

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 469 of 1998.

Dated this Tuesday, the 2nd day of April, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

Shri L. N. D'Souza,
C/o. "ANNI'S",
423 (New) Mangalwar Peth,
Opp: Kalawada,
Pune 411 011.

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Applicant

(By Advocate Shri A. J. Agarwal)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India, New Delhi.
2. The Commissioner of Central
Excise, Mumbai-II Commissionerate,
Piramal Chambers, 9th floor,
Lalbaug, Parel, Jijibhoy Lane,
Mumbai - 400 012.
3. The Additional Commissioner of
Central Excise, Mumbai-II
Commissionerate, Piramal Chambers,
9th Floor, Lalbaug, Jijibhoy Lane,
Parel, Mumbai - 400 012.
4. The Commissioner of Central Excise,
Mumbai-I Commissionerate,
Central Excise Building, M.K. Road,
Near Churchgate Rly. Station,
Churchgate, Mumbai - 400 020.

... Respondents.

(By Advocate Shri M. I. Sethna alongwith
Shri S. D. Bhosale).

O R D E R (ORAL)

PER : Shri B. N. Bahadur, Member (A).

Learned Counsel, Shri A. J. Agarwal, for the applicant
and Learned Counsel, Shri M. I. Sethna alongwith Shri S.D.
Bhosale, for the Respondents have been heard for some time.

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2. We have not gone into the merits of the case because at the very start of arguments a point was raised. The point, in short, is that an appeal dated 21.12.1996 made by the applicant's brother, Shri G. N. D'Souza (against the impugned order of dismissal dated 22.05.1996) has been decided by order of Respondents dated 10.04.1997. The appeal was made by the brother in view of alleged grounds that the applicant was not well, being under psychiatric treatment. We have again not gone into the merits of fact of his illness/treatment, etc. but have gone by one law point which has been urged by the Learned Counsel, Shri Agarwal, viz. that the brother or any other person is not entitled in Service Law to file an appeal on an order of dismissal, etc. in respect of a Government official. Hence, he argued that the Order dated 10.04.1997 was a nullity.

3. We asked Shri M.I. Sethna, the Learned Counsel for Respondents, to deal with this point first. He made the point that in that case the applicant would be hit by the law of limitation. This point can also be left open viz-a-viz the peculiar type of illness i.e. psychiatric/person being of unsound mind is brought in defence by applicant.

4. The only conclusion we are drawing today is that an appeal made by a brother (or anybody else) on behalf of a Government servant and decided as an appeal on merits is a nullity. Nobody other than the applicant, i.e. the person aggrieved, can make an appeal. We are arriving at this conclusion, more so in view of what is stated in the letter dated 20.05.1997 (Page 197, Annexure C-11), which is a reply by the Respondents on a letter dated 08.05.1997 where the applicant

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himself wanted to appeal. Paras 2, 3 and 4 of this order is important and are reproduced below :

"2. Earlier, in an appeal filed by your brother Shri G. N. D'Souza, the Commissioner, vide Order-in-Appeal of even No. dated 10.04.97, has already confirmed the impugned Order-in-Original dated 22.05.1996. A copy of the said Order-in-Appeal, dated 10.04.1997 was forwarded to you by Regd. Post, and the same was received by you.

3. As per the Law, an Authority who has earlier passed an order, cannot, under any circumstances, revise/review the same.

4. In view of the above, the Commr., C. Ex., Mumbai-II, has not taken any cognizance of your letter dated 08.05.97, under reference, appealing for setting aside the impugned Order-in-Original dated 22.05.96."

When the order deciding the appeal is a nullity, this reasoning is wrong. We may also point out that in the order deciding the brother's appeal dated 10.04.1997 the issue of appeal by a person other than the affected officer has been referred to in para 6.2 of the order. In spite of the doubt raised, decision on merit have been taken.

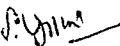
5. In view of the above position, it will be a proper course of action that the appeal made by applicant is decided on merits. It will be open to the respondents to consider the question of limitation, delay and laches also but these must be considered in the peculiar circumstances of the fact of illness and other facts brought out by the Applicant with reference to the law on the subject. Before parting with this case, we must state that Shri Sethna wanted to argue the matter further but since we clarify that we are not going into the merits of the case and are only

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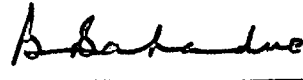
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deciding the issue as above and providing another opportunity, both to the Applicant and the Respondents, to assess the matter in appeal, we did not feel that we need to go into the matter further.

6. Accordingly, this O.A. is disposed of in terms of para 5 above with all questions on merit left open on both sides. The Respondents may consider the appeal application made by the Applicant dated 08.05.1997(Annexure C-9) on merits and in accordance with law, keeping in view the observations at para 5 above, within a period of three months from the date of receipt of a copy of this order. The Applicant will be at liberty to come up to this Tribunal again in case he is aggrieved by the order passed by the Respondents and if he is so advised. No order as to costs.


(S. L. JAIN)
MEMBER (J).

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(B. N. BAHADUR)
MEMBER (A).