

Reserved

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

(This the 19th Day of September 2018)

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Misc. Delay Condonation Application No. 2279 of 2015
In
Misc. Restoration Application No. 2280 of 2015
In
Original Application No.520 of 2009
(U/S 19, Administrative Tribunal Act, 1985)

Amar Kant Ojha S/o late Sri Nagesh Shankar Ojha, R/o Jagannath
Pur, Post Sadar, District Gorakhpur.

..... Applicant

By Advocate: Shri Pradeep Mishra/Shri B. Tiwari

Versus

1. Union of India through the General Manager, N.E Railway, Gorakhpur.
2. Senior Manager, Printing and Stationary Railway Press, NE Railway. Gorakhpur.
3. Controller of Stores, N.E Railway. Gorakhpur.
4. S.M. Suri Technitian Grade I in Mono Section, Railway Press N.E. Railway, Gorakhpur.

..... Respondents

By Advocate: Shri P.N. Rai

ORDER

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. Learned counsel for the applicants has filed Misc. restoration application no. 2280 for recalling the order dated 30.1.2015 by which the O.A. was dismissed in default for non-prosecution. He has also filed Misc. Delay Condonation

Application No. 2279 of 2015 for condoning the delay in filing the restoration application.

2. The restoration application has been preferred with a delay of around four months as is apparent from the fact that the O.A. was dismissed in default on 30.01.2015 and the restoration application has been filed on 27.5.2015.
3. In the Delay Condonation Application, the counsel for the applicant has taken the ground that the initially Shri Bashist Tiwari was engaged as counsel for the applicant and in 2010 applicant engaged Shri Dharmendra Tiwari on his behalf. It was informed by Shri Dharmendra Tiwari that case file of the applicant was misplaced from the chamber of Senior Counsel and due to non-availability of case file Shri Dharmendra Tiwari, Advocate could not appear on 30.1.2015 before the Tribunal and consequently the case was dismissed in default by order dated 30.1.2015. The order dated 30.1.2015 was communicated by the office of this Tribunal to the applicant by Registered letter dated 12.5.2015 which was received by the applicant on 18.5.2015.
4. Learned counsel for the applicant further submitted that as per Rule 15 along with Rule 22 of C.A.T. (Procedure) Rules 1987, the date of communication to applicant is liable to be taken as the date of passing the order for the purpose of limitation. As such, 18.5.2015 is the date which is liable to be treated for the purposes of limitation for filing of restoration application.
5. Rule 15 of CAT (Procedure) Rule 1987 governs the restoration procedure of an O.A. dismissed in default reads as under :-

“15 Action on application for application’s default

1. Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned the application does not

appear when the application is called for hearing the Tribunal may in its discretion, either dismiss the application for default or hear and decide it on merit.

2. Where an application has been dismissed for default and the applicant files and application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same."
6. According to Rules, the restoration application is within time because in the case of Nand Lal Nichani and others Vs. Union of India and others reported in Full Bench judgment of Central Administrative Tribunals (1989-1991) Vol. II at page 85 in para 22 of the judgment, the Full Bench of the CAT Principal Bench has held that it is from the point of tendering of the copy of the order that time begins to run. The date of passing of the order is not the starting point of limitation.
7. The applicant has averred that the delay in filing the restoration application was not deliberate but due to unavoidable circumstances which were beyond the control of the advocate. And therefore, in the interest of justice the delay be condoned in filing the restoration application and the O.A. be restored to its original number.
8. The law is settled that the delay in filing an application for restoration of the O.A. can be condoned provided applicant shows 'sufficient cause' for the delay.
9. In the objection filed by the respondents, it has been submitted that on 30.1.2015, the case was called out, none was present on behalf of applicant and learned counsel for

the respondents was present. The case was dismissed in default and for non prosecution. The present Recall/Restoration application has been filed in the month of March 2015 without explaining the delay day-to-day. In the Delay Condonation Application, the applicant has failed to explain the cogent reason and it is well established law that no application can be entertained by the Tribunal beyond the period of limitation.

10. We have heard and considered the arguments of Learned Counsels for the parties and gone through the material on record. The undisputed facts are that O.A. No. 520/09 was dismissed in default vide order dated 30.1.2015 and application for its restoration was filed on 27.5.2018.
11. It has been argued by learned counsel for applicant that due to misplace of original file of the applicant, the earlier counsel was not present in the Court on 30.1.2015. Learned counsel for applicant further argued that the order dated 30.1.2015 was communicated by the office of this Tribunal to the applicant by Registered letter dated 12.5.2015 which was received by the applicant on 18.5.2015.
12. Rule 22 of CAT (Procedure) Rule reads as under :-

“22. Communication of order to parties - (1) Every interim order, granting or refusing or modifying interim relief and final order shall be communicated to the applicant and to the concerned respondent or to their counsel, either by hand delivery or by post free of costs:

Provided that unless ordered otherwise by a Bench, a copy of the final order need not be sent to any respondent who has not entered appearance:

Provided further that when the petitioner or the respondent is represented by a Counsel, under a single

Vakalatnama, only one copy shall be supplied to such Counsel as named therein.

(2) If the applicant or the respondent to any proceeding requires a copy of any document or proceeding the same shall be supplied to him on such terms and conditions on payment of such fees as may be fixed by the Chairman by general or special order”.

13. On the question of receiving of final order in terms of Rule 22 and its consequences regarding the period of limitation in Nand Lal Nichani (supra), it has been held that –

“The word ‘communicate’ means to impart; to reveal; to transmit. The word ‘communicate’ here will have its full application only when a copy of the order is either handed over to the party or to his counsel or sent by properly addressing, prepaying and posting by registered post and it will be deemed to have been effected at the time it would be delivered in the ordinary course of post. It is from the point of tendering of the copy of the order that time begins to run. The date of the passing of the order is not the starting point of the limitation. Where a duty is cast on the court to communicate the order to a party, it has to be complied with in any of the modes mentioned in Rule 22 of the Rules. There is provision for supplying a copy of the order by hand also. It is, therefore, clear that time would not begin to run until a copy of the order is communicate to the party concerned”.

It has further been observed by the Hon’ble Full Bench that “It is also made clear that in any event, time would

not begin to run until the applicant had either been served with a copy of the order.....”.

14. Taking in first instance, the argument of applicant that the order dated 30.1.2015 was communicated by the office of this Tribunal to the applicant by Registered letter dated 12.5.2015 which was received by the applicant on 18.5.2015.
15. In this background, looking to the law laid down by the Hon'ble Full Bench that the time would not begin to run until a copy of the order is communicated to the concerned party, it cannot be said that the restoration application is barred by period of limitation as per Rule 15 of C.A.T. (Procedure) Rules, 1987.
16. In view of the facts and circumstances of the case as discussed above, it is clear that the copy of the final order dated 3.9.2014 was received by the applicant on 18.5.2015 and thereafter the O.A has been filed on 27.5.2018. As such, there is no delay in filing the O.A.
17. Consequently the applications are allowed: Delay is condoned, the order dated 30.1.2015 is set aside and the O.A is restored to its original number for disposal,
18. List the O.A. on 31.10.2018 for further proceeding.

(RAKESH SAGAR JAIN)
Member (J)

(GOKUL CHANDRA PATI)
Member (A)

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