

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Dated : This the 12th day of **October** 2018

Review Application No. 330/00012 of 2018
In
Original Application No. 330/00395 of 2017

Hon'ble Mr. Gokul Chandra Pati, Member – A

1. Union of India through its Secretary, Ministry of Finance & Revenue, New Delhi.
2. The Director General (Vigilance), Customs & Central Excise II Floor, Hotel Samrat, Kautilya Marg, Chanakya Puri, New Delhi.
3. The Commissioner, Customs, Central Excise and Service Tax, 38 M.G. Marg, Allahabad.

. . .Applicants

By Adv : Shri R. Tripathi

V E R S U S

Shiv Karan Vishwakarma. S/o Manbodh Vishwakarma, R/o H. No. 36-A/27-C, Sulem Sarai, Allahabad.

. . .Respondents

By Adv: Shri S. Lal & Shri M.K. Yadav

O R D E R

This Review application has been filed by the Union of India and others, who are the respondents in OA No. 395/17, which was disposed of vide order dated 13.12.2017 directing the respondents to release the gratuity dues to the applicant as per the rules alongwith interest and to convert his provisional pension to regular pension. Review application challenges this order dated 13.12.2017 mainly on the following grounds:-

- i. The department has not accepted the order dated 19.01.2017 of this Tribunal in which the charge sheet against the applicant was quashed. A Writ Petition was filed before Hon'ble Allahabad High Court which was dismissed vide order dated 25.04.2017. Thereafter, the department filed the SLP before Hon'ble Supreme Court. Therefore, the matter of disciplinary proceedings of the applicant and penalty imposed thereon is under litigation and final decision regarding gratuity and pension of the applicant cannot be taken till the issue is finally settled.

- ii. The Central Excise appeal against the applicant has also been filed before Hon'ble High Court which is pending.
- iii. In view of above, since the matter relating disciplinary proceedings against the applicant has not reached finality his pension and gratuity as per the order dated 13.12.2017 cannot be granted.

2. Review application has been filed with a MA No. 581/18 for condonation of delay in filing the Review Application.

3. Heard learned counsel for the review applicant, Shri Rajeshwar Tripathi, who submitted that the delay in filing the Review Application is on account of delay in obtaining approval of the competent authority, for which there was a delay for about of two months in filing the Review Application, which may be condoned.

4. Regarding merits, learned counsel for the review applicant submitted that the disciplinary proceedings against the applicant is subjudice and the impugned order was passed assuming that the disciplinary proceeding had attained finality, which is not correct. Hence, it needs to be reviewed since there is factual error on record.

5. Shri S. Lal and Shri M.K. Yadav Learned counsels for the review respondents (applicant in the OA) submitted that no satisfactory reason has been furnished to explain the delay. It is also submitted by Shri M.K. Yadav that the SLP No. 12316/18 which was filed by the Union of India against the applicant impugning the order of Hon'ble High Court, has since been dismissed vide order dated 26.08.2018. Further the Central Excise appeal has also been dismissed by the Hon'ble High Court vide order dated 19.01.2018. Copies of above orders have been furnished, which are taken on record.

6. Shri R. Tripathi, learned counsel for the review applicants, also agreed that the SLP filed by the Union of India has been dismissed..

7. From the above submissions of the learned counsels, I am of the view that satisfactory reason has not been furnished to justify condonation of delay in filing this Review Application. Further, the under Rule 17 of the CAT (Procedure) Rules, 1987 no application for review shall be entertained unless it is filed within 30 days from the receipt of the copy of the order sought to be reviewed. Hence, the Review Application has been filed with delay for which no satisfactory reason has been furnished.

8. On merit also, the ground that disciplinary proceeding against the applicant has not attained finality, is no longer valid after dismissal of the SLP by Hon'ble Apex Court and dismissal of the Central Excise appeal filed by the Government against the applicant. No other valid ground under law has been furnished in the Review Application to justify review of the order dated 13.12.2017.

9. In view the above, the Review Application is not maintainable on the ground of delay as well as on merit. Accordingly, the MA No. 581/2018 to condone delay as well as the Review Application No. 12/2018 are dismissed. No cost.

(Gokul Chandra Pati)
Member (A)

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