

Niti

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO.33 OF 2021 (FILING NO.)
WITH
STAMP NUMBER (APPLN.) NO.1847 OF 2020

UNION OF INDIA, THROUGH
SECRETARY OF MINISTRY OF
DEFENSE AND ANR. ...APPLICANTS/
PETITIONERS

Versus

AREZHI SREEDHARAN ...RESPONDENT

Mr. Somnath Karpe, *Central Government Standing Counsel* with
Mr. Abhishek Sawant, *Advocate for the Applicants/Petitioners.*

CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ
DATED: 22nd September 2021

P.C. :

1. In this case, there is a delay of 266 days in instituting this review petition. According to us, the reasons given are not at all satisfactory and, therefore, we had granted time to the applicants to file an additional affidavit. Adjournments were sought after the time expired and, even by this date, the affidavit is not forthcoming. Accordingly, we are not satisfied that any case is made out to condone the delay in instituting this review petition, more particularly, since this is a matter where under the judgment and order of which review is applied for, this Court, had declined to interfere with the order of CAT made on 15.03.2011.

2. The CAT order dated 15.03.2011 was made in OA filed on 24.06.2010 by an Office Superintendent, who retired on 26.05.2008. The relief granted by the CAT entails some financial benefits to this retired Office Superintendent, which, by no means are substantial.

3. Taking into consideration all the aforesaid circumstances, no case is made out for condonation of delay. The reasons set out in the civil application are the routine reasons about the moving of files from one table to the other and how the error on the part of the Standing Counsel was realized later. This review has been filed through another Standing Counsel.

4. Mr. Karpe, however, submits that the judgment and order of which review is applied for were made on 15.02.2020 and the review was filed on 11.12.2020. Since this was the period covered under the COVID pandemic, the general order made by the Hon'ble Apex Court extending the period of limitation would apply. Having regard to this submission and without going into the issue as to whether the order indeed comes to the rescue of the Union of India in this matter, we proceed to consider the review petition on merits.

5. Mr. Karpe has submitted that the Tribunal had relied upon its full Bench judgment in OA No.459 of 1997 and 460 of 1997 decided on 15.10.1999, to grant relief to the original applicant before it. He concedes that the fact that this judgment had been challenged by the Union of India before the Nagpur Bench of this Court and that the same was set aside was not pointed out to this Court when it decided this petition on 25.02.2020. He, however,

submits that this aspect renders our judgment and order dated 25.02.2020 quite vulnerable and, therefore, the same should be reviewed. He further submits that certain other OM's were issued granting some benefits to persons like the original applicant and, therefore, this was also not a case where the judgment of the CAT had promoted substantial justice.

6. We have considered the contentions raised by Mr. Karpe, in support of this review petition.

7. Our judgment and order dated 25.02.2020 is based on the following two distinct grounds :

(a) That the CAT had only followed its earlier decision made by the Full Bench and further the decision of the Full Bench had never been challenged by the Union of India;

(b) That, even otherwise, the view taken by the Tribunal promoted substantial justice.

8. In this case, the original applicant had not even appeared before us because he had retired almost 12 years earlier, that is, in the year 2008. Even though there was no stay granted by this Court, the Union of India did not honor the verdict of the CAT and pay him the paltry amount, which he was found due in terms of the order of the CAT. The learned Counsel for the Union of India never pointed out to this Court that the order of the Full Bench of CAT was set aside.

9. Therefore, we do not think that, in the facts of the present case, where the original applicant has already retired in the year 2008, after rendering 40 years of service, our decision should be reviewed, simply because the Counsel for the Union of India did not place the correct facts before us.

10. In any case, even if we proceed on the basis that some case is made out, based on the subsequent decision of the Nagpur Bench of our Court, the second ground about the promotion of substantial justice by the CAT remains. No error has been pointed out or in any case, no error apparent on the face of the record is pointed out so far as this ground is concerned. In our judgment and order dated 25.02.2020, we have relied upon several decisions of the Hon'ble Supreme Court which take the view that if justice became the by-product even of an erroneous view of the law the High Court is not expected to erase such justice in the name of correcting the error of law. This is an additional ground not to entertain this review petition.

11. In this case, the original applicant retired from the position of the Office Superintendent way back in the year 2008. He instituted proceedings before CAT in the year 2010, seeking certain additional financial benefits. These financial benefits were granted to him by the CAT order dated 15.03.2011. Even though there was no interim relief granted by this Court, the Union of India did not pay these benefits to the original applicant. The petition before this Court was dismissed on 25.02.2020 and that even up to date no payment has been made to the original applicant. Having regard to all these facts, as well, we do not

think that any indulgence can be extended to the Union of India for their failure to place the correct facts before the Court.

12. Mr. Karpe, then points out that the concern of the Union of India is that our decision might be used as a precedent in similar cases. Now that the Union of India relies on the decision of the Nagpur Bench, which was never brought to our notice, this apprehension is quite baseless and ought not to survive.

13. For all the aforesaid reasons, this review petition is dismissed.

14. There shall be no order for costs because at this point of time it was perhaps not possible for the Respondent to appear in this Court. The Union of India must at least now honor the decision of the CAT within two months from today.

M. S. JAWALKAR, J.

M. S. SONAK, J.