CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Misc Application No.350/00964/2018
With
Review Application No.350/00023/2018
In
Original Application No.350/01289/2015

Date of Order: This, the 26th Day of April, 2019.

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE DR (SMT) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Tapash Kumar Biswas
Son of Late Subal Chandra Biswas
Residing at Paikpara
P.O, & P.S: Ranaghat, District: Nadia
PIN: 741201. ... Review applicant

- Versus –

1. Union of India, service through
the Secretary, Ministry of Railways
Rail Bhawan, New Delhi-110 001.

2. Railway Board, Service through the
Chairman, Rail Bhavan
New Delhi-110 001.

3. The Chairman
Railway Recruitment Board
Calcutta Metro Railway
A.V.Complex, Chitpur
R.G.Kar Road, Kolkata-700 037.

4. M/s Competent Business Services, 3B
Lukeerganj, Allahabad, Uttar Pradesh
PIN: 211 017

... Opposite Party/Respondents

For review applicant : Mr.C.Chatterjee counsel

For the opposite party:

O R D E R (In Circulation)

MANJULA DAS, MEMBER (J):

Having regard to the facts and circumstances in the matter and the explanation put forth in the MA for causing the delay, the delay in filing the RA is condoned. Accordingly, MA 350/00964/2018 is allowed.

2. By this review application, the review applicant has prayed for recall of the order dated 04.12.2017 passed in OA. No.350/01292/2015 and prayed as under:-

> " In the circumstances aforesaid your applicant most humbly prays that Your Lordship would be gracious pleased to allow this application by reviewing the order dated 04.12.2017 passed by the Hon'ble Ms. Manjula Das, Judicial Member and Hon'ble Dr. Nandita Chatterjee, Administrative Member in O.A. No. 350/1289 of 2015 and to pass such other order or further order or orders as to Your Lordships may deem fit and proper."

3. When the said OA came up on 04.12.2017, learned counsel for the applicant was not available on that day.

However, this Tribunal after considering the pleadings and the documents placed on record had passed the following order vide order dated 04.12.2017 in the said OA:-

> "2. The grievance of the applicant is that after appearing in the written examination he was eagerly waiting for result but all of a sudden the Chairman, Railway Recruitment Board informed the candidates that the written examination which was held, is cancelled following the decision taken by the Railway Recruitment Board. It is noted that the present applicant approached before this Tribunal long after cancellation of the order dated 10/16th Oct, 1998 and approached before this Tribunal in the year 2015 that is after 17 years that too without condonation of delay in filing the original application.
>
> 3. We have heard the learned counsel for the respondents and perused the documents placed on record.
>
> 4. "Section 21 of the Administrative Tribunals Act, 1985 provides for limitation of filing an OA as under:-
>
> "21. Limitation –
>
> (1) A Tribunal shall not admit an application, -
>
> (a) in a case where a final order such as is mentioned in clause (a) of subsection (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
>
> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired

thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

Further, sub-section 3 of Section 21 of the said Act, provides as under:-

(3) Notwithstanding anything contained in sub-section applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

In the case of **Bhoop Singh vs Union of India & Others, 1992 AIR 1414**, the Hon'ble Supreme court has observed as under:-

"... Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief."

We have noted that the applicant was sleeping over the matter for 17 years and no sufficient reasons have been explained for condonation of such delay. The maxim 'vigilantibus, non dermientibus, jura sub-veniunt' (law assist those who are vigilant not those who are sleeping over their rights) is appropriate to the matter in hand. In our opinion, the case is hopelessly barred by limitation.

5. Accordingly, the OA stand dismissed. No order as to costs."

4. According to the review applicant, he had filed writ application being WPCT 65 of 2018 before the Hon'ble High

Court assailing the aforesaid order of this Tribunal and the said writ application was disposed of by the Hon'ble High Court on 05.10.2018. The review applicant contended that the Hon'ble High Court while granting liberty to file review before this Tribunal together with appropriate application observed that this Tribunal would sympathetically consider the delayed approach for review and decide the matter on merits. Review applicant has annexed the copy of the order passed in said writ petition.

5. Order XLVII, Rule 1, Code of Civil Procedure provides the grounds on which a prayer for review can be entertained, namely, (i) discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him; (ii) some mistake or error apparent on the face of the record; and (iii) any other sufficient reasons.

6. The law relating to review is well settled as succinctly summarized by the Hon'ble Supreme Court in **State of West Bengal and others** vs. **Kamal Sengupta and another, (2008) 2 SCC (L&S) 735**, para 35 which reads thus:-

"35. The principles which can be culled out from the above-noted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/ analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

(iii) The expression "any other sufficient reason" appearing 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 record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/ decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party

seeking review has also 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 before the court/tribunal earlier."

7. We have carefully perused the RA, the order of the Hon'ble High Court annexed therein and the order sought to be reviewed. The Hon'ble High Court while disposing of the WPCT 65/2018 along with two other similar WPCTs had passed the following common orders:-

> " Points of law and facts involved in these writ petitions are similar to the points involved in W.P.C.T. 64 of 2018, which has been disposed of by us today. Accordingly, these writ petitions shall also be governed by the order passed in W.P.C.T.64 of 2018.
>
> There shall be no order as to costs."

The Hon'ble High Court while disposing of the WPCT 64/2018 had passed the following orders:-

> " In that view of the matter, this writ petition stands disposed of without interfering with the order under challenge. However, liberty is reserved to the writ petitioner to apply for review before the tribunal together with appropriate application, as he may be advised.
>
> Since the writ petitioner was pursuing his remedy before this Court, we hope and trust that the tribunal, if approached by the writ petitioner, shall sympathetically consider the delayed approach for review and decide the matter on its merits."

8. We have already allowed the MA for condoning the delay keeping in mind the above order of the Hon'ble High Court. As quoted above, in the order under review this Court have found that the recruitment process in question was cancelled by notification published in the Employment Notice dated 10-16th October, 1998 and the applicant had filed the OA in 2015 that is after 17 years, therefore, relying on the ratio laid down in **Bhoop Singh vs. Union of India & Ors, 1992 AIR 1414** OA was dismissed. In this RA no whisper has been made by the review applicant on this aspect.

9. In view of the above, we are of the considered opinion that the review applicant in his review application has failed to project any ground which falls under Order XLVII, Rule 1, Code of Civil Procedure. Review applicant has also failed to produce any case law in support of his grounds raised in the RA. In our considered view, the review applicant is basically challenging the findings recorded by this Tribunal vide Order dated 04.12.2017, which is impermissible.

10. In view of the above, there is no merit in the present R.A. and the same is accordingly dismissed.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

/BB/