

(Reserved on 25.04.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 02nd DAY of May, 2018)

HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

Civil Misc. Delay Condonation Application No. 330/01984/2016

With

Civil Misc. Review Application No. 330/00032/2016

(On behalf of Union of India and 3 others)

In

Original Application No. 330/00680 / 2007.

Chandra Shekhar son of Shri Ram Das, R/o Police Station Chavni,
Kacchi Kothi, Cantonment, District – Kanpur Nagar

.....applicant

V E R S U S

1. Union of India through its General Manager, North Central Railway, Head Quarters, Subedarganj, District – Allahabad.
2. Mandal Rail Prabandhak, North Central Railway, District – Allahabad.
3. Deputy Chief Executive Officer, Pul Line, North Central Railway, District Allahabad.
4. Executive Engineer, Pul Line, North Central Railway, District Allahabad.

.....Respondents

Advocate for the Review Applicants :-Shri Prashant Mathur
Shri Rakesh Kumar Srivastava
Advocate for the Respondents:- Shri A.K. Dave

O R D E R

Delivered by Hon'ble Mr. Gokul Chandra Pati, Member (A)

The instant Review Application is directed against the order dated 01.09.2015 (Annexure R-1) passed by this Tribunal in OA No. 680/07 (Chandra Shekhar Vs. U.O.I. & Ors) and filed by the

respondents in the OA (hereinafter referred to as respondents) and the respondent in the Review Application, was the applicant in the O.A (hereinafter referred to as applicant). The operative para of the order dated 01.09.2015 is as follows:-

“8. In view of this clear position, it is directed that the respondents should restore the original pay scale of the applicant of 2650-4000 after expiry of sixty months reckoned from 16.12.2004. His pay should not only be restored but the arrears due to him on account of the restoration of his pay scale to the original scale should also be calculated and paid to the applicant with an interest of 8% and the order should be complied within a period of 3 months from the date of receipt of certified copy of this order”

2. Main grounds mentioned in the Review Application to review the order dated 01.09.2015 of this Tribunal in OA No. 680/2007 are as under: -

- a. The applicant was under the punishment of reduction of post and pay scale from Helper-I 2650-4000 to Helper-II 2550-3200 for a period of 60 months with cumulative effect w.e.f. 16.12.2004 and the currency of such punishment comes to an end on 15.12.2009.
- b. The applicant was medically de-categorized while working as Helper Grade-I and as per rules and on request for alternative appointment, he was appointed to the post of Chowkidar on the same pay and grade in the grade of Rs. 2550-3200 vide order dated 18/19.04.2007 (Annexure).
- c. During the currency of punishment, vide RBE No. 160/2008 dated 29.10.2008, certain scales upto level of S-4 were

merged with the grade pay of Rs. 1800/- on implementation of the 6th CPC.

- d. Since the applicant was not having the requisite qualification, he was required to pass multi-skilling training and granted PB Rs. 1800/- w.e.f. 01.01.2006 and accordingly, his basic pay was fixed.
- e. The applicant concealed the fact of his being medically de-categorized with change of his category in the same grade and as such he is only entitled for difference of pay.
- f. The Tribunal at the time of passing the order dated - 1/.09.2015 did not consider the fact that no grade of 2650-4000/- exists at the present, after 1.1.2006 and as such, the direction contained in the order dated 01.09.2015 for restoration of his original pay in the scale of Rs. 2650-4000 after expiry of 60 months and payment of arrears needs to be reviewed.

3. The Review Application has been filed on 31.05.2016 after about 9 months, for which a delay condonation application No. 1984/2016 alongwith the affidavit has been filed with prayer to condone the delay mainly on following grounds: -

- i. After receipt of the certified copy of the order dated 01.09.2015 on 30.09.2015, on the basis of material available on file, it was decided by the competent authority to file the application to modify the order. Accordingly, a modification application was filed and information to this effect was given on 17.12.2015.
- ii. While further scrutiny of the documents was undertaken at the Headquarter, the entire matter was put

up before the competent authority, who directed filing of the review application as certain relevant documents could not be produced at the time of hearing of the matter.

iii. Thereafter, the entire relevant records were made available to the counsel for drafting the review application and immediately thereafter the present review application has been filed without any further delay.

iv. The delay in filing the review application is neither intentional nor deliberate but was due to departmental procedure.

4. No reply to the review application or delay condonation application has been filed by the applicant in spite of the notice. Both the applications were heard on 25.04.2018.

5. The learned counsel for the respondents submitted that the review application could not be filed well within the time prescribed for filing the review on account of official procedure required to obtain approval of the competent authority. He further submitted that the review involved important issue, which could not be considered by this Tribunal, as explained in the Review Application. Recollecting the background of the case, he submitted that the applicant was placed under suspension and a chargesheet was served upon him as per rules and inquiry was conducted. The disciplinary authority after completing the procedure laid down under the rules removed the applicant from service with immediate effect vide order dated 12.05.2004. The applicant filed the appeal and the appellate authority modified the punishment order to reduction in rank from Helper-I to Helper-II for a period of 60

months with cumulative effect vide order dated 23.12.2014. While working as Helper-II, the applicant was medically de-categorized and on his request he was considered for alternative post of Chowkidar. However, this fact was not brought to the notice of this Tribunal at the time of hearing of O.A by the applicant, who concealed the fact. Further, after recommendation of 6th CPC, certain posts upto S-4 were merged in the GP Rs. 1800/- as per Railway Board's letter dated 29.10.2008. Accordingly, the pay of the applicant has been fixed w.e.f. 01.01.2006 and he was treated as Group 'C' employee, but since he was under suspension, he was granted the basic pay and fixing his pay accordingly from time to time, as reflected in his service register at Annexure-6. After punishment period was over, the pay of the applicant was re-fixed and the arrear of Rs. 2,66,154/- with 8% interest was paid to the applicant as per order at Annexure-7. It was further pointed out that the respondents filed a modification application to modify the direction of this Tribunal directing restoration of his original scale of Rs. 2650-4000 after expiry of the punishment and pay interest at the rate of 8% p.a.

6. Learned counsel for the applicant submitted that no fresh grounds or error apparent on record have been brought out by the respondents in the review application. However, he objected to the fact that the delay condonation application is liable to be rejected.

7. We have carefully considered the submissions and the pleadings on learned counsels for both sides and perused the material on record.

8. Prima facie we find that the present Review Application is highly belated in as much as the order was passed on 01.09.2015, whereas, the present Review Application has been filed on 31.05.2016 i.e. after lapse of about nine months, which is beyond the period of limitation of 30 days, as prescribed under CAT (Procedure) Rules. In the case of **K. Ajit Babu Vs. Union of India – 1997 (6) SCC 473 (Para 4)**, while examining the provisions of Section 22(3)(f) of the AT Act and the Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, the Hon'ble Apex Court laid down that the right of review is available to the aggrieved person on restricted ground as mentioned in the Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came before the Full Bench of Andhra Pradesh High Court in the case of **G. Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others – 2005(4) SLR 720**, where it was laid down that the Tribunal will not have jurisdiction to condone the delay under the Limitation Act.

9. For the reasons stated above, we do not find the reasons furnished in the application for delay condonation to be adequate enough to consider condonation of delay in view of the position of law as discussed above. Accordingly, the Misc. Application No. 330/01984/16 for condonation of delay in filing the review application is liable to be rejected.

10. On merits, we find that the main grounds include the point that the medical decategorization of the applicant was not brought to the notice of this Tribunal, while considering the OA No.

680/2007. In case the applicant did not disclose this fact, nothing prevented the respondents to bring this to the notice of this Tribunal. The other point relates to the merger of different pay scales in one pay scale with effect from 1.1.2006 after implementation of 6th C.P.C. recommendations. It is also stated in the Review Application that after the punishment period was over, the applicant's pay was re-fixed and the arrears with interest have been paid to the applicant, implying the fact that the impugned order has been implemented. Hence, it is not understood why this Review Application has been filed, while implementing the same order which is impugned in the said review Application. Further, if the respondents are not satisfied with the order, they can take appropriate action to challenge it as per the provisions of law. Hence, we are of the view that the grounds taken in the Review Application cannot be considered as legally valid grounds to justify any review of the order dated 01.09.2015 of this Tribunal.

11. In view of above discussions, the Misc. Delay Condonation Application No. 1984/2016, being devoid of merit is dismissed and the Review Application, having been filed with a delay, is not maintainable under law and hence, it is also dismissed.

MEMBER (A)

MEMBER (J)

Anand...