

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****C.A.No.177 of 2016****In Review Application St.No.741 of 2016****In Original Application No.779 of 2009**

Shri Gajanan Shrawanji Kale,
Aged about 63 years,
R/o 55, Hanuman Nagar, Nagpur.

Applicants.**Versus**

- 1) The State of Maharashtra,
Department of School Education,
Mantralaya, Mumbai-400 032
through its Secretary.
- 2) Director of Education,
(Secondary & Higher Secondary),
Pune-1 (M.S.)

Respondents

Shri S.M. Khan, Advocate for the applicants.

Shri P.N. Warjurkar, P.O./ S.A.Deo, CPO for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

Dated :- 03/04/2017.

ORDER -

This Civil Application is for condonation of delay in filing Review Application against the order dated 11/01/2016 passed by this Tribunal in O.A.No.779/2009. Vide order dated 11/01/2016 this Tribunal was pleased to dismiss O.A.No.779/2009 and consequently

the applicant's claim for grant of deemed date as Joint Director from 23/04/1998 and subsequent promotion as Director of Education from 29/12/2007. Alongwith the application for condonation of delay the applicant has filed Review Application St.No.741/2016 and requested that the order passed on 11/01/2016 in O.A.779/2009 be reviewed. According to the applicant, he had been to Mumbai to attend his daughter's marriage and for some family function during the period of March,2016 and he was not able to file Review Application within limitation. There was delay of 21 days in filing Review Application and said delay be condoned in the interest of justice and equity.

2. The learned CPO has submitted that C.A. for condonation of delay in Review Application is not tenable and therefore on this limited point as to whether the application for condonation of delay in Review Application is tenable or not. The matter is being disposed of with the consent of the parties.

3. The Id. Counsel for the applicant agreed that there is a delay of 21 days in filing the Review Application and therefore there is no dispute that the application for review is not filed within limitation.

4. The learned counsel for the applicant has placed reliance from the Judgment reported in **AIR 2002 SCC 1201 Ram Nath Sao alias Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors.**, wherein it

has been held that belated application for condonation of delay for sufficient cause can be condoned. The said case was before the Hon'ble Apex Court and was not under the Maharashtra Administrative Tribunals Act. The learned CPO invited my attention to the Judgment delivered by this Tribunal in C.As.400/15 and 71/2016 in Review Application St.No. 1755/2015 in O.A.No. 542/2014 decided by this Tribunal, Bench at Nagpur Bench on 10/06/2016. In the said Judgment this Tribunal has observed as under :-

“5. The main plank of the contention of the learned counsel for non applicant is that the application to condone delay is not tenable, in view of Rule 18 of the Maharashtra Administrative Tribunal (Procedure) Rules,1988, (in short ‘MAT (Procedure) Rules’). In support of submission reliance is placed on a case **G. Narasimha Rao Vs. Regional Joint Director of School Education, Warangal & Ors., SLR 2005 (4), 720.** As against this, the learned P.O. for applicant relied on the case of **Union of India & Ors. Vs. Central Administrative Tribunal & Ano,2003 (LAB) I.C., 174.** Both are full bench decisions.

6. The tenability of the application is under challenge. As such it is necessary to consider relevant provisions on the point at stake. As per section 22 F of the Administrative Tribunals Act, the Tribunal shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure to review its decision. The other relevant provision is Rule 18 of the MAT (Procedure) Rules which runs as under -

“ Review of application to be filed within thirty days - 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 ”.

7. The case propounded by the parties needs to be considered in the light of the legal provisions. The wording of Rule 18 of the MAT (Procedure) Rules is couched in negative language. According to the learned counsel for non applicant, no application for review can be filed after 30 days. Meaning thereby the provisions of condonation of delay under section 5 of the 'Limitation Act' cannot be available. He proceeded to argue that the Tribunal cannot entertain the application for condonation of delay to review the matters. In support in relied on **Union of India Vs. C.A.T.** (*cited supra*). However, **G. Narasimha Rao's** (*cited supra*) was not cited in C.A.T. case and the Hon'ble High Court had no occasion to consider the same. Both the decisions are Full Bench decisions. The **Union of India Vs. C.A.T.** (*cited supra*) is decided on 8-10-2002 by Their Lordships of Hon'ble Calcutta High Court. The decision in **G. Narasimha Rao's** (*cited supra*) is rendered by Their Lordships of the Andhra Pradesh High Court on 19-11-2003. This is the latter Judgment. However, the former case is not cited and considered therein.

8. Shri Deshmukh, Id. counsel for non applicant has also relied on the case **K. Ajit Babu & Ors. Vs. Union of India & Ors., [(1997) (6) SCC,473]**. His submission is that this is the Judgment given by the Hon'ble Apex Court of the land and is considered in **G. Narasimha Rao's** (*cited supra*) case, and hence case needs to be decided on basis of G.Narasimha Rao's case. In the said case, the C.A.T. has rejected the O.A. observing that the applicant therein should have filed the review petition. The said applicants were not party in the original case. When the matter came up before Their Lordships it is observed that their rights are affected and therefore the rejection of the O.A. on

the ground of tenability was not proper. The Tribunal had rejected the O.A. observing that the applicant had right to avail the remedy of review. The above was the moot point in the said proceedings while considering the aspect of review. Their Lordships referred the provisions holding that the right of review is available if such application is filed within a period of limitation. However that aspect of maintainability of the application for condonation of delay to prefer the review is not considered by Their Lordships.

9. **K. Ajit Babu's** case is referred in the Judgment of **G. Narasimha Rao's** (*cited supra*) in para-10. In that case the scope of the review in the light of order of 47 of Code Civil Procedure Code was considered. In **G.Narasimha Rao's** case, entirely different point, i.e., issue of the maintainability of Review Application was at stake. In sum, the contention of learned counsel Shri Deshmukh that **G. Narasimha Rao's** case (*cited supra*) is based on **K. Ajit Babu's** case (*cited supra*) does not carry weight.

10. Anyhow fact remains that there are two Judgments of two different High Courts of equal Benches taking different views. The Division Bench of this Tribunal (to which one of us was Member) in O.A. No. 370/1999 (Mah. Employees State Insurance Scheme Medical Officer Asso. Vs. State of Maharashtra) decided on 6-4-2015 has condoned the delay in filing in Review Application, relying on the **C.A.T. case** (*cited supra*). However, **Narasimha Rao's** case was not cited before the Bench when the matter was decided. **G.Narsimha Rao's** (*cited supra*) case is latter in point of time. As such the same has to be relied on.

11. The learned P.O. submits that the Review is on legal point and the delay is of very meagre period of 66 days only which deserves to

be condoned, for the reasons given in the C.A. and as some time is consumed while processing the file in the Govt. Offices. There can be substance in the contention of the Id. P.O. However, if it is held that the application for condonation of delay is not tenable at all, the question to consider the reasons for the same does not emerge.

12. It is pertinent to note that the C.A.T. in **P.Kandavel & Ors Vs. Director General, Posts and Telegraphs Department, New Delhi & Ors [1988] 7 Administrative Tribunals Cases,696** had held that by virtue of the section 29 (2) of the Limitation Act,1963 the application for condonation of delay can be considered under section 5 of the Act.

13. As stated earlier this Tribunal had taken the view in O.A.No.370/1999 that the application for condonation of delay in Review Application is tenable. In the said case, the Review Application was rejected by this Tribunal on 15-10-2010 holding that the said application is not tenable. The Writ Petition no.677/2011 was preferred against the said order and Their Lordships referred in **Kandavel** (*cited supra*) case and remanded the matter to the M.A.T. vide order dated 3-2-2015. Thereafter the Division Bench of this Tribunal allowed the application.

14. Section 29 is the Saving clause in Limitation Act, which runs as under :-

“(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 if 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of s.3 shall apply as if such periods were the periods prescribed by the Schedule and for the purpose of determining any period of

limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

15. From the language employed therein it is crystal clear that if the provisions governing the limitation are expressly provided in a special law, the same will be applied. In absence of such provisions the general provisions under the limitation act will be applicable to the extent to which they are not expressly excluded by special or local law. According to the applicant, in view of explicit provisions no application for Review after 30 days can be entertained means the provisions of limitation Act are excluded. In the light of above legal provisions and observations made in the **G. Narasimha Rao's** case being latest in time have to be followed.

16. As a sequel to these reasons, we proceed to pass the following order –

The Review Application is not tenable. As such there is no question to grant the stay to the order passed in the O.A. No.542/2014. Consequently, both the C.As. (Nos.400/2015 & 71/2016) and Review Application St.No.1755/2015 are rejected with no order as to costs.”

5. In view of the aforesaid observations, I do not find any necessity to take descending view as against that taken by this Tribunal in C.A.400/2015 and 71/2016 in Review Application St. No.1755/2015 in O.A.542/2014. Hence, the following order:

ORDER

The C.A. stands dismissed. Consequently, the Review Application Stamp also stands rejected with no order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

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