

(Reserved on 18.09.18)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **04th** day of **October, 2018**

Present:

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER-A.
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J.**

**MISC. DELAY CONDONATION APPLICATION NO. 330/01137/2018
AND
MISC. RECALL APPLICATION NO. 330/1138/2018
IN
EXECUTION APPLICATION NO. 06 OF 2015
IN
ORIGINAL APPLICATION NO. 720 OF 1996**

Mohd. Quazmi S/o Sri Ali Mohammad, R/o 20, Sheikh Bara,
Prem Nagar, Jhansi.

.....Applicant.

V E R S U S

1. Union of India through General Manager, Central Railway, Mumbai CST, Now NCR, Allahabad.
2. Deputy Controller of Store, Central Railway, Jhansi Now NCR, Jhansi.
3. Deputy Controller of Store, Central Railway Now NCR, Jhansi.
4. Kalka Personal Assistant Controller of Stores, C/o Dy. Controller of Stores, Central Railway, Jhansi Now North Central Railway, Jhansi.
5. Chief Personnel Officer, Central Railway, Mumbai Now North Central Railway, Allahabad.

..... Respondents

Present for the Applicant : Shri S.M. Ali
Present for the Respondents: Shri R.K. Srivastava

ORDER

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

Both the Miscellaneous Applications (in short MA) Nos. 1137/2018 and 1138/2008 have been filed by the learned counsel

for the applicant of the OA No. 720 of 1996. MA No. 1138/2018 is for recall of the order dated 14.2.2018 passed by this Tribunal dismissing the Execution Application (in short EA) No. 6 of 2015 filed by the applicant for execution of the Tribunal's order dated 9.8.2002 by which the OA No. 720/1996 was disposed of. MA No. 1137/2018 is for condonation of delay in filing the recall application.

2. The MA No. 1138/2018 has been filed under the rule 15(2) of CAT (Procedure) Rules, 1987. The said rule 15(2) states as under:-

“(2) Where an application has been dismissed for default and the applicant files an 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 :
Provided, however, where the case was disposed of on merits the decision shall not be responded except by way of review.”

From above provisions of the rule 15(2), it is clear that the recall of the order of the Tribunal is allowed under the said rule when an application has been dismissed for the default of the applicant. Since in this case, the EA No. 6/2015 has been dismissed vide order dated 14.2.2018 on merit, the said order dated 14.2.2018 cannot be recalled under the rule 15(2) of the CAT (Procedure) Rules, 1987. This can be done only by way of review as provided under the section 22(3)(f) of the Administrative Tribunals Act, 1985. This review can be done only under the rule 1 of the Order 47 of the Civil Procedure Code.

3. In view of the above, the MA No. 1138/2018 is not maintainable under the rule 15(2) of the CAT (Procedure) Rules, 1987. Hence, the MA No. 1137/2018 and 1138/2018 are liable to be dismissed on this ground of non-maintainability under the rule 15(2) of the CAT (Procedure) Rules, 1987.

4. We have heard the learned counsels for both the parties on the MAs. Learned counsel for the applicant submitted that there is some delay in filing the recall application, which can be condoned since the order dated 9.8.2002 of the Tribunal in OA No. 720/1996 has not

been complied fully. For the reason for delay, it is mentioned in MA No. 1137/2018 that the applicant was under impression that the Writ petition will be filed against the order. It is also mentioned that the resjudicata will not apply for the execution proceedings. The reasons mentioned in the delay condonation application are not at all convincing.

5. Even on merit, the MA No. 1138/2018 deserves to be dismissed. It is stated in para 11 of the MA No. 1138/2018 that two issues are pending for full compliance of the order dated 9.8.2002, for which the Execution Application no. 6/2015 has been sought to be revived. These two issues are regarding seniority vis-a-vis some of the employees and full salary for the period from 9.8.2002 to 11.10.2006. As stated in the order dated 14.2.2018, there was delay in implementing the order dated 9.8.2002 since the respondents had challenged the said order in the Writ Petition No. 40507/2002. The said Writ Petition was dismissed by Hon'ble High Court vide order dated 8.11.2005 (Annexure 3 to the EA) after which the respondents issued the order dated 12.10.2006 (Annexure 4 to the EA) in compliance of the order dated 9.8.2002 of the Tribunal. As stated in the order dated 14.2.2018, the delay in implementation has been accepted by the Tribunal while considering the Contempt application filed by the applicant. There is nothing on record to show that this finding of the Tribunal in the contempt proceedings has been disputed by the applicant as per the provisions of law. Hence, there was no justification for claiming salary for the period from 9.8.2002 to 11.10.2006. Similarly, the seniority of the applicant was found to have been correctly fixed by the respondents, as discussed in para 11 of the order dated 14.2.2018.

6. The applicant has not disputed the finding of the Tribunal in the contempt proceedings, due to which these issues have been settled as on date. No provision of law has been quoted by the applicant in support of the contention that the principle of resjudicata will not apply for the execution proceedings.

7. In view of the above, there is no justification at all for recalling the order dated 14.2.2018 dismissing the EA No. 6/2015. The MA No. 1137/2018 for condonation of delay is dismissed as no satisfactory explanation for delay in filing the MA has been mentioned and the MA No. 1138/2018 is also dismissed on the ground of delay and also on merit.

8. There will be no order as to costs.

(Rakesh Sagar Jain)
Member (A)

(Gokul Chandra Pati)
Member (J)

Anand...