

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

CIVIL APPLICATION NOS. 400/2015 and 71/2016

IN REVIEW APPLICATION ST. 1755/2015

IN ORIGINAL APPLICATION NO.542/2014

The Dean,
Government Medical College & Hospital,
Nagpur.

Applicant
(Org. Respondent no.4)

Versus

1) Shri Ritesh Kantilal Trivedi,
aged about 38 years, Occ. Service,
R/o Qtr. No. C-2/2, Medical Colony,
Ajni, Nagpur.

Respondent (Sr.No.1)
(Org. Applicant)

2) The Principal Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai.

3) The Director,
Medical Education & Research, St. George
Hospital Compound, Fort, Mumbai.

4) The Joint Director (Dental),
Medical Education & Research, St. George
Hospital Compound, Fort, Mumbai.

Respondents (Sr.Nos.2 to 4)
(Org. Respondents)

Shri A.P. Sadavarte, Id. P.O. for the applicant (Org. Respondents)

Shri S.C.Deshmukh, Id. Adv. for the respondent no.1. (Org. Applicant)

**Coram :- Hon'ble Shri B. Majumdar, Vice Chairman
&
Hon'ble Shri S.S. Hingne, Member (J).**

Dated :- 10 /06 /2016.

ORDER -

Per : Member (J).

C.A.Nos.400/2015 & 71/2016 -

Heard Shri A.P. Sadavarte, Id. P.O. for the applicant (Org. Respondents) and Shri S.C. Deshmukh, Id. counsel for the respondent no.1 (Org. Applicant).

2. The applicant (respondent no.4 in O.A.542/2014) has filed the C.A. No. 400/2015 for condonation of delay to file the review application. So also the C.A. 71/2016 is filed to stay the order dated 21-7-2015 deciding the O.A. No.542/2014.

3. At the threshold, the brief resume of the facts leading to move the present application are as under. The applicant/ Sr. Clerk had filed the O.A.No. 542/2014 to consider him for promotion to the post of Lower Grade Stenographer. The Department's stand was that the Sr. Clerk is not the feeder cadre for promotional post of Lower Grade Stenographer. The request being turned down the applicant filed O.A. No.542/2014. The Tribunal allowed the O.A. vide order dated 21-7-2015.

4. Feeling aggrieved by the order, the present applicant wants to prefer the review petition by condoning the delay of

66 days and the civil application no.400/2015 is filed on 7-10-2015.

The applicant spent some time for getting the copy of the Judgment.


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 he 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 the 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. Any how 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 the 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. Narasimha 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 not 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.

sd/-

(S.S.Hingne)
Member (J).

sd/-

(B.Majumdar)
Vice Chairman