

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2931 OF 2018

Uttamrao N. Wagh ...Petitioner
Versus
Union of India and ors. ...Respondents

Mr. Prakash N. Wagh for the Petitioner.
Mr. T.J. Pandian for Respondent Nos.1 and 2/UOI.
Mr. D.Y. Wani for Respondent Nos.3 and 4.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 14th MARCH 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The petitioner challenges the order dated 9th January 2018 made by the Central Administrative Tribunal (CAT), Mumbai dismissing the petitioner's M.A. No. 648 of 2017 in O.A. No. 27 of 2016 seeking for recall of the order dated 13th July 2017, by which, O.A. No. 27 of 2016 came to be

dismissed for default.

4] Mr. P.N. Wagh, learned counsel for the petitioner, submits that the advocate could not attend the proceedings on two dates because of demise in the family, which affected not only the advocate, but also the original applicant who are close relations. He submits that absence was for reasons beyond the control of the advocate and there was also the issue of incorrect record of the date. He submits that there are no *mala fides* involved and taking into consideration the age and health of the applicant, the application for restoration ought to have been favourably considered. He submits that the CAT has taken an unduly harsh view in the matter and therefore, the impugned order is liable to be set aside.

5] Mr. Pandian and Mr. Wani, learned counsel for the respondents, submit that more than two opportunities were granted to the petitioner to proceed with the matter. However, on both the occasions, neither the petitioner nor his advocate remained present. The petitioner had already secured interim relief from the CAT and in these

circumstances, it was expected that the petitioner would be more diligent in pursuing the matter before the CAT. Learned counsel for the respondents submit that there is no infirmity in the impugned order made by the CAT and therefore, this petition may be dismissed.

6] In this case, the applicant is stated to be 73 years old person. It is also stated that his wife, his aged mother, his widowed daughter and her two sons are dependent upon the applicant. The original application filed by the applicant before the CAT relates to deduction of certain amounts from the pension payable to the petitioner.

7] The petitioner, in his application has stated that his advocate could not attend the proceedings before the CAT on account of confusion of the dates. Learned counsel for the petitioner has submitted that on one of the date, there was a death in the family and since the advocate for the petitioner and the petitioner were related to each other, both of them could not attend the proceedings.

8] The explanation furnished by the petitioner was not contested by the respondents by producing any material to the contrary. Although, neither the petitioner nor his advocate remained present before the CAT on two earlier occasions, it cannot be said that the petitioner or his advocate were totally negligent in attending to the proceedings of the tribunal. In matters of this nature, some lapse is inevitable on the part of the parties or their advocates. However, as long as there is no material on record that absence was with a view to prolong the interim reliefs or that there were any *mala fides* involved, the explanation can be accepted. Besides, it was necessary to take into consideration the fact that the petitioner himself is an aged pensioner and there are several dependents upon him. Upon cumulative consideration of all these circumstances, we are of the opinion that the impugned order dated 9th January 2018 is required to be set aside and M.A. No. 648 of 2017 instituted by the petitioner is liable to be allowed and O.A. No. 27 of 2016 restored to the file of CAT. We accordingly order the same.

9] Taking into consideration the facts of the present case, we also order the restoration of the interim relief which had earlier been granted by the CAT during pendency of O.A. No. 27 of 2016. This is on the basis of the assurance that learned counsel for the petitioner that the petitioner will not seek unnecessary adjournments or otherwise delay of disposal of O.A. No. 27 of 2016.

10] Accordingly, Rule is made absolute in terms of prayer clauses (a) and (b) of the petition. There shall be no order as to costs.

11] Parties are directed to appear before the CAT on 4th April 2018 at 11.00 a.m and produce an authenticated copy of this order.

12] All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)