

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 10th day of November, 2006

RA No.13/2006 (OA No.555/2005)

1. Union of India through
the Secretary to the Govt. of India,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. The Member (P&V),
Central Board of Excise and Customs,
North Block,
New Delhi.
3. The Chief Commissioner,
Central Excise (Jaipur Zone),
Jaipur.

..applicants/respondents

(By Advocate: Shri Tej Prakash Sharma)

Versus

S.R.Gaur,
Dy. Commissioner,
Jaipur-I Central Excise,
Jaipur.

...Respondent/applicant

ORDER (By Circulation)

The applicants (respondents in OA) have filed this Review Application for reviewing the order dated 24th April, 2006 passed in OA No.555/2005. The Review Application has been filed on 3.11.2006, admittedly, after expiry of the period of limitation prescribed

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under the Rules, which is 30 days without any application for condonation of delay.

2. The question whether this Tribunal has got power to condone the delay where the Review Application has been filed beyond the period of 30 days as mentioned in rule 30 of Central Administrative Tribunal (Procedure) Rules, 1987 came for consideration before various Benches of this Tribunal as well as Hon'ble High Court and the matter on this point is no longer res-integra. The Full Bench of the Andhra Pradesh High Court in the case of G.Nara Simha Rao vs. Regional Joint Director of School Education (W.P.21738 of 1998) has already held that the Tribunal has no jurisdiction to condone the delay by taking aid and assistance of either sub-section (3) of Section 21 of the Administrative Tribunals Act or Section 29(2) of the Limitation Act. The matter was also considered by the Patna Bench of this Tribunal in RA No.99 of 2005 decided on 27.1.2006 (Union of India vs. Ramdeo Singh), whereby this Tribunal has considered the fact of two contradictory judgements of Hon'ble Calcutta High Court and the Andhra Pradesh High Court and held that delay in filing the Review Application cannot be condoned. At this stage, it would be useful to quote relevant part of para 4 of the decision of the Apex Court in the case of K.Ajit Babu vs. Union of India, 1998 (1) SLJ 85 which is in the following terms:-

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".....Besides that, the right of review is available if such 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, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case of all times to come. Public policy demands that there should be end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure, if filed within the period of limitation."

Thus, in view of the law laid down by the Apex Court as well as the decision rendered by the Full Bench of Andhra Pradesh High Court and also the decision rendered by the Division Bench of the Patna Bench of this Tribunal in the case of Ramdeo Singh (supra), I am of the view that since the Review Application has been filed after the prescribed period of 30 days, as such, the same cannot be entertained. Accordingly, the Review Application is dismissed being time barred.

3. At this stage, it may also be relevant to mention that this Tribunal while disposing of the OA No. 456/2005, vide order dated 29.9.2005 in operative portion has directed respondent No.2 i.e. the Member (P&V), Central Board of Excise and Customs, North Block, New Delhi to decide representation of the applicant (Ann.A7 in OA) by passing a reasoned and speaking order and keeping in view the law laid down by the Apex Court, as noticed in the said judgment, more particularly, the decision of the Apex Court in

the case of Shanti Kumar whereby the Apex Court has specifically observed that if there is breach of Government instructions with regard to transfer, the authorities will look into the matter and redress the grievance of the appellant. Pursuant to the directions given by this Tribunal, the respondents passed another order dated 11.11.2005 (Ann.A2 in OA) thereby rejecting representation of the applicant. This order was signed by the Deputy Secretary. The said action was again challenged in OA No.555/2005 which was disposed of by this Tribunal on 24.4.2006.

4. It may also be relevant to mention here that while issuing notices on OA No. 555/2005 vide order dated 30.11.2005 this Tribunal has specifically directed respondents to explain the circumstances why the matter was not placed before the respondent No.2 who was directed to pass the order in the light of direction given by this Tribunal in earlier OA. It was further observed that after going through the order dated 11.11.2005 (Ann.A2), it is clear that the said order has been passed by the Deputy Secretary to the Govt. of India and not by respondent No.2. Reply was filed by the respondents. The respondents despite specific direction given by this Tribunal has not at all explained this fact in the reply. Accordingly, the said OA was disposed of vide order dated 24.4.2006 whereby the impugned order dated 11.11.2005 (Ann.A2)

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was quashed on the ground that the said order has not been passed in conformity with the observations made by this Tribunal vide order dated 29.9.2005, as such the said order is no order in the eyes of law. However, the respondents were given further opportunity to proceed further in the light of direction given by this Tribunal vide order dated 29.9.2005 by strictly following the observations made in the operative portion (Para-5) of the judgment dated 29.9.2005. Now surprisingly, the respondents by way of this Review Application has taken entirely different stand that representation of the applicant had been disposed of by the Chairman, CBEC in full board meeting, Member (P&V) being one of the Members in the board and the same was communicated to the applicant by the Deputy Secretary vide order dated 11.11.2005. This stand taken by the respondents on the basis of which review is being sought appears to be wholly misconceived, inasmuch as, what this Tribunal has directed in the earlier judgment dated 29.9.1995 was that respondent No.2 shall decide the representation of the applicant by passing a reasoned and speaking order and keeping in view the law laid down by the Apex Court, more particularly, the decision of the Apex Court in the case of Shanti Kumar. Thus, what the Tribunal has directed was that the respondent No.2 shall personally apply his mind on the representation of the applicant (Ann.A7) and

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thereafter pass reasoned and speaking order in terms of the observations made in para 5 of the judgment. This Tribunal has nowhere stated that respondent No.2 or for that matter the Chairman of CBEC in full board meeting in which respondent No.2 being one of the Members shall approve the decision which has been taken by a subordinate authority, which appears to have been done in the instant case. The decision required to be taken on the representation of the applicant after application of mind by the appropriate authority cannot be termed to be a decision taken by the subordinate authority and then approved by the board, as in the later case, there is non application of mind on behalf of the appropriate authority, as the mind has been applied by the subordinate authority, which according to the applicant, is one step higher than the applicant.

5. Be that as it may, since the Review Application has been dismissed on the ground of limitation, the passing references made by this Tribunal is only to highlight the attitude of the respondents in the matter and thus taking undefendable stand and not implementing the judgment of this Tribunal, which has attained finality, in letter and spirit.

6. With these observations, the Review Application is dismissed by circulation.


(M.L. CHAUHAN)

Judicial Member

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