

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Miscellaneous Application No.290/00261/2016**

**In**

**Review Application No. 290/00020/16 in OA No. 159/2013**

Reserved on : 11.07.2019

Jodhpur, this the 23<sup>rd</sup> July, 2019

**CORAM**

**Hon'ble Smt Hina P. Shah, Judicial Member**

**Hon'ble Ms Archana Nigam, Administrative Member**

- (1) Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
  - (2) The Superintendent of Post Office, Pali Division, Pali Marwar, Rajasthan.
  - (3) The Post Master, Marwar Junction, District Pali, Rajasthan.
- .....Applicants

By Advocate : Mr K.S. Yadav.

Versus

Hukam Singh S/o Shri Padam Singh aged about 39 years, Resident of VPO Babhan via Sojat Road, District Pali (Rajasthan). Presently working as GDS BPM Bhaban Via Sojat Road, District – Pali (Rajasthan).

.....Respondent

By Advocate : Mr S.K. Malik

**ORDER**

**Per Smt. Hina P. Shah**

The present Miscellaneous Application has been filed seeking condonation of delay of about 07 months for filing the Review Application, seeking review of order dated 28.01.2016 in OA No. 159/2013 by the respondents in the OA (applicants in the Review Application), i.e. Union of India & Ors.

2. The review applicants state that the order sought to be reviewed was passed by this Tribunal on 28.01.2016 and which, according to them, is a non-speaking order as the said OA was allowed in terms of the judgment of Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No. 9739/2014 dated 14.01.2015, directing the review applicants to regularize the services of the applicant (in the OA) within 02 months. The review applicants state that after receipt of order of this Tribunal, the legal opinion was sought wherein it was advised to file review of order dated 28.01.2016. The matter was considered at various levels and ultimately sent to the BLS for legal opinion by the higher authorities who opined to file a review petition in the matter on the ground that case of the applicant does not fall within the ambit of judgment passed by the Hon'ble Supreme Court in Uma Devi's case. Later on, as per the opinion, review application has been filed against order dated 28.01.2016. Since the matter was processed through various levels of the applicant-department, there is delay in filing the review application. Hence, the review application is filed after expiry of period of limitation. It is the contention of the review applicants that there is no deliberate or intentional delay on the part of the applicants and this Hon'ble Tribunal has ample powers to condone the delay.

3. On the other hand, respondent states that the application for condonation of delay in filing review application is not

maintainable in view of Rule 17(1) of CAT (Procedure) Rules, 1987 as the language of these provisions is unambiguous and very clear which starts with negative or prohibitive clause and clear indication of the intent to make it mandatory that no application for review can be entertained unless it is filed within 30 days from the date of receipt of a copy of the order sought to be reviewed. No other explanation or advantage can be made to this Rule which specifically prohibited entertainment of any application for review to be filed within 30 days.

4. We have heard both the parties on the legal issue whether application for condonation of delay in a Review Application filed before this Tribunal after expiry of 30 days of receipt of copy of order is maintainable or not? The rule 17 (1) of CAT (Procedure) Rules, 1987 reads 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 copy of the order sought to be reviewed.**

5. Mr K. S. Yadav, learned counsel for the review applicants submitted that this Tribunal has ample powers to condone the delay in Review Application if it is accompanied by proper application for delay to be condoned in filling the Review Application. He further submitted that the said question is no more res integra. He referred to Full Bench judgment of Hon'ble Orissa High Court in the case of Akshaya Kumar Parida Dead Anr

vs Union Of India & Others decided on 3 February, 2015 and submitted that when divergent views were expressed by two coordinate Benches of Orissa High Court in the cases of Smt. Kanchana Badaseth v. Union of India and others, 2007 (II) OLR 365 and Basantilata Dash v. Union of India and others, 2007 (II) OLR 297 necessitated another Division Bench to refer the matter to the larger Bench. Therefore, the matter was placed before the Larger Bench consisting of Hon'ble Chief Justice Mr Amitava Roy, Justice Mr C.R. Dash and Justice Dr A.K. Rath. Since the Division Bench referring the matter did not formulate the question, the Larger Bench implicitly decided to answer the question 'Whether the Central Administrative Tribunal constituted under the provisions of the Administrative Tribunals Act, 1985 has jurisdiction to condone the delay in the event of an application for review is filed beyond the prescribed period of limitation?' The Larger Bench after considering the various provisions of Administrative Tribunals Act, 1985, Central Administrative Tribunal (Procedure) Rules, 1987 as well as Limitation Act concluded that neither Section 22 of Administrative Tribunals Act nor rule 17 of the Central Administrative Tribunal (Procedure) Rules expressly excluded the applicability of section 5 of the limitation act. In the event of application for review is filed beyond the period of limitation alongwith an application for condonation of delay and the applicant satisfies the Tribunal that he had sufficient cause for

not preferring an application within the time, the Tribunal can condone the delay. Hence, the said Larger Bench held that the decisions in Smt. Kanchana Badaseth v. Union of India and others, 2007 (II) OLR 365 and Rajayya Bisoi v. Union of India & others, 96 (2003) CLT 230 holding that in absence of any provision empowering the Tribunal to condone the delay, review application filed beyond thirty days should be rejected, was held as not the correct enunciation of law and same were overruled. He further referred to the Larger Bench judgment of Hon'ble Calcutta High Court in Union of India & Ors vs Central Administrative Tribunal & Anr dated 08.10.2002. On dissenting view of two Division Benches of Kolkata High Court, matter was referred to the Hon'ble Chief Justice for decision of the question by constituting a Larger Bench, which reads as under :

Whether having regard to the provision of rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 and Sections 21 and 22 of the Administrative Tribunals Act, 1985, the Tribunal has jurisdiction to condone the delay in filing the review application?

The Larger Bench consisting of Hon'ble Justice Mr Tarun Chatterjee, Hon'ble Justice Mr Altamas Kabir and Hon'ble Justice Mr Kumar Basu set aside the order of the Tribunal held that 'in view of the rule 17 of the CAT (Procedure) Rules, 1987, the Tribunal was not conferred with the power to condone the delay under section 5 of the Limitation Act, 1963 in filing a review application', and directed the Tribunal to deal with the application

for condonation under section 5 of the Limitation Act and dispose of the same on merits in accordance with Law. He thus summed up his arguments stating that this Tribunal has the jurisdiction to condone the delay in filing a Review Application after 30 days of expiry of receipt of a copy of the order and in view of reasons stated by the applicants in their MA for condonation of delay, there is sufficient cause to condone the delay. Therefore, he prayed that MA for condonation of delay may be allowed and RA may be heard on merits.

6. Per contra, Mr S.K. Malik learned counsel for the respondent submitted that the language of these provisions is unambiguous and very clear which starts with negative or prohibitive clause and clear indication of the intent to make it mandatory that no application for review can be entertained unless it is filed within 30 days from the date of receipt of a copy of the order sought to be reviewed. No other explanation can be made to this Rule which specifically prohibited entertainment of any application for review not being filed within 30 days. Relying upon para 12 & 13 of Hon'ble Supreme Court judgment in the case of Union of India vs M/s Popular Construction Company reported in AIR 2001 SC 4010 submitted that since language of Rule 17 (1) of the CAT (Procedure) Rules is in negative and words 'No application for review shall be entertained' is crucial as the crucial words used, 'but not thereafter', in the proviso to sub-section (3) of Section 34

of the Arbitration and Conciliation Act, 1996. The Hon'ble Supreme Court held that use of the said phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. He thus submitted that Administrative Tribunals Act, 1985 is a special law and when negative language is used in the Rule 17(1), there is no scope for maintaining any application for condonation of delay under the said rules. Relying upon judgment of Hon'ble Supreme Court in Bengal Chemists and Druggists Association vs Kalyan Chowdhury reported in (2018) 3 SCC 41, he submitted that peremptory or mandatory language providing for statutory period of limitation, including a grace period, which may be provided on showing of sufficient cause, words used such as 'not exceeding' or 'but not thereafter' are equivalent in clearly indicating that the limitation period can be extended no further. Hence, this Tribunal has no powers or jurisdiction to condone the delay in filing the Review Application beyond the statutory period of 30 days and to deal with the application under section 5 of the Limitation Act. Referring to the order dated 26.02.2009 passed by Division Bench of this Tribunal in Miscellaneous Application No. 16/2006 in Review Application No. 1/2006 in OA No. 147/2004, learned counsel for the respondent submitted that Full Bench of

Hon'ble High Court of Andhra Pradesh in the case of C. Nara Simha Rao vs Regional Joint Director of School Education (W.P. 21738 of 1998) held that Tribunal has no jurisdiction to condone the delay by taking aid and assistance of either sub-section (3) of Section 21 of the Administrative Tribunals Act, 1985 or Section 29(2) of the Limitation Act. Relying upon the said judgment of Hon'ble Andhra Pradesh High Court, this Tribunal held in the aforesaid OA that delay in filing the R.A. cannot be condoned. Summing up his arguments, he thus prayed that Miscellaneous Application for condonation of delay may be dismissed being not maintainable at all under the AT Act, CAT (Procedure) Rules as well as Limitation Act as the language of Rule 17 of the Procedure Rules exclude the provisions of Limitation Act and leaves no scope for condonation of delay.

7. We have considered the rival contentions and gone through the record as well as judgments cited by the parties.

8. After judgment of Hon'ble Supreme Court in the case of L. Chandra Kumar vs. Union of India & Ors. (1997) 3 SCC 261 it is settled position that the Tribunals are only competent to hear matters where vires of statutory provisions are questioned and not where the vires of their parent statute is in question, following the settled principle that a Tribunal which is the creature of a statute cannot declare that very statute to be unconstitutional.



9. On the issue of maintainability of Miscellaneous Application filed for condonation of delay in a Review Application under Rule 17 of CAT (Procedure) Rules, 1987, both sides supported their arguments by judgments of Hon'ble High Courts as well as Hon'ble Supreme Court recorded in preceding paragraphs. In the judgments of Hon'ble Supreme Court cited by learned counsel for the respondent namely M/s Popular Construction Company (supra) and Bengal Chemists and Druggist Association (supra), the subject matter under consideration before the Hon'ble Supreme Court was relating to Arbitration and Conciliation Act, 1996 and Companies Act, 2013. Hence, the same are not applicable in the present case. Also, this Tribunal has no jurisdiction and powers to enunciate the law or interpret the same in a certain way from which it derives its power and jurisdiction, based on the ratio of judgments of Apex Court cited by learned counsel for the respondent in view of law laid down by Hon'ble Supreme Court in L. Chandra Kumar's case (supra) as no direct answer with regard to maintainability of application for condonation of delay in a Review Application filed under Act or Procedure Rules of the Tribunal had been answered in these judgments cited by learned counsel for the respondent.

10. However, the aforesaid question had directly been considered by the Larger Benches of Hon'ble Kolkata High Court, Hon'ble Orissa High Court and Hon'ble Andhra Pradesh High

Court. Mr S.K. Malik, learned counsel for the respondent referred to the judgment of this Tribunal in MA No. 16/2006 (Union of India & Ors vs Brij Mohan) dated 26.02.2009 wherein learned Bench of this Tribunal placed reliance on relevant portion of Full Bench judgment in the case of C. Nara Simha Rao (supra), which reads as under :

The Full Bench was considering Rule 19 of A.P. Administrative Tribunal (Procedure) rules, framed under AT Act. These Rules are pari material Rule 17. The Full Bench took note of decision in K. Ajit Babu case. It held -

“Even assuming that the Limitation Act is not expressly excluded by the Administrative Tribunals Act or the Rules made thereunder, we have to see whether the scheme of the special law i.e. in this case Administrative Tribunals Act/Rules and the nature of remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern all the matters provided by it. If on an examination of the relevant provisions it is found that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act and the Rules made thereunder. In our view, even in case the Act/Rules does not exclude the provisions of Section 4 to 22 of Limitation Act by an express reference, it would none the less has to be examined whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the Act/Rules exclude their operations. The provisions of Section 3 of the Limitation Act envisage that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed. Whereas Rule 19 of the Rules which gives an preemptory command that no application for review shall be entertained unless it is filed within thirty days from the date of the order of which the review is sought.

Even otherwise the provisions of the Limitation Act which unless expressly excluded would be attracted can be made applicable to the nature of the proceedings under the Act/Rules, but the same is not what Section 29(2) of the Act says because it provides that Sections 4 to 24 (inclusive) shall apply only insofar as and to the extent to which they are not expressly excluded by such special or local law. If none of them are excluded all of them are applicable whether those sections are applicable or not is not determined by the terms of those sections, but by their applicability or inapplicability to the proceedings under the special or local law. Section 6 of Limitation Act, which provides for the extension of the period of limitation till after the disability in the case of a person who is either minor or insane or an idiot, is inapplicable to the proceedings under the Act/Rules. Similarly Sections 7 to 24 are in terms inapplicable to the proceedings under the Act, particularly in respect of

filing of applications and the procedure to be followed under the Act/Rules. The applicability of those provisions has, therefore, to be judged not from the terms of limitation Act but by the provisions of the Administrative Tribunals Act 1985 and the Rules made thereunder relating to the filing of original applications and review applications and their disposal to ascertain whether it is a complete code in itself which does not admit of the application of any of the provisions of the Limitation Act mentioned in Section 29(2) of the Act.

Rule 19 is couched in negative form and disables the person from seeking review under Section 22(e)(f) of the Act, in case review is not filed within 30 days of the order. However, in the Act nowhere it is stated the method or manner or time limit to file such review except Rule 19. In view of the same, the power of Tribunal to condone the delay under Section 21 of the Act is applicable only to the applications filed under Section 19, but the same cannot be made applicable to the review sought under Section 22(3)(f). Sub-section (1) of Section 22 puts an embargo on exercise of such power by the Tribunal, namely that the power of the Tribunal shall be guided by the principles of natural justice and of any rules made by the Central Government. In the absence of any provisions prescribed for condoning the delay either in the Act or in the Rules, the Tribunal will not have jurisdiction to condone the delay in taking aid and assistance of Section 5 of the Limitation Act on the premise that Limitation Act is made applicable in view of Sub-section (2) of Section 29 of the Limitation Act.”

It is evident that Full Bench of Hon'ble High Court of Andhra Pradesh relied upon the decision in K. Ajit Babu's case and thereafter answered the question regarding powers and jurisdiction of the Central Administrative Tribunal to condone the delay in case of Review beyond prescribed period of limitation.

11. On the other hand, Mr K.S. Yadav, learned counsel for the respondents relied upon the Full Bench judgments of Hon'ble High Court of Kolkata and Hon'ble High Court of Orissa in the case of Union of India & Anr. (supra) and Akshaya Kumar Parida (Dead) (supra) wherein direct question with regard to the jurisdiction of this Tribunal to condone the delay in the event an application for review is filed beyond the prescribed period of limitation has been answered. In the case of Akshaya Kumar Parida

(Dead) (supra), the Full Bench of Hon'ble High Court of Orissa distinguished the decision of the Apex Court in the case of K. Ajit Babu (supra), which has been relied upon by Mr S.K. Malik, counsel for the respondents, in the following manner:

21. Before parting with the case, we would like to observe that in Smt. Kanchana Badaseth (supra), the Bench relied upon a decision of the apex Court in the case of K.Ajit Babu (supra). In K.Ajit Babu (supra), the short question arose for consideration was whether the application filed by the appellants under Section 19 of the Act was maintainable. The apex Court held that often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. In that context, the apex Court held that ordinarily, right of review is available only to those who are party to a case. It was further held that right of review is available if such an application is filed within the period of limitation on the grounds mentioned in Order 47 of the Code of Civil Procedure. Thus K.Ajit Babu (supra) cannot be understood as laying a law that the Tribunal is de hors of its power in entertaining an application for review filed beyond the prescribed period of limitation, if the same is accompanied by an application under Section 5 of the Limitation Act.

After distinguishing the judgment delivered by Hon'ble Supreme Court in K. Ajit Babu's case, the Full Bench of Hon'ble High Court of Orissa in the case of Akshaya Kumar Parida (Dead) (supra) held that :

22. The logical sequitur on the analysis made in the preceding paragraphs is that neither Section 22 of the Act nor Rule 17 of the Rules expressly excluded the applicability of Section 5 of the Limitation Act. In the event an application for review is filed beyond the period of limitation along with an application for condonation of delay and the applicant satisfies the Tribunal that he had sufficient cause for not preferring an application within the time, the Tribunal can condone the delay.

12. Accordingly, judgments of Full Benches of Hon'ble High Court of Orissa and Hon'ble High Court of Kolkata cited by Mr K.S. Yadav, learned counsel for the applicants are relevant law on the issue. Hence, the preliminary objection of maintainability of application for condonation of delay in Review Application filed under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 raised by Mr S.K. Malik, learned counsel for the respondent is overruled. In view of judgment of Hon'ble High Court of Orissa in the case of Akshaya Kumar Parida (Dead) (supra), it is held that this Tribunal can condone the delay if it is satisfied that sufficient cause for not preferring an application within the time has been supplemented.

13. Review Application No. 290/00020/16 has been filed by the applicants (Union of India) after a delay of almost 07 months. We are satisfied with the reasons put forth by the applicants in their application as well as during course of hearing for condonation of delay. Accordingly, MA is allowed and let the Review Application be listed for further hearing as per convenience of Court as well as respective parties.

**[Archana Nigam]**  
**Administrative Member**

**[Hina P. Shah]**  
**Judicial Member**

Ss/-