FORM NO. 4

(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

ORDER SHEET

Original Application No. _____

Misc.Petition No. _____

Contempt Petition No. _____

Review Application No. 02/05 (OA 315/04)

Applicants:- Sri Jiju Singh

Respondents U.O.I & ors

Advocates for the Applicant MR K.K. Biswas

Advocates of the Respondents Ms. M. Das, Addl. CGSC ~~Mr A.K. Choudhury~~

Notes of the Registry	Date	Order of the Tribunal
This Review application has been filed for reviewing the order dated 14.12.04 passed in M.P. No. 148/04 in OA 315/04 with a prayer for consideration for reviewing the above order. Laid before Hon'ble Vice Chairman for consideration and consideration. 18/1/05 Section Officer (J)		Review is not an appeal in disguise. I do not find any ground or justification to entertain review application. The review application does not merit hearing. 18.1.05
	6.2.07.	Post the matter on 7.3.07 alongwith O.A.No.315 of 06. Vice-Chairman
Hon'ble V.C:	07.03.07.	Post the matter on 28.3.07. alongwith O.A. No.315 of 04. Vice-Chairman

lm

Read copy of order delivered on 18/1/05 Advocate

Read copy 20/1/05

lm

RA-4/05 (OA.315/04)

28.3.2007 post on 27.4.2007.

Vice-Chairman

bb.

27.4.2007 Present: The Hon'ble Mr.G.Shanthappa
Member (J)

The Hon'ble Mr.G.Ray, Member (A).

Call the case on 01.06.2007 along with O.A. & M.P.

Member (A) Member (J)

/bb/

1.6.2007 Post the case on 25.06.2007 along with the O.A. & M.P.

Vice-Chairman

/bb/

25.6.07. Post the matter on 11.7.07.alongwith O.A. & M.P.

Vice-Chairman

lm

11.7.2007 Since the R.A. had already been dismissed by my predecessor the R.A. will not hold good. Hence the R.A. is dismissed.

Vice-Chairman

/bb/

R.A. 2/05 (O.A. 315/04)

26.7.07 Post on 14.8.07 along with M.P. 148/04.

Vice-Chairman

pg

31.8.07 Post on 21.9.07 for hearing along with M.P.148/04.

Vice-Chairman

pg

21.9.07 Post on 11.10.07 along with M.P.148/04.

Vice-Chairman

pg

11.10.07 Call on 20.11.07 along with O.A.

(Khushiram) Member(A)

(Manoranjan Mohanty) Vice-Chairman

pg

20.11.2007 Call this matter on 29.11.2007 along with O.A.

(Khushiram) Member (A)

(M.R.Mohanty) Vice-Chairman

/bb/

RA 2/05 (OA 315/04 & MP 148/04)

29.11.2007 Call this matter on 10.12.2007, alongwith O.A.

(Khushiram)
Member(A)

Lm

10.12.2007 In view of the disposal of O.A. No.315/2004 this M.P. No.148/2004 also stands disposed of.

(Gautam Ray)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

10.12.2007 In view of the disposal of O.A. No.315/2004 and M.P. No. 148/2004, this R.A. No.2/2005 also stands disposed of.

(Gautam Ray)
Member (A)

(M.R.Mohanty)
Vice-Chairman

/bb/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI

BENCH :: GUWAHATI

Filed by:
Jigir Singh
17-1-05
Advocate

REVIEW APPLICATION NO:.....02..... OF 2005

IN ORIGINAL APPLICATION NO: 315 OF 2004

IN THE MATTER OF:

An Application under Section 22 of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987;

- AND -

IN THE MATTER OF:

An Application for reviewing the Order dated 14-12-2004 passed in Miscellaneous Petition No:148 of 2004 in O.A. 315 of 2004

-AND -

IN THE MATTER OF:

Sri Jigir Singh,
Son of Late Inder Singh,
Safaiwala, Cantonment Board,
Shillong.

.... Applicant

-versus-

contd...2

1) Union of India- Representing by the Ministry of Defence, Cantonment Board, Shillong, Post Box No: 83, Shillong-793001.

2) Cantonment Executive Officer, Cantonment Board, Shillong, Post Box No: 83. Shillong- 793001.

... Respondents.

Opposite Parties.

The Applicant above named-

MOST RESPECTFULLY BEGS TO STATE:

1. That the Applicant is a Safaiwala (sweeper) under the Cantonment Executive Officer, Cantonment Board, Shillong and right since his appointment on 03-02-89 he has been discharging his duties with sincerity and dedication and there was not any adverse ever communicated to him.

2. That the Applicant being an essentially intermittent category of service is entitled to get a residential accommodation as priority over others and House Rent Allowances in lieu of till such time the quarter is allotted to him.

3. That the Applicant has not been given a quarter till

contd... to-date..

to-date despite countless personal approaches to the Cantonment Executive Officer, the Respondent No: 2, who is in fact the Contpolling Officer of the Applicant, nor the House Rent Allowances paid to him in lieu thereof.

4. That the Applicant has claimed House Rent Allowances only for the period from February/84 to March/99 and after that he has been praying for allotting a residential accommodation, including his mother's Quarter who retired from service in June/2004 .

5. That having failed to get any redress from the Respondents the Applicant filed an O.A. under No: 315 of 2004 before this Hon'ble Tribunal with a Miscellaneous Petition No: 148 of 2004 for condonation of Delay for filing the O.A., as the Applicant is illiterate and does not know anything about the Court procedure nor he has sufficient means to take legal advice from an Expert and moreover, his Employer, the Respondent No: 2, has all along assured him that necessary boon would be granted to the Applicant by way of granting House Rent Allowances and/or allotting a quarter.

6. The on 14-12-2004 , the case came up for admission and the Hon'ble Tribunal after hearing took the view that the relief sought was barred by limitation and accordingly dismissed the application.

A copy of the order dated 14-12-2004 is annexed herewith as ANNEXURE - 1.

contd..4..That..

7. That the Applicant begs to state that it will be apparent from the letter dated 18-19-5-99 issued by the Respondent No: 2 (ANNEXURE - B of the Original Application at Page 8) and Memorandum of settlement arrived at between Cantonment Board Employees Union, Shillong, and the Respondents issued on 7-7-2000 (ANNEXURE - D of the Original Application at Page 11) that the Respondents considering to grant House Rent Allowances to the Applicant on receipt of necessary declaration from him.

8. That it is sumitted that the Applicant has submitted necessary Declaration and Money Receipts for the HRA, as sought for by the Respondents (ANNEXURES- A,C,C/1 of the original Application at Pages 7, 9 & 10).

9. That the Applicant being illiterate belongs to sweeper community and he has no knowledge of ABC of Limitation Law for approaching the Hon'ble Tribunal, and, hence, begs to state with humble and suave submission that it would be a travesty of truth if his prayer is not considered for admitting the Application and thereby redress his long standing grievances by the magnanimity of the Hon'ble Tribunal and with its benign descernment.

10. That the Applicant with most humble submission and with all humility begs to state that the Hon'ble supreme Court in their celebrated judgement in the ' The Madras Port Trust ' Case , reported in 1979(1)

contd...5 ..SLR..

757-758 opined:

> " The plea of limitation based on this section is one which the Court always looks with disfavour and it is unfortunate that a public authority like the Port Trustshould in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

A copy of the judgement is annexed as ANNEXURE -II

11. That in an another celebrated judgement given by the Honble Gauhati High Court in Joy Mohan Mallik & Ors. v-s- Union of India & Another, reported in 200(1) GLT 544, 547, their Lordships opined that:

> " The door of justice should not be slammed on the cause of delay alone of the explanation furnished is not manifestly malicious or that delay was caused deliberately to secure

contd.. 6..undue..

undue advantage . The Court should lean in favour of a litigant by extending the liberal interpretation. The power of condonation of delay is no doubt discretionary but that discretion has to be exercised justly, lawfully, and fairly and not mechanically or purfunctorily. The discretion exercised is to be measured in the touch stone of justice. ..... The paramount aim of legal policy is to do justice and the court assumes that Legislature does not intend injustice. "

A photocopy of the relevent extract of the above judgement is annexed as ANNEXURE - III.

12. That the Applicant with most humble submission begs to state that he would be in permanent perennial loss and economic hardships in case this Application is not admitted, adjudicated and thereon justice bestowed.

13. That this Application has been filed bonafide and for the jsutice.

It is, therefore, prayed that your Lordship would be pleased to consider what is stated above and review the Order dated 14-12-2004 (ANNEXURE - I) passed in Miscellaneous Application No: 148 of 2004 in the Original Application No: 315 of 2004 and be pleased to

cont..7..pass..

pass order/orders as your Lordship may deem fit and prper so as to redress the grievances of this humble,poor and down-trodden Applicant of an oppressed community.

And for this act of kindness, the Applicant, as in duty-bound, shall ever pray.

VERIFICATION

I, Sri Jigir Singh, son of Late Inder Singh, aged about 36 years, working as Safaiwala under Cantonment Board Executive Officer, Shillong, do hereby verify that the statements made in paragraphs 1 to 8 are true to my personal knowledge and the statements made in paragraphs 9 to 13 are believed to be true on legal advice and that I have not suppressed any material facts.

And I sign this Verification on this ..17... the day of January,2005 at Guwahati.

Place: Guwahati

Date: 17-1-05

Jigir Singh

SIGNATURE OF THE Applicant

Contd..8... Affidavit..

AFFIDAVIT

I, Sri Jigir Singh, son of Late Inder Singh, aged about 36 years, working as Safaiwala under the Cantonment Board Executive Officer, Shillong, do hereby solemnly affirm and declare as follows:

1. That I am the Applicant in this Petition and as such I am well conversant with the facts and circumstances of the case and I swear this Affidavit.

2. That the statements made in this Affidavit in paragraphs 1 to 8 are true to my knowledge and those made in paragrapha 9 to 13 are my humble submission before this Hon'ble Tribunal.

And I sign this Affidavit on this 17 th day of January,2005 at Guwahati.

Jigir Singh

DEPONENT

Identified by:

Advocate. 17-1-05

Solemnly affirmed and declared before me by the Deponent who is identified by Sri K.K.Biswas, Advocate, on this th day of January,2005 at Guwahti.

ADVOCATE.

ANNEXURE-1

FORM NO. 4
(SEE RULE 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. _____
Misc. Petition No. 148/04 (O.A. 315/04)
Contempt Petition No. _____
Review Application No. _____

Applicants: Sri J. Singh

Respondents: U.O.I. & ors

Advocate of the Applicants:- Sri K.K. Biswas (Advocate)

Advocate for the Respondents:- Mr. A.K. Chaudhury. Addl. C.G.S.C.

Notes of the Registry	Date	Order of the Tribunal
	14.12.2004	Present: Hon'ble Justice Shri R.K. Batta, Vice-Chairman.

Heard Mr K.K. Biswas, learned counsel for the applicant. The applicant is claiming house rent allowance from February 1989. The relief sought is hopelessly barred by limitation. Learned counsel for the applicant was given option to restrict the claim for the last three years, but he does not wish to avail of the said option. I, therefore, do not find any reason or justification to condone the delay and on that count the condonation application is dismissed.

Sd/VICE CHAIRMAN

TRUE COPY

Section Officer (J)
Central Administrative Tribunal
Guwahati Bench, Guwahati
15/12/04

ANNEXURE -II

Committee put up the whole
and confirmation on 6-7-74
put up along with the appeal
mately the Board considered
In my opinion, the present
resaid of the Supreme Court,
ly ratified and confirmed the
it has passed an independent
should be removed from the

etitioner also placed reliance
h Court in *Mohd. Dilawar Ali*
R. 1967 Andhra Pradesh, 291):
taken by a Committee which
on arose as to whether by
r the order will be deemed to
d that the ratification by the
of that case cannot be held to
order In my opinion, the
itioner, in view of the fact that
d ratified and confirmed but
of the petitioner on the basis
he enquiry. Apart from that,
o decided the case in question,
said judgment of the Supreme
the Board to ratify and confirm
According to me, in the facts
as to be held that the decision
the Board itself.

the petitioner, also purported
s, before the Inquiring Officer,
that the Director of the Library
against the petitioner. In my
this plea for more than one
dy constituted under the Act,
no Court in *Sukhdev Singh* v.
R. 1975 Supreme Court, 1331),
validity of the order of removal
in contravention of regulation
ation or statutory provisions
e been brought to our notice.
not point out as to how any
travened while taking decision
of the Board. Shri Choubey,
of Bihar was appointed as the
to show cause was given to the
e. He also appeared before the
which will be deemed to be a
ny opinion, in such a situation,
been observed and the petitioner
. Moreover, in view of the new
g to which this application has

to be disposed of, the petitioner has to show violation or contravention of some statutory provision, rule or regulation before he is entitled to any relief by this Court. Although we have not examined the allegations of *mala fide* made on behalf of the petitioner and denial thereof by Respondent No. 2, in detail, but it is difficult to believe that Respondent No. 2 who is the Director of the Library, in question could have influenced the members of the Board who appear to be very responsible persons. The Chairman of the Board is the Governor of Bihar himself.

15. Lastly, it was pointed out that the Board has purported to remove the petitioner from the service of the Board with effect from 25-6-74, the date the resolution of Executive Committee was communicated to the petitioner. As I have taken the view that the order removing the petitioner from service became effective from 8-8-74, when the Board passed the aforesaid resolution, it will be deemed that the Board purported to remove the petitioner from service with effect from the date when that resolution dated 8-8-74 was communicated to the petitioner. The petitioner will be entitled to his salary and other remuneration till that date.

16. In the result, there is no merit in this application and it is accordingly dismissed. In the circumstances of the case, I will make no order as to costs.

B. S. Sinha, J.—I agree.

Petition dismissed.

SUPREME COURT OF INDIA

Before :—P. N. Bhagwati and A. D. Koshal, JJ.

Civil Appeal No. 467 of 1969

Decided on 3-1-1979

The Madras Port Trust (*Appellant*)

Vs.

Hymanshu International by its Proprietor
V. Venkatadri (dead) by L. Rs. (*Respondents*)

Limitation Act, 1963—Madras Port Trust Act, 1905, Section 110—Plea of Limitation—Government or Public Authority should not ordinarily take up the plea of limitation to defeat the just claim of a citizen.

The plea of limitation based on this Section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

(Para 2)

JUDGMENT

Bhagwati, J.—The only question arising in this appeal by special leave is whether the claim of the respondent for refund of the amount

wherfage, demurrage and transit charges paid to the appellant was barred by Section 110 of the Madras Port Trust Act (II of 1905). The appellant lost in the High Court and a decree for Rs. 4,838.87 p. was passed against the appellant. The appellant applied to this Court for special leave and by an order dated 7th March, 1969 this Court granted special leave on the appellant agreeing to pay the amount of the refund irrespective of the result of the appeal and also to pay the costs of the appeal in any event. That is how the appeal has now come up before us for final hearing.

2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this Section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the appellant was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).

3. We accordingly revoke the special leave granted to the appellant and direct that the appellant do pay the cost of the respondents.

Special leave revoked.

SUPREME COURT OF INDIA

Before :—R. S. Sarkaria and
V. D. Tulzapurkar, JJ.

Civil Appeal No. 1783 of 1969
Decided on 13-12-1978

Union of India and another *(Appellants)*

Vs.

S. N. Verma *(Respondent)*

Constitution of India, Articles 309 and 310—Civil Service Regulations, Articles 4 and 459—Tenure of Service—Power of Govt. to alter—Art. 4 has nothing to do with the tenure of Service Government competent to amend or alter tenure of Service of employees under Art 459. (Para 3)

ORDER

After hearing counsel on both sides we are clearly of the view that there is no substance in this appeal. Even counsel for the appellants did not raise any serious contention on the merits on the point that has been decided by the High Court.

1979(1) SLR A. T. Rao

His only grievance was that ... to, 1969 has made certain ... Civil Service Regulations ... observations unnecessarily ... Central Government to alte... servant. After setting out ... thus:—

"The article obvious... ment to charge t... this could not ... with the empl... superannuation. ... is reserved under ... of service of emp...

2. In our view Art. 4 sh... that the Government has ... period of service and the ... regard to the topics dealt wi... to the right to make change... and pension of Government ... tedly the respondent and t... erned by C.S. Regulations ... 459 of these Regulations a... or period of service has b... and it cannot be disputed t... this provision so as to cut ... service. Unfortunately, su... which has nothing to do w... therefore, think that the ... regard to Art. 4 will have ... to alter Art. 459.

3. Mr. Bhatia has poin... the benefit of his salary or... which he put in until he a... of pension and gratuity etc. ... that the appellant will pay ... delay.

4. With the above obse...

KARI...
Before...
W. ...
J...
J...

A. Thimmoji Rao a...

State of Karnataka ...
For the Petitioners ...
For the Respondents ...

A. Constitution o... lative powers ... officers in the ...

approval has been accorded by the State Government on 16.1.2001. The order of detention was passed on 3.1.2001 and therefore reconing from 4.1.2001 upto 16.1.2001 the approval of the State Govt. was accorded after more than 12 days had elapsed.

5. It is however, contended by Mr. Dasgupta that the case in hand is covered by proviso to sub-section 4 and not under the provision of sub-section 4. Proviso to sub-section 4 is a provision to take care of the situation where under Section 8 the ground of detention are communicated by the officer making the order after 5 days and not later than 10 days. Such a situation 12 days is substituted by 15 days. In the case at hand, as already stated that along with order of detention on 3.1.2001 the ground of detention has also been supplied to the detenu on the same day and therefore, the proviso to sub-section 4 of Section 3 would not be attracted in the case at hand.

6. The procedure prescribed under Article 22(5) of the Constitution is a procedural safeguard and when curtailing the liberty of a citizen the appropriate authority was bound to follow the procedural safe guard prescribed under Article 22(5) of the Constitution.

7. In the instant case, admittedly the approval of the State Government was accorded after more than 12 days which is contrary to the mandate of the provision of sub-section 4 of Section 3. The point of law has been set at rest by the Apex Court in *Ranbir Singh -vs- T. George Joseph, District Magistrate, Meerat and Anr. reported in 1988 (Supp) SCC 425*. In that case, the Apex Court was considering the approval given by the State Government under the proviso to sub-section 4 of Section 3 of the Act. There it has been held by the Apex Court that confirmation/approval having been made beyond the period of 15 days prescribed by 3(4) of the National Security Act, 1980, the continued detention of the detenu has been held illegal. Although it was a case of proviso to sub-section 4 of Section 3 the principle laid down by the Apex Court is clearly attracted in the case at hand inasmuch as in the present case the approval of the Government was obtained after 12 days. Solely on this ground the detention order dated 3.1.2001 is vitiated. We accordingly quash and set aside the order of detention dated 3.1.2001. The detenu shall be set at liberty forthwith if he is not required in connection with any other case.

With the aforesaid direction this petition is allowed. No costs.

2001(1) GLT544

(BEFORE D.N. CHOWDHURY, J.)

JOY MOHAN MALLIK
& ORS. ...PETITIONERS
-VS-
UNION OF INDIA
& ANR. ...RESPONDENTS

W.P.(C) No. 1225 of 2000

Decided on 27.3.2000

Limitation Act, 1963 — S.5 — Delay — Condonation of — Petitioners declared "illegal migrants" ex-parte by the Tribunal — Appeal preferred dismissed by Appellate Tribunal at the threshold on ground of being time-barred — Meaning and object of providing appeal explained — In the process of litigation, delay in each case not fatal — The door of justice should not be slammed on the cause of delay alone if the explanation furnished is not manifestly malicious or delay was caused deliberately to secure undue advantage — Court should lean in favour of litigant by extending liberal construction — Discretion has to be exercised justly, lawfully and fairly and not mechanically or perfunctorily — Primary

ANNEXURE-III

function of justice delivery system is to adjudicate the dispute — A good cause does not become bad cause merely on ground of not approaching the court within the prescribed limit — Rule of limitation not to be applied to undermine the right of parties — Appellate Tribunal bestowed with discretion to admit appeal even after expiry of limitation — Order of Appellate Tribunal set aside — However, instead of remanding to Appellate Tribunal, matter remanded back to Tribunal to adjudicate the Reference afresh, earlier decision being ex-parte.

... Para 4, 5

Cases referred: Chronological — Paras

1. (1947) 2 All E.R. 680 : Associated Provincial Picture House Ltd. -vs- Wednesbury Corporation ... 4
2. 1960 SC 748 (768) IRC -vs- Hinemy ... 4
3. 1971 AC 739 (746) : Mengin -vs- IRC ... 4
4. 1979 (1) All E.R. 142 (148) : Nothman -vs- London Borough Barner ... 4

Advocate appeared for the Petitioners : Mr. P.K. Goswami.

Advocate appeared for the Respondent: Mrs. N.Devi Sarma, CGSC.

JUDGMENT & ORDER

D.N. CHOWDHURY, J. —

Petitioner No. 1 and 2 are the husband and wife and petitioner No. 3 is their daughter. All the aforementioned petitioners were declared to be "illegal migrants" within the meaning of Section 3(c) (i) of the Illegal Migrants (Determination by Tribunals) Act, 1983 (hereinafter referred as the Act) upon a reference under Sec.8(1) of the said Act by the court of illegal Migrants (Determination) Tribunals, Lakhimpur vide order dated 4.7.88. The aforesaid adjudication was made by the said tribunal ex parte. Before the tribunal the respondents examined PW1 J Doley, the Enquiry Officer who stated to have recorded the statement of the petitioner No. 2 and also further recorded that she could not produce any document regarding her citizenship. The judgment and order does not indicate as to whether his enquiry report was even proved before the tribunal. The Tribunal, however passed an ex parte order holding these three petitioners as illegal migrants and reference was answered accordingly. The petitioners preferred appeal before the Appellate Tribunal and the Appellate Tribunal did not enter into the merits and dismissed the appeal at the threshold on the ground of limitation vide order dated 11.10.99. As per the order of the Appellate Tribunal an application U/s 5 of the Limitation Act was made before the Appellate Tribunal for condonation of delay wherein it was indicated that no notice or information was provided to the appellants during the pendency of the case in the lower Tribunal and order was passed ex parte and that the appellants were aware about the order only on 9.5.99 when the police visited their house for deportation. From the statement of the learned Tribunal it further transpires that copy of the judgment of the lower Tribunal was ready for delivery on 10.5.99 and the appellants took delivery of the copy of the judgment on 14.5.99 and presented the appeal on 23.6.99. That appeal was to be filed within 30 days from the date of receipt of the copy of the judgment. The appellants received the copy of the judgment on 14.5.99. The appellants did not file the appeal within 30 days from the date of obtaining the copy. Therefore, it was time barred. Before the tribunal the learned counsel for the appellants submitted that on account of wrong advice about the period of limitation the appeal was not preferred within 30 days. The Appellate Tribunal referring to the condonation petition did not find any averment to that extent in the application for condonation of delay. The Tribunal accordingly held that in the absence

any such averment in the application for condonation of delay it cannot be said that the appellants were diligent in filing the appeal or that any ground has been made out for condonation of delay. The appeal was accordingly dismissed. Hence the writ petition.

2. In the writ petition the petitioner stated that his father Late Adhar Biswas was a permanent resident of Village Bejibari of Laluk Mouza in the district of Lakhimpur. He was enrolled as a voter of Naobaicha Legislative Assembly Constituency No. 112 for the year 1965 and in the electoral roll his number was at Sl. 42 against House No. 17. A true copy of the voters list is annexed with the writ petition. The petitioners also annexed a certificate of the Gaonburah of Village Nizlaiuk certifying that petitioner No. 2 was married to one Jaimohan Mallik, a permanent resident of village Bejibari. Laluk in the year 1966 and is a permanent resident of that locality. In addition the testimony of Headmaster of Bejibari Primary School dated 20.1.68 is also annexed stating thereunder that petitioner No. 2 Smti Bichitra Kumari Biswas was a student of the Bejibari Primary School and she had completed her study in the school on 31.12.1967. Referring to the aforesaid facts Mr. PK Goswami, learned counsel for the petitioner submitted that prima facie these three petitioners cannot be said to be illegal migrants. At any rate the petitioner could make out that they are not illegal migrants warranting expulsion from India as illegal migrants. The learned counsel submitted that justice was denied to the petitioners by the First Tribunal by not affording reasonable opportunity to submit representation with regard to the averments made in the reference and defend their case lawfully. The first Tribunal, contended the learned counsel, passed his order in a most mechanical fashion throwing to the winds the rule of principle of natural justice. The learned counsel further submitted that the finding of the learned first Tribunal cannot otherwise also be sustained on the materials on record and if an opportunity is provided to the petitioners as per law the petitioners would be able to vindicate their rights. The learned counsel assailed the impugned order of the learned Appellate Tribunal as arbitrary, capricious that suffers from the vice of mechanical exercise of power. The learned counsel submitted that the Act in question armed the Tribunal to admit an appeal after the expiry of the period of limitation under sub-sec. (9) of Section 15. The power conferred with the tribunal is a power to render justice and at any rate to avoid injustice. The learned counsel submitted that proviso to sub-sec. (9) of Sec. 15 no doubt was a matter within the area of discretion of the Tribunal but that discretion is to be exercised meaningfully, justly and reasonably.

3. Mrs. N. Devi Sarma, learned Central Govt. Standing Counsel seriously opposed the petition and submitted that both the Tribunals acted lawfully and within its competence and, therefore, question of interference by this court under Article 226 of the Constitution does not arise. The learned Standing Counsel submitted that it was the appellant who defaulted to appear before the first Tribunal despite notices were issued. Since the petitioners failed to avail the opportunity provided to it they cannot now come around and allege that there was denial of opportunity. In the case in hand opportunity was given and petitioners failed to avail the opportunity submitted Mrs. N. Devi Sarma. Referring to the order of the learned Appellate Tribunal the learned counsel submitted that statute has provided a period of limitation and if the appeal is not presented within time

scribed then the question of entertaining appeal does not arise unless the party that eals succeed in satisfying the court for not ferring the appeal within the period, by fficient cause. The learned counsel mitted that there was no sufficient cause accordingly the learned Tribunal rightly missed the appeal as time barred. Lastly learned Central Govt. Standing Counsel mitted that the learned Appellate Tribunal rcised the discretion which cannot be said e arbitrary and in the circumstances stion of exercising jurisdiction by this court ay of a writ petition does not arise.

4. Admittedly, the Tribunal adjudicated the ence ex parte. The decision of the tribunal ld a person as an illegal migrant enables Central Govt. to expel such person. Such has serious remifications affecting the and livelihood of such person. Considering e aspects of the matter the statute provide rocedural safeguards in Section 10 itself particularly in Section 10 and 12. Here case where the petitioners have alleged procedural safeguards were denied to . None of the Tribunals below had the tion to deal with this aspect of the matter. ppellate Tribunal dismissed the appeal ry technical ground. Sub Sec (9) of on 15 no doubt prescribe the period of tion for preferring an appeal but the same ion also empower the Appellate Tribunal cept an appeal after expiry of the id period. A discretion is conferred on thority to condone the delay. Rules of tions prescribed by a statute has its own tance. Such limitations are prescribed the parties do not sit over the oar and a proceeding. The statute, therefore, bed a point of limitation. The law of ion is based on a public policy that is ed in the maxim "interest reipublicae ut sit finis litium" (It concerns the state that there be an end of lawsuits. It is for the general welfare that a period be put to litigation). The whole object of prescribing period of limitation needs to avoid undue delay in a proceeding and to see that the parties move promptly for remedial measure. But at the same time one cannot overlook the meaning and object of providing appeal to enable the party to redress his grievances and recoup the legal injury so suffered. In the process of litigation there may be some laches on the part of the litigant concerned. Delay in each case is not fatal. The door of justice should not be slammed on the cause of delay alone of the explanation furnished is not manifestly malicious or that delay was caused deliberately to secure undue advantage. The court should lean in favour of a litigant by extending the liberal interpretation. The power of condonation of delay is no doubt discretionary but that discretion has to be exercised justly, lawfully and fairly and not mechanically or perfunctorily. The discretion exercised is to be measured in the touch stone of justice. In this context one should also keep in mind the accepted principle of statutory interpretation that comprehend the policy of law which in turn is based on public policy. Rule binds and the principle guides "Principiorum non est ratio" (No argument is required to prove fundamental rules). Then a statute incorporates a rule it makes that rule conclusive in relation to the purpose of the Act, where it attracts a principle it provides the scope of flexibility in application. A legal principle confers a right in the sense that a litigant can claim that the court shall take into account any relevant principle. A norm or standards is to be observed. The paramount aim of legal policy is to do justice and the court assumes that Legislature does not intend injustice. There is one more facet of the legal