been cited. Simply because delay was condoned in one case would never mean that in every case, whatever be the circumstances, the delay must be condoned. Similarly, if in one case the respondents are directed to consider appointment on compassionate ground of an applicant, such an order cannot create a ratio to be followed in all other such cases irrespective of the circumstances of each individual case.

6. Since this Tribunal, on a brief consideration of the merits of the case, had come to the conclusion that the merit was not such as to compel the Tribunal to condone the delay, and since cogent grounds were not shown for condoning delay, the delay was not condoned. For those reasons the M.A. was dismissed as result of which the OA itself became not maintainable, and was dismissed as such.

7. In the R.A. no such ground has been placed which may

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persuade this Tribunal to review its order passed earlier, particularly in view of the limitation placed on the Tribunal, while considering a R.A. in an order of the Apex Court in the case of **Ajit Kumar Rath Vs. State of Orissa & Ors.; 2000[2] SLJ108 [SC]**. For the sake of this application, the relevant portion of the order of the Hon'ble Supreme Court may be reproduced below :-

“The power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”

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Their Lordships in that order also had held that any other attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

8. In the result, I do not find any merit in this R.A. which is dismissed.


[P.K.Sinha]/VC

skj.