

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REVIEW APPLICATION NO. 170/00002/2017

IN

ORIGINAL APPLICATION NO.170/00758/2016

DATED THIS THE 05th DAY OF FEBRUARY, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. Union of India,
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi – 110 001.

2. Pr. Chief Commissioner of
Income Tax,
Karnataka & Goa Region,
Queens Road,
Bangalore – 560 001.

.....Review Applicants

(By Shri M.V. Rao, Senior Panel Counsel)

Vs.

1. K. Murugeshwaran
S/o V. Kandaswamy, aged 47 years,
R/o 276, 2nd Floor, 5th Cross,
5th Main, Vivek Nagar Further Extension,
Bangalore

2. A. Revathi
D/o V. Ananda Krishnan, aged 51 years,
R/o 1428, 11th Block, Further Extension,
Anjennapura, Bangalore

3. Saikarnan N
S/o R. Narayana Swamy,
aged 51 years,
R/o 34, 1st Main Road,

Ramesh Nagar, Bangalore.

4. Geetha Kumari
D/o K.C. Kolha, aged 50 years,
R/o 27, Deepam, 3rd Main, 7th Cross,
LBS Nagar, Vimanapura, Bangalore.

5. A. Uma Devi
D/o H. Ashok, aged 43 years,
R/o MIG-191, 6th B Main Road,
Ramakrishan Nagar,
K Block, Mysore.

6. G. Srinivas
S/o C. Govindan, aged 49 years,
R/o 19/14-1, 1st Main Road,
Jayamahar Ext,
Bangalore – 560 046.

7. Bhavani P
D/o Perumal, aged 49 years,
R/o 34, 7th Cross,
Laibharat Nagar,
Maruthi Sevagram Post,
Bangalore.

8. M Isaivani
D/o Megharaj V, aged 55 years,
R/o 92, 5th Street,
Kalyan Nagar,
Banaswadi, Bangalore.

9. Malliga Shankar
D/o V. Lingesan, aged 53 years,
R/o B-6, Income-tax Colony,
2, Infantry Road, Bangalore.

.... Review Respondents

(By Advocate Shri T.C. Gupta)

ORDER

(HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A))

The present RA has been filed by the original respondents seeking review of the order dated 13.07.2016 in OA No. 758/2016. The said order of 13.07.2016 refers to our earlier order passed in OA No. 854-863/2013 in which certain clarifications were issued and benefits granted to the applicants therein who are equivalently situated. Hence direction was given to the respondents to treat the

applicants in the same circumstances and pass appropriate orders in the light of the order passed by this Tribunal if there is full similarity.

2. The review applicants submits that since all the respondents in the Review Application, i.e., the original applicants in the OA, are similarly situated as compared to applicants in OA No. 854-863/2013 and since a Review Application has been filed against the said order of the Tribunal in OA No. 854-863/2013, the present Review Application has been filed against the order passed in OA No. 758/2016. They have taken same contention as taken by them in the Review Application against the order passed in OA No. 854-863/2013 saying that the Tribunal had upheld the OM dated 28.08.2013 issued by the Chief Commissioner of Income Tax and hence the direction to protect the pay and increment availed by the applicants who were to be reverted from the date they started working as Income Tax Officers on personal basis is not justified. They have quoted FR 31 A regarding refixation on de-confirmation and submits that the service rendered by the government servant in the post to which he was wrongly promoted/appointed as a result of the error should not be reckoned for the purpose of increments or for any other purpose in that grade/post to which he would not normally be entitled but for the erroneous promotion/appointment. They have also mentioned that the number of Officers drawing pay in a particular cadre will be more than the sanctioned strength in a particular cadre if the order was implemented. Hence they prayed for a review of the order passed in OA No. 758/2016. The applicants have also filed MA No. 27/2017 seeking condonation of delay of 143 days in filing the Review Application.

3. The respondents in the Review Application had filed the reply which was found defective and had not been taken in the record. However in the reply they have only raised the issue that the Review Application has not been filed within 30

days from the date of receipt of copy of the order. There is no provision for condoning the delay in filing the RA. They have referred to Hon'ble Supreme Court decision in Civil Appeal No. 10941-10942/2013 in the case of New India Assurance Company Vs. Hilli Multipurpose Cold Storage Pvt. Ltd in which it was held that no power lies beyond the statute. Therefore they submitted that since the RA has not been filed within time, the delay cannot be condoned and the Review Application should be dismissed. The review applicants have filed MA No. 333/2017 seeking permission to file rejoinder and MA No. 528/2017 seeking permission to file additional rejoinder. Both these MAs are allowed and the rejoinder and additional rejoinder are taken on record. In the rejoinder and additional rejoinder, the review applicants have submitted that the issue of delay has been considered by the Larger Bench of this Tribunal which clearly held that the Tribunal has power to condone the delay in filing the Review Application. The decision has been reported in 2010 SSLJ 1. They have also referred to a judgment of the Hon'ble Apex Court in UOI Vs Satish Kumar reported in 2006 SCC (L&S) 132 where it has been held that by seeking extension of time to comply with the order of the High Court by itself does not preclude a party aggrieved to question the correctness or otherwise of the order of the High Court and it does not waive his right to file an appeal in the matter. They have also stated that the decision of the Hon'ble Supreme Court in K. Ajit Babu and Others Vs. Union of India have been discussed the 5 Member Bench decision reported in 2010 1 SLJ (CAT) wherein the Hon'ble Supreme Court held that the principles contained in order 47 CPC should have been extended which clearly indicates that an application for condonation of delay in filling the RA can be filed and entertained.

4. We have heard both sides who have practically reiterated the submission made in the Review Application, reply and rejoinders as has been highlighted in

the preceding paras. On the issue of delay, we have considered the matter in detail and condone the delay and take up the Review Application on merit.

5. It is evident from the contention made by the review applicants that they have filed the present Review Application against the order passed in OA no. 758/2016 on similar grounds as that highlighted in the Review Application filed against the order passed in OA No. 854-863/2013. We have considered the contention of the review applicants and the respondents in Review Applications No. 05/2017 and 07/2017 filed against the order in OA No. 854-863/2013 in detail and by a separate order the Review Applications filed by both sides have been dismissed as there was no justifiable ground for any review of the order dated 22.04.2016 passed by the Tribunal in OA No. 854-863/2013. Since the order in OA No. 758/2016 only gave direction to respondents to take further action in accordance with the order passed by this Tribunal in OA No. 854-863/2013, there is no justifiable ground in the present Review Application also. Hence we hold that the present Review Application lacks merit and therefore the same stands dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicants in RA No. 170/00002/2017

Annexure-RA1: Copy of the order of CAT, Bangalore Bench dated 13.07.2016 in OA No. 170/00758/2016

Annexures referred in Rejoinder

Nil

Annexures referred in Additional Rejoinder

Nil

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