
(2003) 07 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 4532 of 1998

Rajayya Bosi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 17, 29(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 230 : (2003) 2 OLR 211

Hon'ble Judges : R.K. Patra, J;M. Papanna, J

Bench : Division Bench

Advocate : P.V. Ramdas and P.V.B. Rao, for the Appellant; Addl. Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—In this writ petition the legality of the order dated 26.2.1998 made by the Central Administrative Tribunal in Review Application No. 54 of 1994 is under challenge. Following are the two points which arise for consideration :

(i) Has the Central Administrative Tribunal jurisdiction to condone delay if the review application is filed beyond the prescribed period of limitation ?

(ii) What is the extent of review power exercisable by the Central Administrative Tribunal under Rule 17 of the Central Administrative Tribunals (Procedure) Rules, 1988.

2. A brief resume of facts is necessary to appreciate the above points raised on behalf of the petitioner. The petitioner filed O.A. No. 577 of 1992 before the Central Administrative Tribunal, Cuttack Bench (hereinafter referred to as "the Tribunal") claiming promotion to the post of Assistant Superintendent of Post-offices with effect from 1984 when his juniors were given promotion. His case before the Tribunal was that during the relevant period, certain disciplinary proceedings were initiated against him and because of pendency of such

proceedings, he was not considered for promotion. Later when the proceedings were terminated in his favour, although he was entitled to be considered for promotion it was not done. Case of the Postal department before the Tribunal was that the petitioner's representations were rejected by the Director General and since he was not confirmed in the post of Inspector of Post-offices, question of consideration of his case for promotion to the post of Assistant Superintendent of Post-offices did not arise. The Tribunal after hearing by its order dated 24.6.1994 (Annexure-4) accepted the prayer of the petitioner and directed the authorities to consider his case for promotion and grant back wages if he was found suitable for promotion, In paragraph-6 of the order, the Tribunal observed as follows :

"In view of the aforesaid facts and circumstances, especially the fact that the disciplinary proceedings have been quashed and the applicant has been exonerated from all the charges levelled against him in respect of the proceedings, no dirty linen exists against the applicant and therefore, his case should be reconsidered for confirmation in the post of Inspector of Post Offices and in case he is found suitable his case should be further considered for promotion to the next higher posts to which he is entitled to according to rules and in case he is found suitable, promotion should be given to the applicant with effect from the date from which his juniors have been promoted..."

The Postal Department instead of complying with the above direction of the Tribunal filed review application No. 54 of 1994 before the Tribunal seeking review of the above order dated 24.6.1994 passed in O.A. No. 577 of 1992. Admittedly, the said review application was filed beyond the prescribed period of limitation provided under Rule 17(i) of the Central Administrative Tribunals (Procedure) Rules, 1988. The Tribunal condoned the delay by its order dated 12.5.1997 and admitted the application for hearing and by the impugned order dated 26.2.1998 set aside its earlier order dated 24.6.1994 holding that it suffered from an error apparent on the face of the records.

3. Point No. (i) : Rule 17(i) of the Central Administrative Tribunals (Procedure) Rules, 1988 lays down that no petition for review shall be entertained unless it is filed within thirty days from the date of the order of which review is sought. There is no dispute that the review application was filed beyond thirty days. The Tribunal in its order dated 12.5.1997 recorded a finding that there was delay of "at least 125 days" in filing the review application. Having recorded such a finding, it condoned the delay with an observation that the department had been able to make out a case for it.

Shri Ramdas's contention is that in absence of any provision empowering the Tribunal to condone the delay, the review application ought to have been rejected at the threshold as admittedly it was filed beyond 30 days. According to him, whether there was sufficient cause for condoning the delay is a secondary question, inasmuch as that question would arise only when there exists jurisdiction to entertain an application filed beyond time. In this connection, he

placed reliance on the judgment of the Supreme Court in Director, Government of India Vs. General Secretary, Central Government Small-Scale Industries Organisation Employees' Union and Another, In the aforesaid case, the Tribunal condoned the delay and proceeded to dispose of the main case. The Supreme Court in paragraph-4 of the judgment observed as follows :

"...The said view of the Central Administrative Tribunal is not in consonance with the law laid down by this Court in Ajay D. Panalkar v. Pune Telecom Deptt. wherein it has been laid down that the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 has no jurisdiction to adjudicate upon the finding of the Industrial Tribunal. In view of the said decision, the order dated 3.3.1992 passed by the Central Administrative Tribunal rejecting the review application cannot be upheld and the said review application must be allowed..."

The above clearly shows that the Tribunal has no power to entertain the review application if it is filed beyond the time stipulated.

Shri Ramdas has also referred to a judgment of this Court in Kulamani Kar and Others Vs. Orissa Land Reforms Tribunal-cum-Subordinate Judge and Others, In that case, question arose whether the Land Reforms Tribunal is competent to condone delay in exercise of its power under the proviso to Section 57A(3) of the Orissa Land Reforms Act, 1965. It was contended in that case that in view of Section 29(2) of the Limitation Act, 1963 the Tribunal can condone delay, After construing Section 57A(3) this Court observed as follows :

"The proviso to Section 57-A(3) is in the negative form holding out the legislative mandate of providing a six-month period. The provision is indicative of the anxiety of the legislature to fix a clear time limit for making of an application and not to allow the proceeding to originate at a time beyond the period thus provided."

The wordings of Rule 17(i) of the Central Administrative Tribunals (Procedure) Rules, 1988 is similar to that of the proviso to Section 57A(3) of the Orissa Land Reforms Act, 1965. We are, therefore, inclined to hold that the provisions of Section 29(2) of the Limitation Act, 1963 cannot be pressed into service.

Point No. (ii) : In view of what has been stated above, this point need not be examined as it has become academic.

4. For all the reasons aforesaid, the Tribunal has no power to entertain the review application as admittedly it was filed beyond the prescribed period of limitation. The Tribunal has accordingly acted without jurisdiction in entertaining the review application. As the order dated 12.5.1997 condoning the delay is without jurisdiction the impugned substantive order dated 26.2.1998 has to be set aside. We order accordingly.

In the result, the writ petition is allowed.

M. Papanna, J.

I agree.