

(Reserved on 10.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 16th DAY of August, 2018)

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

Civil Misc. Delay Condonation Application No. 330/03795/2015

With

Civil Misc. Review Application No. 330/00050/2015

(On behalf of Union of India and others)

In

Original Application No. 330/01573 /2012.

1. Union of India through General Manager, East Central Railway, Hazipur (Bihar).
2. Divisional Railway Manager, East Central Railway, Mughalsarai.
3. Senior divisional Personnel Officer, East Central Railway, Mughalsarai.
4. Divisional Personnel Officer, Mughalsarai.
5. Senior Divisional Commercial Manager, East Central Railway, Mughalsarai.

.....applicants

V E R S U S

Rahmatullah son of late Mohd. Hanif, Resident of House No. 621/1, Kailashpuri Mohamoodpur, Mughalsarai, District - Chandauli.

.....Respondent

Advocate for the Review Applicants :-
Advocate for the Respondent:-

Shri N.C. Srivastava
Shri A.K. Dave

ORDER

The instant Review Application is directed against the order dated 02.07.2015 (Annexure RA-1) passed by this Tribunal in OA No. 1573/2012 (Rahmatullah 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 relevant paragraphs of the order dated 02.07.2015 is as follows:-

“5. Having regard to the fact that the respondents have failed to produce any documentary support to establish that any disciplinary or criminal / judicial proceeding is pending against the applicant there is no justification on the part of the respondents not to release gratuity and the other financial benefits due to him, as claimed in the O.A

6. Accordingly the O.A is allowed. The respondents are directed to release the gratuity of the applicant alongwith balance amount of two leave encashment and balance amount of house rent allowance for the period from January 2011 to July 2011 within a period of three months from the date of receipt of certified copy of this order. The applicant is also entitled to 8% interest per annum from the date on which the payment of the aforesaid amount was due to him till the actual date of payment. No costs.”

2. Main grounds mentioned in the Review Application to review the order dated 02.07.2015 of this Tribunal in OA No. 1573/2012 are as under: -

- a. The claim of the applicant cannot be considered due to a criminal case No. 137/2005 under section 7, 13 of Prevention of Corruption Act and under section 420, 384 IPC is pending against him. .
- b. The OA was allowed mainly on the ground of non-availability of documentary evidence at the relevant time. However, order sheets since 12.03.2007 to 16.06.2013 (Annexure RA-3) in the criminal case pending against the applicant as the documentary evidence has now been filed with this Review Application.
- c. The letter dated 26.08.2015 issued by the Special PP (Vigilance-1st), Patna which contains the fact regarding special Case No. 24 of 2005 arising out of P.S. Case No. 137/2005 (State Vs. Rahmatullah) pending in the Court of Special Judge, Vigilance 1st Patna.

- d. The learned Special Judge Vigilance 1st Patna issued warrant of arrest on 16.11.2011 in the aforesaid case and the next date was fixed on 04.09.2015.
- e. In view of the above fact that the criminal case is pending against the applicant, the order dated 02.07.2015 needs to be reviewed.

3. The Review Application has been filed on 14.09.2015 after more than one month, for which a delay condonation application No. 3795/2015 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 02.07.2015 on 29.07.2015, the matter was referred to the higher authorities for taking necessary decision, who vide letter dated 31.08.2015 decided to file the Review Application. .
- ii. 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.
- iii. The delay in filing the review application is neither intentional nor deliberate but was due to departmental procedure.

4. The applicant had filed Counter Affidavit stating therein that the case against the applicant mentioned by the respondents in the Review Application is private in nature and it has no relation to the discharge of official duties, hence withholding of pensionary benefits is totally arbitrary, illegal and against rules. In support of this contention, counsel for the applicant has cited a judgment in the case of Prabir Kumar Chakraborty Vs. Union of India & ors – 2016(2) AISLJ CAT (Calcutta) 501. It is further stated that the applicant has already been released on bail.

5. The learned counsel for the respondents was heard. He 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.

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. A copy of the judgment of this Tribunal in the case of Prabir Kumar Chakraborty (Supra) has been produced at the time of hearing.

7. I have carefully considered the submissions and the pleadings of learned counsels for both sides and perused the material on record. Admittedly, the present Review Application is filed beyond 30 days with a delay condonation application under rule 17 of the CAT (Procedure) Rules, 1987, which states as under:

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“17. Application for review – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of a copy of the order sought to be reviewed.”

Hence, the Review Application filed beyond 30 days will not be maintainable.

8. 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 held 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. In this case, this Review Application was filed on 14.09.2015

impugning the order dated 02.07.2015 of this Tribunal. Hence it is filed beyond 30 days time as stipulated under rule 17 of the CAT (Procedure) Rules, 1987.

9. For the reasons stated above, I 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. 3795/15 for condonation of delay in filing the review application is liable to be rejected.

10. On merits, under Rule 1 order 47 of the CPC, the review application is maintainable only on the following grounds: -

- “(i) Discovery of new and important matters or evidence, which was not within the knowledge or could not be produced in time before Court; or
- (ii) Order made on account of some mistake or error apparent on the face of the record; or
- (iii) Any other sufficient reason.

It is held by the Hon’ble Apex Court that the ground at (iii) above has to be related to the grounds mentioned at (i) and (ii).

11. In this case, the respondents in the Review Application have stated that the copy of noting of the criminal case was not available at the time of hearing of the OA, which could not be produced before the Tribunal. This has been received by the respondents after passing of the impugned order dated 02.07.2015. It is not established that the document could not have been obtained at the time of hearing of the OA by this Tribunal even after exercise of due diligence. In fact, it was the duty of the respondents to have kept the proof of pending judicial proceedings against the applicant before deciding to withhold release of the retiral dues, which cannot be withheld on hearsay and without any documentary proof to be obtained from time to time.

12. Further in the case of Prabir Kumar Chakraborty (Supra) decided by Calcutta Bench of this Tribunal vide order dated 07.03.2016 which has been cited by the applicant’s counsel, it was held after examining various case laws on the matter that if no

disciplinary or criminal proceedings are pending against a retired employee, except a judicial proceeding or private nature, having no relation to official duty of the applicant, the respondents cannot withhold the retiral benefits, including gratuity of the applicant.

13. In view of above discussions, the Misc. Delay Condonation Application No. 3795/2015, being devoid of merit is dismissed and the Review Application, having been filed with a delay, is not maintainable on the ground of limitation. It is also devoid of merit as discussed above.

14. Accordingly, the Review Application is dismissed.

MEMBER (A)

Anand...