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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 30th DAY of November, 2018)

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

Civil Misc. Delay Condonation Application No. 330/02518/2018

With

Civil Misc. Review Application No. 330/00057/2018

Union of India and others.

.....applicants

V E R S U S

Banwari Lal.

.....Respondents

In

Original Application No. 330/01162 /2012.

Banwari Lal.

.....Applicant

VERSUS

Union of India and others.

.....Respondents

**Advocate for the Applicants :- Shri Manish Kumar Yadav
Advocate for the Respondent:-**

O R D E R

The instant Review Application filed by the respondents in the OA, is directed against the order dated 04.09.2018 (Annexure-RA -1) passed by this Tribunal in OA No. 1162/2012 (Banwari Lal Vs. U.O.I. & Ors). 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 main grounds mentioned in the Review Application to review the order dated 04.09.2018 of this Tribunal are as under: -

- a. The argument advanced at the time of final hearing that the disciplinary proceeding was processed against the applicant in accordance with provisions of DAR Rules, 1968 has not been considered.
- b. The Tribunal also did not consider the fact that the applicant did not co-operate the enquiry despite repeated request made by the Inquiry Officer, for which the Inquiry Officer proceeded with the enquiry against the applicant ex-parte.

- c. At the time of reserving the judgment on 24.08.2018, time was granted to the respondents' counsel to submit written arguments upto 04.09.2018, but the judgment was pronounced 04.09.2018 in the morning session without considering such written arguments.
- d. It appears that there are certain error in the order dated 04.09.2018, which is apparent on the face of the record, hence the order dated 04.09.2018 needs to be reviewed.

3. The Review Application against the impugned order dated 04.09.2018 has been filed on 25.10.2018 after a delay beyond 30 days from the date of receipt of the order dated 04.09.2018 on 10.09.2018, as mentioned in the MA No. 2518/18 filed alongwith the Review Application on 25.10.2018. Following grounds are mentioned in MA No. 2518/18 justifying condonation of delay : -

- i. After receipt of certified copy of the order dated 04.09.2018, the matter was referred to the higher authorities for taking necessary decision.
- ii. The competent authority decided to file the Review Application and thereafter, the present Application has been filed. There was also vacation for the period from 13.10.2018 to 21.10.2018.
- iii. The delay in filing the review application is neither intentional nor deliberate but due to some unavoidable reasons, which were beyond the control of the applicants.

4. It is clear that the present Review Application is filed with a delay of about 15 days. In this regard the rule 17 of the CAT (Procedure) Rules, 1987 states as under:-

“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 cannot be considered in view of the aforesaid rule 17.

5. It is noted that 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 it is filed within the period of limitation. The matter of condonation of delay in filing Review Application has also been considered by the Full Bench of Hon'ble 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** and it was held that the Tribunal will not have jurisdiction to condone the delay in filing Review Application.

6. We have perused the grounds mentioned in the delay condonation application (MA No. 2518/2018), which are mainly on account of delay to obtain approval of the competent authority to file Review Application and such reasons are not at all satisfactory. The plea of delay on account of vacation from 13.10.2018 to 21.10.2018 is not acceptable since the review Application was not filed on the first working day immediately after the vacation i.e. on 22.10.2018. Hence, we are of the view that the delay in filing the Review Application beyond the time stipulated under the rule 17 of the CAT (procedure) Rules, 1987 has not been explained satisfactorily by the review applicants (respondents in OA).

7. 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. Accordingly, the Misc. Application No. 2518/18 for condonation of delay in filing the review application is liable to be dismissed.

8. Regarding merits of the Review Application, we note that review of the order of this Tribunal is done under the section 22(3)(f) of the Administrative Tribunals Act, 1985 read with provisions of the rule 1 Order 47 of the CPC which state as under: -

“1. Application for review of judgment – (1) Any person considering himself aggrieved –

- (a). by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b). by a decree or order from which no appeal is allowed, or
- (c). by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

9. It is noted that the scope of reviewing the order of this Tribunal is limited to the grounds as mentioned in the Order 47 Rule 1 of the CPC. A review application can be entertained on the ground of error apparent on the face of record or new facts / matter which was not known at the time of hearing of the O.A or for any other related reason. In the case of **State of West Bengal And Others v. Kamal Sengupta and another reported in (2008) 8 SCC 612**, Hon'ble Supreme Court has laid down following factors to be kept in mind for review:-

- “(i). *The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.*
- “(ii). *The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.*
- “(iii). *“that any other sufficient reasons” in order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- “(iv). *An error which is not self evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of the record.*
- “(v). *An erroneous decision cannot be corrected under review.*
- “(vi). *An order cannot be reviewed on the basis of subsequent decision / judgment of coordinate Larger bench or a superior Court.*
- “(vii). *The adjudication has to be with regard to material which were available at the time of initial decision subsequent event / developments are not error apparent.*
- “(viii). *Mere discovery of new / important matter or evidence is not sufficient ground for review. The party also has to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced earlier before the Tribunal.”*

10. The Hon'ble Apex Court in the case of **Rajendra Kumar and others Vs. Rambhai and others - (2007) 15 SCC 513** has examined with the question of review and its maintainability and has held as under: -

“6. *The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to*

failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

11. We have considered the grounds mentioned in the Review Application in the light of legal provisions as well as the ratio of the judgments, as discussed above. Regarding adherence of the rules in the disciplinary proceedings against the applicant in the OA, , para 17, 19 and 20 of the impugned order dated 04.09.2018 state as under: -

“17. The service of the chargesheet by pasting the same on the notice board cannot be considered to be adequate, since the applicant was absent from the place of work as asserted by the respondents in the chargesheet. When the allegation against an employee is unauthorized absence, the service of the chargesheet or penalty order by pasting the order on the notice board in the station is no service at all. If the registered posts were being returned undelivered, the respondents could have considered issue of a notice or publishing a notice to the applicant about the chargesheet or the inquiry in the local newspaper, which was not done. Hence, the chargesheet was not properly served on the applicant.

18.

19. It is the contention of the respondents that the inquiry was conducted ex-parte. For ex-parte inquiry, the guidelines in para 15(k) of the Master Circular No. 67 states as under:-

“k) If the charged official does not appear before the Inquiry Officer, the inquiry may be held ex-parte. However, a copy of the record of the day-to-day proceedings of the inquiry and notices for the hearings should be sent to the charged official regularly so that he is aware of what has transpired during the proceedings and this also enables him to join the proceedings at any stage, if he so desires. This procedure should be complied with invariably and Inquiry Officer should ensure that full opportunity is provided to the charged official to defend himself (Board's letter No. E(D&A) 90 RG 6-34 dt. 18.4.90).”

Nowhere in the pleadings of the respondents it is claimed that the procedure as specified by the Railway Board has been adhered to while conducting the ex-parte inquiry against the applicant. A copy of the inquiry report was also not attached, which could have revealed the procedure adopted by the inquiry officer while conducting the ex-parte inquiry.

20. Apart from non-service of the chargesheet, another major lacuna in the departmental proceedings against the applicant is absence of any pleadings by the respondent about communication of the copy of the inquiry report to the applicant to ask for his representation for consideration of the disciplinary authority before taking decision about the penalty. No evidence or document has been furnished by the respondents to show that the statutory requirement under the rule 10(2) of the DAR, 1968 has been fulfilled.”

12. There is nothing in the Review Application to show that the findings as recorded in paragraphs 17, 19 and 20 of the impugned order were based on incorrect facts or some pleadings or documents on record were not considered while arriving at such conclusions or there is any error apparent on the face of the record. Clearly, there is substantial violation of the rules in the manner in which the disciplinary proceeding against the applicant in the OA was conducted and finalized.

13. Regarding the ground of submission of written arguments by the respondent's counsel for which time was allowed till 04.09.2018, it is seen that no additional argument beyond what was placed by the respondents' counsel at the time of hearing of the OA has been mentioned in the Review Application. If there was any other argument which could have been placed before the Tribunal through written argument, then such argument could have been placed alongwith the present Review Application for consideration. No such pleading or argument has been advanced in the Review Application which could have affected the findings recorded in the order dated 04.09.2018 that there was violation of the rules applicable for the disciplinary proceedings in this case.

14. In view of the facts and reasons as mentioned above, we do not find any reason to review the order dated 04.09.2018 as per the provisions of law. The respondents have failed to show that there is any error apparent on the face of record to justify review of the impugned order dated 04.09.2018 of this Tribunal.

15. In view of above discussions, the Misc. Delay Condonation Application No. 2518/18, being devoid of merit, is dismissed. The Review Application No. 57/2018 is dismissed both on the ground of delay as well as on merits for the reasons discussed above.

16. The Registry is directed to communicate the copy of this order to the counsel for the parties.

MEMBER (J)

MEMBER (A)

Anand...