

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 6th April, 2005

RA No.03/2005 (OA No.20/2004),
MA No.6/05 (OA No.20/2004)
and MA No.108/05 (RA No.03/2005)

N.K.Grover
s/o late Shri H.R.Grover,
aged about 60 years,
erstwhile resident of 159/2,
Pratap Lines,
now resident of Gurgaon,
(Haryana)

.. Applicant

(By Advocate: Shri R.S.Bhadauria)

Versus

1. Union of India through the Secretary to the Govt. of India, Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts, West Block V, Audit Section. G.P.IV, R.K.Puram, New Delhi.
3. The Principal Controller of Defence Accounts (WC) Sector 9-C, Chandigarh.
4. The Commandant PH & HP R) Sub Area Chief (Station Cell), Ambala Cantt.
5. The Garrison Engineer (South) Ambala Cantt.

.. Respondents

ORDER
(By circulation)

The applicant has filed this Review Application for reviewing the order dated 13.1.2005 passed in OA No. 20/2005 whereby this Tribunal has dismissed the OA

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on the ground of limitation and it was further observed that the applicant has not filed any application for condonation of delay and no reason has been given by the applicant as to why he has not filed the application within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. Alongwith this Review Application, the applicant has also filed Misc.Application No.108/2005 for condonation of delay in filing the Review Application. For the reasons stated in the MA No.108/2005, the MA is allowed and the Review Application is taken on record. By way of this Review Application, the applicant has stated that in Para 5.1 and 5.2 of the impugned order, the Hon'ble Tribunal has observed that the applicant has not filed any application for condonation of delay giving justifying reasons for approaching the court belatedly. On the contrary, the application for condonation of delay was very much on record on the date of hearing of the OA on admission i.e. 13.1.2005. Obviously, dismissal of OA on the ground of delay and latches on the face of application of condonation of delay is an error apparent on the face of record and wants review of the order impugned.

2. I have considered the averments made by the applicant in the Review Application and is of the view that even if the present Review Application is

allowed, the same shall not materially change the ultimate result of the OA which is hopelessly time barred and no sufficient cause has been shown by the applicant to condon the delay. Further, it may be stated that the OA was presented by the applicant on 16.1.2004. Notice of the OA was given to the respondents vide order dated 22.1.2004 and the OA was only confined to prayer made in Para 8(i). Thereafter the matter was adjourned from time to time for filing reply/rejoinder on behalf of parties. When the pleadings were complete vide order dated 9.11.2004, the matter was listed for hearing on 16.12.2004. On 16.12.2004, the matter was adjourned on the request made by the learned counsel for the applicant that he was not feeling well and the same was listed for hearing on 13.1.2005. It was also made clear that no further adjournment will be given on that date. It was in these circumstances that the matter was taken for hearing on 13.1.2005 and the OA was dismissed in open Court for the reasons to be dictated separately in the presence of the parties. At this stage, it may be stated that the applicant has filed Misc. Application No. 6/2005 for condonation of delay only on 5.1.2005 much after the dates when the pleadings were complete and the matter was listed for final hearing. The applicant has not sought any permission from the Bench to move Misc. Application for condonation of delay. However, the applicant scrupulously filed MA for

condonation of delay without permission of the Court when the matter had already been listed for hearing after completion of pleadings. Mere filing of the MA in the Registry for condonation of delay does not mean that the Tribunal has taken cognizance of the said MA. Fact remains that the attention of the Tribunal was not invited to the MA for condonation of delay by the learned counsel for the applicant when the matter was listed on 13.1.2005, nor any permission was sought from the Bench even after the completion of pleadings and the matter listed for final hearing on different dates. Fact also remains that no notice was even given to the respondents on this application. Thus, the applicant cannot be permitted to raise the contention that the application for condonation of delay was pending and as such the Tribunal has given finding ignoring the application for condonation of delay.

3. Be that as it may, in the interest of justice I have proceeded to consider the application for condonation of delay. As already noticed in the judgment, claim of the applicant for recovery of House Rent pertains to the period between 15.10.82 to 31.12.84 and in fact recovery was effected in the year 1985. The OA has been filed in the year 2004 after a lapse of 19 years. The ground taken by the applicant for condonation of delay in filing the OA at this

belated stage is that the applicant was pursuing the matter with the department diligently and the matter was never closed. For that purpose, the applicant has annexed copy of the application dated 7.5.1997 (Ann.A7). It is further stated that thereafter the matter was again taken up with respondent No.3 vide letter dated 31.1.2001 (Ann.A8) after a lapse of about 4 years and it is further stated that as a last resort notice for demand of justice dated 9.5.2003 (Ann.A9) was also sent. According to me, these facts do not constitute sufficient cause to condon the delay. It is settled proposition that repeated representations will not extend the period of limitation. Admittedly, recovery was effected in the year 1985. The applicant has not explained as to what steps he has taken practically for 12 years as the applicant himself has stated in para 2 of the MA that he 'persuaded the authority vide application dated 7.5.97 (Ann.A7) to see reasons and recovery made forcibly by deducting the amount at source be refunded'. The Apex Court in the case of State of Karnataka vs. S.M.Kotrayya, 1996 (6) SCC 267 has held that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-section (1) and (2) of Section 21 of the Administrative Tribunals Act, 1985, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period

applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. As per the provisions contained in Section 21 of the Administrative Tribunals Act, 1985, the OA ought to have been filed within one year after the cause of action has arisen in favour of the applicant i.e. up till, 1986. Even as per own showing of the applicant, he persuaded the authorities for refund of the amount so recovered after lapse of almost 12 years in the year 1997. This cannot be said to be any valid explanation as per law and no reasons are forthcoming why the applicant has not approached this Tribunal immediately after the lapse of statutory period prescribed under the Administrative Tribunals Act. Thus, even if the MA of the applicant for condonation of delay is taken into consideration, the applicant has not made out any case for condonation of delay, as such the decision rendered by this Tribunal vide order dated 13.1.2005 in OA No.20/2004 will not materially affect the ~~result~~ of this case.

4. For the foregoing reasons, the Review Application as well as MA No.6/2005 for condonation of delay are dismissed.



(M.L.CHAUHAN)

Member (J)