

**ORISSA HIGH COURT
CUTTACK**

W.P.(C) NO. 701 OF 2006

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Bhajaram Bhuyan Petitioner

Versus

Union of India & others Opposite Parties

For Petitioner - M/s R.K.Pattanaik, S.C.
Puspalak, S.S.Jena, A.N.
Samantray and S.Samal.

For Opp.Parties - Mr. S. Singh,
Central Government Standing
Counsel.

PRESENT: -

**THE HON'BLE MR. JUSTICE I.M.QUDDUSI
AND
THE HON'BLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing & judgment : 30.01.2006

I.M.QUDDUSI,J. By filing the instant writ petition, learned counsel for the petitioner has raised a question as to whether the Central Administrative Tribunal, while entertaining an application for restoration of the Original Application, can exercise the jurisdiction under Section 5 of the Limitation Act, even if applications for condonation of delay in filing such restoration applications registered as M.A. No.479 of 2005 and M.A. No.464 of 2005 arising out of O.A. No.262 of 2001 and O.A. No.718 of 2003 respectively had been filed. Though both the Original Applications were taken up together and a

common order dismissing both the Original Applications was passed due to default, but the applicant of O.A. No.718 of 2003 only has approached this Court by filing the present writ petition. Therefore, we are concerned at the moment with O.A. No.718 of 2003 and M.A. No.464 of 2005.

2. The Tribunal has dismissed the application for restoration of the O.A. holding that since the application for condonation of delay was not maintainable, the application for restoration of the O.A. is time barred and delay in filing the same cannot be condoned. Reliance has been placed by the Tribunal on a case law laid down by a Division Bench of this Court in the case of Rajayya Bosi Vrs. Union of India reported in 96 (2003) CLT 230, in which it has been held that the Tribunal has no power to entertain the review application if it is filed beyond the time stipulated and the provisions of Section 29(2) of the Limitation Act, 1963 cannot be pressed into service to decide the extent of review power exercisable by the Central Administrative Tribunal under Rule 17 of the Central Administrative Tribunals (Procedure) Rules.

3. We have perused the impugned judgment and order passed by the Tribunal as well as the provisions of Administrative Tribunals Act and the Central Administrative Tribunals (Procedure) Rules, 1987.

4. At the very outset, we would like to examine the provisions of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985 which are quoted hereunder :-

“A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely :-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;

- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or documents or copy of such record or documents from any office.
- (e) issuing commissions for the examination of witnesses documents,
- (f) reviewing its decision;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter which may be prescribed by the Central Government.”

5. Now, the provisions of Rule 15(2) of the Central Administrative Tribunal (Procedure) Rules, referred to by the Tribunal in its impugned judgment and order, are reproduced herein below :-

“Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing the Tribunal shall make an order setting aside the order dismissing the application and restore the same.

Provided, however, where the case was disposed of on merit, the decision shall not be reopened except by way of review.”

No doubt, the Tribunal has jurisdiction to dismiss an application for default under sub-rule (1) of Rule 15, but the same can be restored if an application is filed within thirty days from the date of dismissal of the application and if the applicant satisfies the Tribunal that there were sufficient cause for his non-appearance

when the application was called for hearing. In such eventuality, the Tribunal shall make an order setting aside the order dismissing the application and restore the same.

6. The next question has arisen that if the application for setting aside the order of dismissal of the O.A. for default is filed after expiry of the prescribed period, i.e., thirty days from the date of dismissal, whether the Tribunal has power to condone the delay in filing that application, if an application for condonation of delay is moved, and whether the provisions of Limitation Act would be applicable in such circumstances.

7. In the above regard, it is a matter of consideration that when the legislature is so conscious in providing liberty to move an O.A. under Section 19 of the Administrative Tribunals Act even after expiry of the period mentioned therein with a view that a Government servant may not lose his legitimate claims, there appears no point for consideration as to why the legislature would be so strict in the matter of moving an application for setting aside an order of dismissal of the O.A. for default.

8. Of course, the rules made under the Administrative Tribunals Act are silent in respect of condonation of delay in filing such application. But as per the Administrative Tribunals Act itself, the Tribunal has been given full-fledged jurisdiction of civil court in respect of considering the application for setting aside the order dismissing the O.A. for default. Therefore, there was no necessity to mention in the rules regarding applicability of the law of limitation to the application for setting aside an order of dismissal of the O.A. for default, if it is filed beyond the time prescribed since while dealing with such matters the Tribunal acts as a civil court under the Code of Civil Procedure.

9. Thus, the legislature has taken care of the situation and has conferred upon the Tribunal the powers of civil court under the Code of Civil Procedure, 1908, while trying a suit in

respect of limited matters including dismissal of the representation for default. Once the Tribunal exercises the power vested under the Code of Civil Procedure while trying a suit, in our considered opinion, all the provisions applicable to the civil court while trying a suit shall become automatically applicable to those limited matters in which the powers of civil court have been conferred upon the Tribunal. In the Code of Civil Procedure, an application for setting aside the decree has been provided under Rule 13 of Order 9 that in any case in which a decree is passed ex parte against the defendant, he may apply to the court by which the decree was passed for an order to set it aside and if he satisfies the court that the summons was not duly served, or that there was sufficient cause for his failure to appear when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit. Therefore, while deciding the application for setting aside the dismissal of a suit (in the instant case, the Original Application/representation), the provisions of Section 5 of the Limitation Act would be applicable. However, if it is taken that the Administrative Tribunals Act is a special law which provides for a period of limitation different from the period prescribed by the schedule, the provisions of Section 3 shall apply as if such period were the period 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. Provisions of sub-section (2) of Section 29 are reproduced hereunder :

“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 Section 3 shall apply as if such period were the period 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.”

10. Therefore, since by sub-section (3) of Section 22 of the Administrative Tribunals Act, the Administrative Tribunals have been conferred with powers of a civil court while trying a suit in respect of deciding any order of dismissal of any representation for default, the Administrative Tribunals while dealing with the restoration application shall be deemed to be civil court. As such, the provisions of Section 29(2) and Section 5 of the Limitation Act shall be applicable. Therefore, the Central Administrative Tribunal is competent to deal with the application for condonation of delay in making an application for setting aside the order dismissing the Original Application/representation for default.

11. We are conscious about the judgment and order passed by the Division Bench of this Court in *Rajyya Bosi* (supra) holding that the Tribunal has no power to entertain the review application if it is beyond the time as stipulated therein. But, at present, we are not concerned with the question as to whether the Tribunal has power to entertain the review application filed beyond the time. We have, at the moment, to consider whether the Tribunal has power to entertain the application for condonation of delay in filing the application for setting aside the order of dismissal of Original Application/representation for default. For the reasons mentioned above, we are of the opinion that the Central Administrative Tribunal has jurisdiction to deal with the application for condonation of delay in filing the said application and application for condonation of delay shall be maintainable before it.

12. In view of the above facts and circumstances, the impugned judgment and order passed by the Central Administrative

Tribunal, Cuttack Bench in M.A. No.464 of 2005 arising out of O.A. No.718 of 2003 is quashed and the matter is remitted to the Tribunal for consideration of the application for condonation of delay on merits and for passing appropriate orders and then to deal with the application for setting aside the order dismissing the O.A. for default.

13. In the result, the writ petition is allowed in part.

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I.M.QUDDUSI,J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack
 January 30, 2006 / **Routray**