

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH**

**Review Application No.291/00017 of 2014
with
Misc. Application No.291/00352 of 2014
in
Original Application No. 729 of 2012**

Date of order : 01-10-2014

CORAM :

**HON'BLE SHRI ANIL KUMAR, MEMBER (A)
HON'BLE SHRI M.NAGARAJAN, MEMBER (J)**

1. Union of India through General Manager, North Western Railway Head Quarter, Jagatpura, Jaipur.
2. Deputy Chief Personnel Officer, North Western Railway Head Quarter, Jagatpura, Jaipur.
3. Assistant Personnel Officer (R&T), Railway Recruitment Cell, North Western Railway, Durgapura Railway Station, Jaipur – 302 018.

**....Applicants in RA
(Original Respondents)**

By Advocate: Shri Anupam Agarwal

Versus

Praveen Kashyap son of Shri Netram Kashyap, age about 27 years, resident of 299-C, Shanti Nagar –B, Gurjar Ki Thadi, Gopalpura Baipass, Jaipur (Raj.).

**.....Respondent in RA
(Original Applicant)**

By Advocate: Shri Munesh Bhardwaj

PER : HON'BLE SHRI M.NAGARAJAN, MEMBER (J)

ORDER BY CIRCULATION

The present review application is filed by the review applicants seeking review of the order dated 28-5-2014 in O.A. No.729 of 2012. The review applicants are the respondents in the said O.A.No.729 of 2012. The prayer of the applicant in O.A.No.729

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of 2012 was to set aside the letter dated 03-10-2012 and for a direction to the respondents to permit him to appear in the examination for the post of Junior Engineer-II (Electrical) treating him a person with disability and to give him appointment on the aforesaid post with all consequential benefits. The said O.A.No.729 of 2012 was disposed of by the order dated 28-5-2012 with the following observations and the same reads as under :

"10. At the end we may add that India is a Signatory to the proclamation on the Full Participation and Equality of people with Disabilities in the Asia and the Pacific region and in pursuance of the same enacted a suitable legislation called "(The) Persons with Disabilities (Equal opportunities Protection of Rights and Full Participation) Act 1995 which provided for equalization of opportunities for persons with disabilities in employment under Chapter VI of the said Act. As such we are of the view that though the applicant has failed to establish his claim, the respondents are directed to consider the candidature of the applicant for the post in question only in the even of non-availability of any other candidate in the vertical reservation category in which the applicant is entitled to be considered for selection and appointment subject to the condition that the applicant produces a certificate in the prescribed format at Annexure-5 of the notification dated 25-6-2012 in view of the fact that the applicant has passed the said written examination and qualified by writing the examination on the strength of the interim order of the Tribunal dated 31-10-2012.

11. Accordingly, the O.A. is disposed of with aforesaid observations. No order as to costs."

and the same
The above order is sought to be reviewed. ~~The order under review~~ is dated 28-5-2014. The present review application was presented in the Registry of the Tribunal on 27-8-2014.

2. Section 22 of the Administrative Tribunal Act, 1985 deals with the procedure and powers of the Tribunal. As per sub-section (3) of section 22 of the Administrative Tribunals Act, the Tribunal shall have all the powers of a civil Court under the Code of Civil

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Procedure, 1908 for the purpose of reviewing its decision. Sub-section (3) of section 22 reads as under :

"22. (3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence of affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning and public record or document or copy of such record or document from any office;*
- (e) issuing commissions for the examination of witnesses or documents;*
- (f) reviewing its decisions;*
- (g) dismissing a representation for default or deciding it ex- parte;*
- (h) setting aside any order of dismissal of any representation fro default or any order passed by it ex-partie ; and*
- (i) any other matter which may be prescribed by the Central Government."*

(underlining by ~~us~~)

3. Rule 17 of the Central Administrative Tribunal (Procedure)

Rules, 1987 deals with an application for review. Sub rule (1) of the said Rule 17 prescribes the time limit within which an application for the review can be entertained by the Tribunal and the same reads as under :

"17. Application for review. – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed."

In view of the time limit prescribed under sub rule (1) of Rule 17, the review applicants ought to have presented the review application within thirty days from the date of receipt of a copy of the order dated 28-5-2014 in O.A. No.729 of 2012.

4. We have perused the affidavit of the review applicants in support of their prayer to condone the delay in filing this review application.

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The application for condonation of delay did not mention the total number of days which are required to be condoned in view of the time limit prescribed under the said Rule 17. The affidavit in support of the prayer for condonation of delay also does not contain the information as to the date on which the review applicants were in receipt of the order under review. However, it is stated therein that order under review was prepared on 29-5-2014 and the same was forwarded by the counsel along with opinion on 09-6-2014. In view of the fact that certified copy was prepared on 29-5-2014 even if it is to be presumed that the said copy was served upon the applicant on a subsequent date, it may not be beyond 10-6-2014. Hence, even if it were to be presumed that the review applicants were in receipt of the certified copy of the order only on 10-6-2014, in view of the time limit prescribed under sub rule (1) of Rule 17 of the CAT (Procedure) Rules, review application should have been presented on or before 10-7-2014, but as already observed review application was presented before the Tribunal on 27-8-2014. Thus, there is delay in preferring the review application and the fact is an admitted one.

5. Now the question before us is that whether the delay in preferring the review application can be condoned? On examination of the issue that whether the delay in filing the review application can be condoned, we are bound to refer to the full bench judgment of the Hon'ble High Court of Andhra Pradesh in the case of *G.Narasimha*

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Rao v. Regional Joint Director of School Education, Warangal & Ors. reported in 2005(4)SLR 720. The relevant portion of the said judgment is reproduced hereunder :

"The short question, which is of general importance, that arises for our consideration is whether the State Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 ('the Act' for brevity) has jurisdiction to condone the delay in filing the review petition, notwithstanding the negative language voiced in Rule 19 of A.P. Administrative Tribunal (Procedure) Rules, 1989.....

4. Challenging the order in recalling the judgment in R.P.No. 22397 of 1989 dated 23-9-1993 petitioner filed the present writ petition. When the writ petition was taken up for hearing, the learned Division Bench of this Court comprising of Justice Bilal Nazki and Justice D.S.R. Varma referred the matter to the Full Bench in view of negative language voiced in Rule 19 of the Rules and the question had caught the attention of the Full Bench in which one of the learned Judges Justice S.B. Sinha, Chief Justice as he then was, was of the view that Section 5 of the Limitation Act would apply even in relation to matters which are not covered by Section 21 of the Act, but the two learned Judges Justice S.R. Nayak and Justice G. Raghuram though that it was not necessary in that case to consider the question as they found that the delay condoned by the Tribunal could have not been condoned.

5. That is how the matter is posted before the Full Bench....."

The full bench of the Hon'ble High Court of Andhra Pradesh after referring to section 22(3)(f) of the Administrative Tribunals Act, 1985 and Rule 19 of the Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 answered the question before it as under :

"13. Rule 19 is couched in negative form and disables the person from seeking review under Section 22(e)(f) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay under Section 21 of the Act is applicable only to the applications filed under Section 19, but the same cannot be made applicable to the review sought under Section 22(3)(f). Sub-section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal, namely that the power of the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Government. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the

premise that Limitation Act is made applicable in view of Sub-section (2) of Section 29 of the Limitation Act.

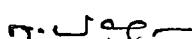
14. In the view we have taken, we answer the reference holding that the Administrative Tribunals Act and the Rules made thereunder are impliedly infer that the Tribunal will not have jurisdiction to condone the delay by taking aid and assistance of either Sub-section (3) of Section 21 of the Act or Section 29(2) of the Limitation Act.”

6. Rule 17(1) of the CAT (Procedure) Rules, 1987 is in pari-materia with Rule 19 of the Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989. Rule 17(1) of the CAT (Procedure) Rules, 1987 reads as under :

“17. Application for review. – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.”

A reading of Rule 19 of Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 makes it clear that the same is nothing but reproduction of Rule 17(1) of CAT (Procedure) Rules, 1987. Both the rules are akin to each other. The only difference is from which date the period of thirty days requires to be computed. As per the CAT (Procedure) Rules it is from the date of receipt of copy of the order, whereas as per the ^{Andhra} ~~Pradesh~~ Administrative Tribunal (Procedure) Rules, it is from the date of the order. Hence, the above decision of the Hon'ble Andhra Pradesh High Court is applicable to CAT (Procedure) Rules also.

7. In view of the time limit prescribed under Rule 17 of the Central Administrative Tribunals (Procedure) Rules, 1987 and the law declared by the full bench of the Hon'ble High Court of Andhra

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Pradesh in *G.Narasimha Rao (supra)*, we have no jurisdiction to condone the delay in preferring the review application.

8. Since it is declared by the full bench of the Hon'ble High Court of Andhra Pradesh that the Tribunal has no jurisdiction to condone the delay in preferring the review application the question of examining whether the order dated 28-5-2014 in O.A.No.729 of 2012 requires to be reviewed or not does not arise.

9. For the foregoing reasons, Misc. Application No.291/00352 of 2014 is dismissed on the ground that the Tribunal has no jurisdiction to condone the delay and Review Application No.291/00017 of 2014 is rejected on the ground that the same is not filed within thirty days from the date of receipt of a copy of the order dated 28-5-2014 in O.A.No.729 of 2012.

10. Under the circumstances, there is no order as to costs.

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(M.Nagarajan)
Member(A)(J)

Anil Kumar
(Anil Kumar)
Member(A)

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