

GAHC010083392021



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/3034/2021**

THE UNION OF INDIA AND 3 ORS.  
REPRESENTED BY THE SECRETARY, GOVERNMENT OF INDIA, MINISTRY  
OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-  
110001

2: THE CENTRAL BOARD OF DIRECT TAXES  
REPRESENTED BY ITS CHAIRMAN  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI-110001

3: THE MEMBER (P AND V)  
THE CENTRAL BOARD OF DIRECT TAXES  
DEPARTMENT OF REVENUE  
NORTH BLOCK  
NEW DELHI-110001

4: THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX  
NER  
GUWAHATI  
1ST FLOOR  
AAYKAR BHAWAN  
GUWAHATI-78100

VERSUS

CHANCHAL NAG  
S/O LATE SWADESH RANJAN NAG, JOINT COMMISSIONER OF INCOME  
TAX, GROUP A SERVICE RANGE 3, GUWAHATI

**Advocate for the Petitioner** : MR. S. C. KEYAL, CGC

**Advocate for the Respondent** : DR. G. J. SHARMA, DR. J L SARKAR

**BEFORE  
HONOURABLE THE CHIEF JUSTICE  
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**JUDGMENT & ORDER  
(ORAL)**

Date : 27-03-2023

**(Sandeep Mehta, C.J.)**

This writ petition has been preferred by the Union of India and its components for assailing the order dated 08.06.2020, passed by the Central Administrative Tribunal (CAT), Guwahati Bench (hereinafter referred to as "the Tribunal"), dismissing the Review Application No. 40/00009/2019, supported by Misc. Application No. 149/2019 preferred by the petitioners seeking condonation of delay of 768 days in filing the Review Application, through which the order dated 04.08.2017, passed in Original Application No. 40/00063/2017 was sought to be recalled/reviewed.

2. Learned counsel Mr. S. C. Keyal, representing the Union of India vehemently and fervently contended that the Tribunal was totally unjustified in rejecting the application seeking condonation of delay in filing of the Review Application by holding that there was no power with the Tribunal so as to condone the delay. He placed reliance on the Full Bench judgment of the Calcutta High Court in the case of ***Union of India & Ors. Vs. Central Administrative Tribunal & Anr.***, reported in ***2002 SCC OnLine Cal 597***, further reaffirmed by Calcutta High Court in the case of ***Union of India and Ors. Vs. Ram Krishna Mondal and Ors.***, reported in ***MANU/WB 2622/2019***. He submitted that the Full Benches of Calcutta High Court, after adverting to the statutory provisions contained in the Administrative Tribunals Act, 1985 (hereinafter referred to as the "Act of 1985") and the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as "the Rules of 1987"), have held in unequivocal terms that the Tribunal has the power under Section 5 of the

Limitation Act, 1963 to condone the delay occasioned in filing Review Application despite the restriction contained in Rule 17 of the Rules of 1987. He thus implored the Court to accept the writ petition, set aside the impugned order and direct the Tribunal to consider the Review Application on merits after condoning the delay.

**3.** Per contra, Dr. G. J. Sharma, learned counsel representing the respondent vehemently and fervently opposed the submissions advanced by Mr. Keyal. Dr. Sharma placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***K. Ajit Babu and Others vs. Union of India and Others***, reported in **(1997) 6 SCC 473**, wherein the Hon'ble Supreme Court held as follows:

*“4. As stated earlier, the appellant has challenged the impugned seniority list prepared on the basis of the decision rendered by the Central Administrative Tribunal, Ahmedabad in Transfer Application No. 263 of 1986 dated 14-8-1987, by means of an application under Section 19 of the Act wherein there was no prayer for setting aside the judgment dated 14-8-1987 of the Administrative Tribunal. It is true that the judgment given by the Central Administrative Tribunal, Ahmedabad in TA No. 263 of 1986 would have come in the way of the appellant. Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employees and at the same time adversely affect another class of employees. In such circumstances the judgments of the courts or the tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises: What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. In the present case, the view taken by the Tribunal is that the only remedy available to the affected persons is to file a review of the judgment which affects them and not to file a fresh application under Section 19 of the Act. Section 22(3)(f) of the Act empowers the Tribunal to review its decisions. **Rule 17 of the Central Administrative Tribunal (Procedure) Rules (hereinafter referred to as “the Rules”)** provides that **no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed.** Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression “a person feeling aggrieved” occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case has to be decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking*

*Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. **Besides that, the right of review is available if such an application is filed within the period of limitation.** The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation.”*

*(Emphasis supplied)*

Dr. Sharma also placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***Sakuru vs. Tanaji***, reported in **(1985) 3 SCC 590** in support of the contention that the provisions of the Limitation Act, 1963 apply only to proceedings in courts and not to appeals and applications to any other bodies other than courts, such as quasi-judicial tribunals. Reliance was also placed by Dr. Sharma on the judgment of the Hon'ble Supreme Court in the case of ***International Asset Reconstruction Company of India Limited vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Others***, reported in **(2017) 16 SCC 137**, wherein the Hon'ble Supreme Court held as below:

“9. The fact that the Tribunal may be vested with some of the powers as a civil court under the Code of Civil Procedure, regarding summoning and enforcing attendance of witnesses, discovery and production of the documents, receiving evidence on affidavits, issuing commission for the examination of witnesses or documents, reviewing its decisions, etc. does not vest in it the status of a court. Section 22(1), in fact, provides that the Tribunal shall not be bound by the procedures under CPC, and can regulate its own procedures in accordance with natural justice.

10. Section 5 of the Limitation Act provides that the appeal or application, with the exception of Order 21 CPC may be admitted after the prescribed period, if the applicant satisfies the court that he has sufficient cause for not preferring the application within time. **The pre-requisite, therefore, is the pendency of a proceeding before a court. The proceedings under the**

***Act being before a statutory Tribunal, they cannot be placed on a par with proceedings before a court. The Tribunal shall therefore have no powers to condone delay, unless expressly conferred by the statute creating it.”***

*(Emphasis supplied)*

In support of the argument that the Tribunal has no power to condone delay, Dr. Sharma also placed reliance on another judgment rendered by the Hon'ble Supreme Court in the case of ***S.S. Rathore vs. State of Madhya Pradesh***, reported in ***(1989) 4 SCC 582***, wherein the Hon'ble Supreme Court categorically laid down that the civil court's jurisdiction has been taken away by the Act of 1985 and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation.

Dr. Sharma urged that the Tribunal not being a court, cannot exercise the powers conferred by Section 5 of the Limitation Act, 1963 and, hence, the Tribunal was absolutely justified in rejecting the Condonation Application filed by the petitioner because the same was submitted after a gross delay of 768 days as against the permissible time limit of 30 days provided in Rule 17 of the Rules of 1987.

**4.** The second limb of the submissions of Dr. Sharma was that the instant writ petition is not maintainable because the original order dated 04.08.2017, passed by the Tribunal in Original Application No. 40/00063/2017 accepting the Original Application of the respondent has not been challenged in this writ petition. In this regard, he has drawn the attention of this Court to the relief clause of the present writ petition pointing out that the prayer of the petitioners is only to assail the order dated 08.06.2020 passed in Misc. Application No. 149/2019 filed seeking condonation of the delay in filing the Review Application. He thus urged that the original order dated 04.08.2017 having not been challenged in this writ petition, the same has attained finality and, hence, the petitioners are under a lawful obligation to comply with the same.

In support of this contention, Dr. Sharma has placed reliance on the following Hon'ble Supreme Court's judgments:

***DSR Steel (Private) Limited vs. State of Rajasthan and Others***, reported in ***(2012) 6 SCC 782*** and ***Bussa Overseas and Properties Private Limited and Another vs. Union of India and Another***, reported in ***(2016) 4 SCC 696***.

5. We have given our thoughtful consideration to the submissions advanced at bar; perused the impugned order and have given respectful consideration to the precedents cited at bar.

6. The foundation of challenge to the impugned order, as urged by Mr. Keyal, learned counsel representing the Union of India was based on the two judgments (supra) of the Calcutta High Court. Suffice it to say that in the first Full Bench judgment in the case of ***Union of India & Ors. Vs. Central Administrative Tribunal*** (supra) the judgments rendered by the Hon'ble Supreme Court in the cases of ***K. Ajit Babu*** (supra) and ***S.S. Rathore*** (supra) were not considered. As the Constitution Bench of the Hon'ble Supreme Court, in the case of ***S.S. Rathore*** (supra) has categorically laid down that the civil court's jurisdiction has been taken away by the Administrative Tribunals Act, 1985 the view to the contrary taken by the Full Bench of the Calcutta High Court in the case of ***Union of India & Ors. Vs. Central Administrative Tribunal*** (supra) cannot be held as laying down a correct proposition of law.

7. Rule 17 of the Rules of 1987 provides an express bar against entertainment of a Review Application unless it is filed within thirty days from the date of receipt of the copy of the order sought to be reviewed. By holding that this limitation of 30 days is not mandatory and can be extended by resorting to the provisions of the Limitation Act, 1963 the Full Bench of the Calcutta High Court virtually declared the statutory provision to be *ultra vires*. The Administrative Tribunals Act, 1985 is a special law.

Section 21(1) of the Act of 1985 prescribes limitations for filing of the original applications, which is one year for making the application. The power of condonation of delay for a period not exceeding six months to entertain the original application has been vested with the Tribunal under Sub-Section (3) of Section 21.

**8.** As stated above, the limitation for filing a review application is 30 days, as provided in Rule 17 of the Rules of 1987. Thus, the Act of 1985 lays down specific provisions with regard to limitation as well as the power for condonation thereof. **Hence, the proceedings under the Act of 1985 cannot be governed by the provisions of the Limitation Act, which is a general law governing issues of limitation arising in proceedings before Courts.** This view is further fortified when we consider the ratio of the judgments relied upon by Dr. Sharma in the cases of *International Asset* (supra) and *Sakuru* (supra), wherein it has been stipulated that the proceedings before a statutory Tribunal cannot be placed at par with proceedings before a court. The Tribunal shall have no power to condone the delay unless expressly conferred the power by the statute creating it. As Rule 17 of the Rules of 1987 expressly provides timeline of 30 days for entertaining a review application, unless the statutory provision is declared to be *ultra vires* such power cannot be read into the statute by a judicial pronouncement.

**9.** Thus, we have no hesitation in holding that the Tribunal was justified in holding that it has no power to condone the delay and entertain the review application beyond a period of 30 days. Thus, the rejection of the Misc. Application No.149/2019, filed by the petitioners seeking condonation of the gross and inordinate delay of 768 days in filing the Review Application by the impugned order dated 08.06.2020, does not call for any interference in exercise of the extra ordinary writ jurisdiction conferred upon this Court by Article 226 of the Constitution of India. As we have decided this issue in favour of the respondent, the second limb of argument advanced by Dr. Sharma is left open for consideration.

**10.** In view of the discussion made hereinabove, the writ petition is devoid of merit and is rejected.

No order as to costs.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**