

**Reserved on
(12.04.2018)**

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

(This the 20th Day of April, 2018)

**Hon'ble Dr. Murtaza Ali- Member (J)
Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Review Application No.330/00051/15

On behalf of

Union of India through Secretary, Ministry of Finance, Department
of Revenue, North Block, New Delhi and others.

..... Review Applicants

In

**Original Application No. 861 of 2005
(U/S 19, Administrative Tribunal Act, 1985)**

Ajay Kumar Mishra **Applicant**

By Adv.: **Shri Ashish Srivastava**

Versus

Union of India & Others. **Respondents**

By Adv.: **Shri L.P. Tiwari**

O R D E R

Delivered by Hon'ble Dr. Murtaza Ali, Member (J)

The present Review Application along with a Delay
Condonation Application has been filed by the respondents in O.A.
No.861 of 2005 on 24.09.2015 to review the order dated

16.12.2010 passed by the Tribunal and for condoning the delay in filing the review application. By the said order, it was directed that seniority of the respondent (applicant in O.A.) shall be restored so as to show above the Respondent Nos.4 & 5 of the said O.A. and review applicants were also directed to convene a review DPC in order to consider the name of the review respondent for promotion on the post of ACIT on the basis of the seniority list as on 01st January, 1999.

2. In the application for condonation of Delay, it is stated that in compliance of order dated 16.12.2010 seniority of the respondent was accordingly fixed vide order dated 17.02.2012. It is, further, stated that a review D.P.C. of ITO cadre was convened on 28.10.2013 in which D.P.C. had observed that applicant had not passed eligibility examination for promotion to the post of ITO in the year 1993 whereas Shri A.N. Mishra and Shri R.K. Gupta had passed the ITO examination in the year 1992 and were eligible for the promotion for the post of I.T.O. in the year 1994 and a request was sent to the Central Board of Direct Taxes, New Delhi vide letter dated 19.12.2013 to convene the review D.P.C. for considering the case of respondent for promotion. The C.B.D.T. convened the review D.P.C. and proposal for promotion of the

applicant was submitted to U.P.S.C. on 28.01.2014 but U.P.S.C. have expressed non feasibility to convene review D.P.C. to place the name of respondent above the names of applicants no.4 and 5 for promotion to the grade of A.C.I.T. for the vacancy year 2003-04 unless his seniority is revised above the applicants in the grade of ITO.

3. It is stated that due to above administrative reasons, there was a delay in filing the Review Application and it has been submitted that the delay was neither intentional nor deliberate and thus it has been prayed that delay in filing the Review Petition may be condoned.

4. Notice was issued to the respondent, who in turn filed counter affidavit and raised preliminary objection on the point of Delay in filing the Review Application as well as maintainability of the Review Application.

5. It is stated by the respondent that in the event of non compliance of the order dated 16.12.2010 passed in O.A. No.861 of 2005, a Contempt Petition No.174 of 2011 was filed by the respondent for non compliance of the said order and during the

pendency of the said Contempt Petition, applicants had filed Writ Petition No.10686 of 2012 which was dismissed by Hon'ble High Court against which S.L.P. was also filed before the Hon'ble Supreme Court and the same was also dismissed. He, further, stated that contempt petition filed by the respondents before this Tribunal is still pending and no review would lie when the order has been affirmed by the Higher Court. Hence, the Review Application is liable to be dismissed.

6. Learned counsel for the applicants has filed reply to the counter affidavit and reiterated the facts as stated in the Review Application.

7. Heard Shri L.P. Tiwari, counsel for the applicants and Sri A. Srivastava, counsel for the respondent and perused the application for condonation of delay and carefully examined the grounds taken by the applicants.

8. The reasons for delay in filing the Review Application, as stated by the applicants, are due to administrative difficulties. It is specifically provided in Rule 17 (1) of the Central Administrative Tribunal (Procedure) Rules, 1987 that no application for review

shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed. The 30 days limitation prescribed in the Act is a bar that essentially applies as a matter of mandate to the Tribunal. Although in the case of *U.OI Vs. CAT*, the Kolkata High Court has ruled that though despite the existence of Rule 17 of *C.A.T (Procedure) Rules*, the Tribunal can condone the delay in filing of Review Application under section 5 of the Limitation Act but the power of delay condonation has to be used sparingly and in exceptional cases where the reasons given for delay are well laid out. In the case of **Post Master General & others vs. Living Media India Limited and another** reported in **2012 (1) SCC (L&S) 649**, Hon'ble Apex Court has held that condonation of delay is an exception and should not be used as an anticipated benefit for government departments and offering usual explanation that file was kept pending due to procedural red tape. For the above stated position, the delay condonation application filed by the applicants was rejected by the Hon'ble Apex Court. In the present case, the Review Application has been filed on 28.09.2015 i.e. after lapse of about 5 years from the date of order sought to be reviewed, primarily attributed to the procedure involved in the department which we do not find sufficient reason

for condonation of delay. Thus, the application for condonation of delay is liable to be rejected.

9. Accordingly, the delay condonation Application as well as review application are rejected. No costs.

(Gokul Chandra Pati)
Member - A

(Dr. Murtaza Ali)
Member - J

Sushil