

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

Review Petition No.4/98

ORIGINAL APPLICATION NO: 660/96

Date of Decision: 25-6-98

R.N.Mayekar

.. Applicant

Shri S.P.Kulkarni

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.D.Vadhavkar.

.. Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ? X

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 4 OF 1998  
IN  
ORIGINAL APPLICATION NO. 660/96.

Pronounced, this the 25<sup>th</sup> day of March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

R.N.Mayekar ... Applicant (Original)  
(S.P.Kulkarni, Advocate)

V/s.

Union of India & Ors.  
(Chief Commissioner of  
Income Tax, Mumbai)

And

Chief Commissioner of  
Income Tax, Mumbai. ... Respondents(Original)  
(V.D.Vadhavkar, Advocate).

O R D E R

¶ Per Shri M.R.Kolhatkar, Member(A)¶

In this Review Petition the Review Petitioner/  
Original Respondents (Income-tax Department) have sought  
a review of my order dt. 17.4.1997 by which the  
application for grant of compassionate appointment was  
allwed and the respondents were directed to consider the  
case of the applicant's daughter Kum. Manik for a  
Group 'D' post in the department subject to availability  
of vacancy for compassionate appointment.

2. The respondent has filed an M.P. viz. M.P.  
175/98 for condonation of delay in filing the R.P.

~~whereas~~ ¶ The Judgment was delivered on 17.4.1997 and the  
same is stated to have been received on or about  
26.5.1997 by the Department, and time for filing a review  
therefrom  
was one month/i.e. by 26.6.1997. The R.P. was filed  
on 21.10.1997 and there is thus a delay of

~~about 4 months.~~ The respondents state that they received a report having a bearing on the Judgment on 9.7.1997. After appropriate and due consideration a decision was taken to move the Tribunal for review and the present R.P. came to be filed on 21.10.1997. According to the respondents, the report received by the respondents goes to the root of the matter and shows that the applicant had obtained relief by concealing vital information bearing on his financial position and therefore the delay may be condoned.

3. The counsel for the original applicant has opposed the M.P. for condonation of delay. According to him the delay is of about four months and that it is required ~~explained~~ day by day and the respondents have to be <sup>and</sup> failed in their duty ~~on~~ to explain the reasons / therefore the delay may not be condoned and the R.P. be dismissed on this ground alone. In the facts and circumstances of the case, I am inclined to condone the delay. The delay is condoned, M.P. is allowed.

4. So far as the R.P. is concerned, it is stated that in the course of enquiry under Sec. 133A of the Income-tax Act in the month of September, 1994 in the case of Shri Jagat M. Parikh it came out that Shri Ravindra Raman Mayekar the son of the ~~applicant~~ applicant in the present case who is stated to be living separately from the applicant was a Partner of the said Jagat M. Parikh. It further came out that Ravindra invested ~~Rs. 5 lac in the partnership out of which Rs. 4 lac were from relatives and Rs. 1 lac was out of income from ancestral property.~~ Rs. 5 lac in the partnership out of which Rs. 4 lac were from relatives and Rs. 1 lac was out of income from ancestral property. It was explained that

Ravindra's father i.e. the applicant <sup>owned</sup> 5 acres of land on which mango and coconut trees are grown. Shri Ravindra has also revealed that his mother Smt. Vijaya M. Mayekar had advanced a loan of Rs. 5 lac to M/s. M&P Construction which was not repaid to her till 15.9.1994. It was further revealed that Shri Ravindra has been carrying on business in the name of "Kanda Batata (Onion Potato centre) Vikri Kendra" at Worli and that his mother Smt. Vijaya is also carrying on business in the name of "Worli Wada Pav Centre" from the same shop.

5. The respondents have enclosed a copy of the statement of Ravindra dt. 15.9.1994 (at page 9). They have also enclosed a copy of the Departmental report (at page 15).

6. The counsel for the review petitioners contends that the material <sup>on</sup> record ~~therefrom~~ shows that the applicant had made <sup>a</sup> false statement regarding his financial condition. He had not disclosed the fact <sup>deriving</sup> of owning agricultural land and <sup>Incidentally,</sup> substantial income there from. <sup>The</sup> reference to the wife of the applicant engaging in miscellaneous activities was also ~~mentioned~~ is reflected in the Judgment of the Court vide para 5 where it is stated that his wife does some business by way of selling of vada pav etc. which does not show that she has independent source of income but only shows that his wife is required to resort to miscellaneous activities to support the family.


7. The respondents have, therefore, prayed for revocation of the Order dt. 17.4.1997 and directing dismissal of the O.A.



8. When the Review Petition was received, it was decided not to decide it by circulation, but to hear it in the open court. The applicant was given liberty to file a reply to the Review Petition. No reply, was however filed till the date of final hearing. The learned counsel for the original applicant has contended that it is well settled that when a review is sought on the ground of discovery of new evidence, the evidence must be relevant, clear and conclusive. The new evidence must be such as is presumably to be believed and if believed, would be conclusive. In this connection, he has referred to the case law cited at page 1599 of Lal's commentary on Administrative Tribunals Act IIIrd Edition. The above publication at page 1600 cites English case in Guest v. Abbotson (1922) where Scrutton, L.J. observed :

"In order to obtain a new trial, for the purpose of calling fresh evidence, litigant should show (i) that such evidence was available, and of undoubted character; (ii) that the evidence was so material that its absence might cause a miscarriage of justice; (iii) that it could not with reasonable care and diligence have been brought forward at the time."

The learned counsel stated that in the light of this settled position the evidence under section 133A of the Income-tax Act cannot be considered to be such a strong evidence as to over throw the original Judgment. It is contended that the department has not made any extensive enquiry regarding the ancestral property of the applicant. The Tribunal had accepted the position that Ravindra does not stay with the applicant and no material has been produced to corroborate Ravindra's statement regarding mother's business by obtaining the statement.

of his mother. It is further contended that the enquiry was made in 1994 and the O.A. was filed in 1996 and the department ought to have been aware of the statement and at this late stage the department cannot rely on such collateral evidence.

9. The learned counsel for the review petitioner has contended that there is a nexus between mother and Ravindra whether or not he stays separately.  ~~No~~ reply has been filed by the applicant although the Tribunal gave liberty to them and that the evidence brought out by the department can definitely be stated to be strong.

10. I have considered the matter. The scheme of compassionate appointment has been formulated by the Government with a view to provide immediate assistance to the dependants of the employee who dies in harness or who ~~is~~ medically incapacitated. The financial distress test is required to be satisfied. The fresh material which is brought on record by the Department does show that the financial position of the applicant was not such as could pass the test of distress. The learned counsel for review petitioner is quite right <sup>in saying</sup>  that it was open to the applicant to rebut the allegations in the statement of Ravindra on which the department has relied. In my view, therefore, the evidence brought forward by the respondents is certainly credible and is conclusive as to the financially comfortable position of the original applicant. I consider that the tests laid down in Guest v. Abbotson are fulfilled in this case because the evidence was available in 1994, that is at the time respondents filed their written statement,  that the

evidence is material and that considering the vastness of the department of Income-tax in which there is a large number of Circles for assessment and the assessment work is distinct from the work of Personnel Branch, the department could not with reasonable care have brought forward the material earlier.

11. I am therefore, of the view, that my Judgment dt. 17.4.1997 is liable to be reviewed <sup>and recalled</sup> and I accordingly recall the same.

12. I further hold that as the test for grant of compassionate appointment ~~(is)~~ not fulfilled by the applicant, the applicant is not entitled to the relief claimed by him. The O.A. No.660/96 is therefore dismissed with no orders as to costs.

*M.R. Kolhatkar*

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(M.R.KOLHATKAR)  
MEMBER(A).

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