

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 5683 of 2024

Manoj Kumar, aged about 53 years, son of Late Raghaw Sharan Lal,
Resident of H. No.12, Sahu Building, First Lane, Anantpur, P.O.-
Doranda, P.S.-Chutia, Dist.-Ranchi, 834002.

... .. Petitioner

Versus

1. Union of India through General Manager, South Eastern Railway, office at Dumayrie Area, S.E. Railway, North Colony, Garden Rich Kolkata, West Bengal; P.O. & P.S. Garden Reach, Dist.-Kolkata, State: West Bengal.
2. The General Manager, South Eastern Railway, office at Dumayrie Area, S.E. Railway, North Colony, Garden Rich, Kolkata, West Bengal; P.O. & P.S. Garden Reach, Dist.-Kolkata, State:West Bengal.
3. The Divisional Railway Manager, S.E. Railway, Ranchi Division, P.O. + P.S. Hatia, District-Ranchi, PIN-834003.
4. The Divisional Personnel Officer cum Chief Personnel Officer, South Eastern Railway, Ranchi Division, P.O. + P.S. Hatia, District Ranchi, PIN 834003.
5. The Sr. Divisional Operations Manager, South Eastern Railway, Ranchi Division, P.O. + P.S. Hatia, District-Ranchi, PIN 834003.

... .. Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Appellant	: Mr. Sachin Kumar, Advocate Mr. Ravi Prakash Mishra, Advocate Mr. Vivek Aditya Advocate
For the Respondents	: Mr. Anil Kumar, Addl. S.G.I. Ms. Chandana Kumari, AC to Addl. S.G.I.

02/Dated: 28th October, 2024

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant writ petition has been filed under Article 226 of the Constitution of India for quashing of the order dated 15.01.2024, whereby and whereunder, the Central Administrative Tribunal, Ranchi has dismissed the O.A. No. 051/00842/2023 filed by the petitioner on the ground of limitation.

Factual Matrix:

2. The brief facts of the case as per the pleading made in the writ petition which requires to be enumerated herein, reads as under:

The petitioner was appointed as Assistant Station Master on 01.08.1998 at Bhav Nagar Division (BVP), Western Railway and was transferred to Silli, South Eastern Railway as an Asst. Station Master in the year 2003.

Respondent No.4, on 19.07.2007, had issued notification inviting option for the post of Traffic Apprentice in the scale of 5500-9000/- against 10% quota through LDCE from all Group 'C' Staff of Operating Department (other than Ministerial Staff). Applicant had applied for the post, participated in the LDCE and cleared the examination. Result was published on 09.02.2009 and the Chief D.T.I., Ranchi was directed by respondent No.4 to release applicant for joining as Traffic Apprentice w.e.f. 11.04.2010. Applicant was released to join for the training in the month of April 2010. Meanwhile, applicant got promotion to the post of Station Master.

It is the case of the petitioner that subsequently the posts of Traffic Apprentice and Station Master got merged and applicant, after completion of training, was waiting for appropriate gradation to the next pay fixation but he was not provided the seniority or raise in pay. Respondents issued a seniority list on 04.05.2016 in which his name appeared at serial 56 while other employees who had not qualified in the LDCE were placed above him. Applicant submitted a representation in 2017 relating the issue of his pay and seniority. He submitted another representation in 2021 but respondents have not redressed his grievance.

Being aggrieved, the petitioner approached the Central Administrative Tribunal by filing O.A./051/00842/2023 which has been dismissed on the ground of limitation.

3. It is evident from the factual aspect of the instant case that the writ petitioner being aggrieved with his position in the seniority list and

consequent upon the same, denying his promotional benefit, has approached to the Central Administrative Tribunal by filing application under Section 14 of the Administrative Tribunal Act, 1985.

The Tribunal has heard the learned counsel for the applicant, the writ petitioner herein, as also the respondent.

A serious objection has been raised on behalf of the respondent that the cause of action said to be accrued in favour of the writ petitioner on 04.05.2016, the day when the seniority list was published and the learned Tribunal has been approached in the year 2023 by filing original application but without filing any delay condonation application as required under Section 21(3) of the Act, 1985, as such, the original application is not fit to be entertained.

The Tribunal has considered the submission advanced on behalf of the respondent and agreeing to the objection so raised on behalf of the respondent and by giving finding of having no prayer for condonation of delay has held the original application as not maintainable in view of the provision of Section 21 of the Act, 1985 against which the present writ petition has been filed.

Submission of the learned counsel for the petitioner:

4. Mr. Sachin Kumar, learned counsel for the petitioner has submitted that admittedly the delay condonation application was not filed but merely on account of the fact that the delay condonation application had not been filed, the rejection of the original application cannot be said to be proper reason being that the petitioner is having genuine grievance of his supersession as also the denial of pay scale attached to the post to which the petitioner is claiming his promotion based upon the seniority list published on 04.05.2016.
5. Further submission has been made that the learned Tribunal has gone into hyper-technicality and instead of considering the substantive issue, has gone into the issue of limitation, therefore, the impugned order is fit to be interfered.

Submission of the learned counsel for the respondent:

6. *Per contra*, Mr. Anil Kumar, learned Additional Solicitor General of India has submitted that the applicant, the writ petitioner herein, has invoked the jurisdiction of the learned Tribunal in view of the provision of Section 14 thereof and as such, the statutory command as available under the Administrative Tribunal Act, 1985 as available under Section 21 which pertains to the issue of limitation ought to have been followed by the petitioner before the Tribunal.
7. It has been submitted that if the statutory provision has been carved out wherein the Tribunal has been conferred with the power to entertain a grievance of the litigant concerned to be agitated within a period of one year and if any grievance is being raised beyond the period of one year then such application is required to be appended with delay condonation application by giving the sufficient cause as would be evident from Section 21(3) of the Act, 1985.
8. It has further been submitted that it is not that the petitioner had made delay condonation application along with the original application for its consideration showing sufficient cause but admitted position is that no delay condonation application was filed along with original application and in that view of the matter, if the Tribunal has taken a view that the issue on merit cannot be considered in absence of any delay condonation application.
9. Learned Additional Solicitor General of India, based upon the aforesaid submission, has submitted that if the learned Tribunal has taken the aforesaid view, the same cannot be said to suffer from error.

Analysis:

10. We have heard the learned counsel for the parties and gone across the finding recorded by the learned Tribunal in the impugned order.
11. This Court after having heard the learned counsel for the parties is required to consider as to whether non-filing of the delay condonation application if the original application has been filed

beyond the period of one year, can the Tribunal consider the issue on merit.

12. This Court, in order to answer the aforesaid issue, needs to refer the very genesis of the creation of Central Administrative Tribunal.
13. The Central Administrative Tribunal has been created in view of the amendment inserted in the Constitution by inserting the provision of Article 323A.
14. The Tribunals are institutions established for discharging judicial or quasi-judicial duties. Article 323A of the Constitution stipulates that Parliament may, by law, provide for the adjudication or trial by Administrative Tribunal of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government.
15. Article 323A speaks about creation of the Central Administrative Tribunal for the purpose of adjudication of the service dispute of the employees working in the Central Government or its establishment depending upon the insertion of such public sector undertaking under the fold of the Administrative Tribunal Act, 1985 by issuance of notification by appropriate Government in view of the provision of Section 4 thereof.
16. Herein, based upon the insertion in the Constitution of Article 323A, the Central Government has come out with the statute in the name and style of Administrative Tribunal Act, 1985.
17. Initially, the issue with respect to the adjudication of the Central Administrative Tribunal, having been answered was to be considered under the appellate jurisdiction before the Hon'ble Apex Court by filing an appeal under Article 136 of the Constitution of India. But, the issue has been raised that approaching directly to the Hon'ble Apex Court will be in the teeth of the constitutional basic structure and as such, the matter has been dealt with in the case of **S.P.**

Sampath Kumar v. Union of India and Others [(1987) 1 SCC 124]

wherein the issue regarding the exclusion of the High court's jurisdiction of judicial review under Articles 226 and 227 of the Constitution of India in service matters was considered. For ready reference, the relevant paragraphs of aforesaid judgment are being quoted as under:

“5. It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have some modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained judges in the High Courts and the Supreme Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every Bench of the Administrative Tribunal should consist of one judicial member and one administrative member and there should be no preponderance of administrative members on any Bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court. Now Section 6 provides that the Chairman of the Administrative Tribunal should be or should have been a Judge of the High Court or he should have for at least two years held office of Vice-Chairman or he should have for at least two years held the post of Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India. I entirely agree with Ranganath Misra, J. that the Chairman of the Administrative Tribunal should be or should have been a Judge of a High Court or he should have for at least two years held office as Vice-Chairman. If he has held office as Vice-Chairman for a period of at least two years he would have gathered sufficient experience and also within such period of two years, acquired reasonable familiarity with the constitutional and legal questions involved in service matters. But substituting the Chief Justice of a High Court by a Chairman of the Administrative Tribunal who has merely held the post of a Secretary to the government and who has no legal or judicial experience would not only fail to inspire confidence in the public mind but would also render the Administrative Tribunal a much less effective and efficacious mechanism than the High Court. We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. Of course, I must make it

clear that when I say this, I do not wish to cast any reflection on the members of the Civil Services because fortunately we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome administrative problems of great complexity. But what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience. I am, therefore, of the view, in agreement with Ranganath Misra, J. that clause (c) of Section 6(1) must be struck down as invalid.

15. The question that arises, however, for consideration is whether bar of jurisdiction under Articles 226 and 227 affects the provision for judicial review. The right to move the High Court in its writ jurisdiction — unlike the one under Article 32 — is not a fundamental right. Yet, the High Courts, as the working experience of three-and-a-half decades shows have in exercise of the power of judicial review played a definite and positive role in the matter of preservation of fundamental and other rights and in keeping administrative action under reasonable control. In these thirty-six years following the enforcement of the Constitution, not only has India's population been more than doubled but also the number of litigations before the courts including the High Courts has greatly increased. As the pendency in the High Courts increased and soon became the pressing problem of backlog, the nation's attention came to be bestowed on this aspect. Ways and means to relieve the High Courts of the load began to engage the attention of the government at the Centre as also in the various States. As early as 1969, a Committee was set up by the Central Government under the chairmanship of Mr Justice Shah of this Court to make recommendations suggesting ways and means for effective, expeditious and satisfactory disposal of matters relating to service disputes of government servants as it was found that a sizeable portion of pending litigations related to this category. The Committee recommended the setting up of an independent Tribunal to handle the pending cases before this Court and the High Courts. While this report was still engaging the attention of government, the Administrative Reforms Commission also took note of the situation and recommended the setting up of Civil Services Tribunals to deal with appeals of Government servants against disciplinary action. In certain States, Tribunals of this type came into existence and started functioning. But the Central Government looked into the matter further as it transpired that the major chunk of service litigations related to matters other than disciplinary action. In May 1976, a Conference of Chief Secretaries of the States discussed this problem. Then came the Forty-second Amendment of the Constitution bringing in Article 323-A which authorised Parliament to provide by law “for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government”. As already stated this article envisaged exclusion of the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1). Though the Constitution now contained the enabling power, no immediate steps were taken to set up any Tribunal as contemplated by Article 323-A.”

18. Thereafter, the Hon'ble Apex Court in the case of ***L. Chandra Kumar Vs. Union of India & Ors. reported in (1997) 3 SCC 261*** has been pleased to hold that the creation of the Central Administrative Tribunal if will be at par status to that of the High Court, will hit the basic structure of the constitution reason being that in each State, there will be one High Court and all the Tribunals of the Districts will be under the supervision and control amenable under Article 226 of the Constitution of India.

But the Tribunal after having been created since has been given at par status to that of the High Court which means that in each and every State, there will be two apex judicial system by way of creation of the High Court under the constitutional mandate and subsequently by virtue of the amendment having been incorporated in the Constitution by insertion of Article 323A.

19. The Hon'ble Apex Court has been pleased to hold that the order passed by the learned Tribunal, therefore, will be amenable under Article 226 of the Constitution of India under the power of judicial review. The Hon'ble Apex Court has also given the status of the Tribunal to the Court of first instance. The aforesaid aspect of the matter has been dealt with at paragraph-99 which, for ready reference, is being referred as under:

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny

before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

20. The purpose of referring the aforesaid judgment is that when the Administrative Tribunal Act, 1985 has been inserted, a full pledged procedure of law has been laid down therein by conferment of power to the Tribunal and the nature of dispute which is to be seen and who is the establishment which are made to be amenable under the power of adjudicator under the scope of the Administrative Tribunal Act, 1985. The power has been conferred under Section 14 of the Act, 1985 thereof.
21. Further, the Tribunal has been conferred with the power to condone the delay as per the provision made under sub-section (3) of Section 21 of the Act, 1985 whereby and whereunder, it has been laid down in view of the principle as contained under Section 5 of the Limitation Act, 1963 to condone the delay if the sufficient cause will be shown. For ready reference, the provision of Section 21 is being referred as under:

“21. Limitation.—(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within

the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

22. It cannot be disputed that if a litigant approaches before the Court under any statutory mandate before any adjudicator, compliance of the provision as contained therein is to be there in its letter and spirit.
23. It also needs to refer herein that although the Tribunal has been conferred with the power under Article 226 of the Constitution of India to look into the validity of the statutory provision but even then the issue of limitation has also been taken by insertion of the provision of limitation as under Section 21 of the Act, 1985, meaning thereby, the Tribunal is only required to consider the issue raised after a period of one year subject to condonation of delay if the sufficient cause will be shown in view of the provision of Section 21(3) of the Act, 1985.
24. However, the aforesaid issue of limitation is not applicable under Article 226 of the Constitution of India but the principle of delay and laches is required to be seen while adjudicating the issue by the High Court in view of the provision of Article 226 of the Constitution of India. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***P.S. Sadasivaswamy vs. State of Tamil Nadu, (1975) 1 SCC 152*** wherein at paragraph-2, their Lordship have held as under:

“2. The main grievance of the appellant is that the second respondent who was junior to him as Assistant Engineer was promoted as Divisional Engineer in 1957 by relaxing the relevant rules regarding the length of service necessary for promotion as Divisional Engineer and that his claim for a similar relaxation was not considered at that time. The learned Judge of the Madras High Court who heard the writ petition was of the view that the relaxation of the rules in favour of the second respondent without considering the appellant's case was arbitrary. In view of the statement on behalf of the Government that such relaxation was given only in the case of overseas scholars, which statement was not controverted, it is not possible to agree with the view of the learned Judge. Be that as it may, if the appellant was aggrieved by it he should have approached

the Court even in the year 1957, after the two representations made by him had failed to produce any result. One cannot sleep over the matter and come to the Court questioning that relaxation in the year 1971. There is the further fact that even after Respondents 3 and 4 were promoted as Divisional Engineers over the head of the appellant he did not come to the Court questioning it. There was a third opportunity for him to have come to the Court when Respondents 2 to 4 were again promoted as Superintending Engineers over the head of the appellant. After fourteen long years because of the tempting prospect of the Chief Engineership he has come to the Court. In effect he wants to unscramble a scrambled egg. It is very difficult for the Government to consider whether any relaxation of the rules should have been made in favour of the appellant in the year 1957. The conditions that were prevalent in 1957, cannot be reproduced now. In any case as the Government had decided as a matter of policy, as they were entitled to do, not to relax the rules in favour of any except overseas scholars it will be wholly pointless to direct them to consider the appellant's case as if nothing had happened after 1957. Not only Respondent 2 but also Respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957, apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal.”

25. Further, the Hon'ble Apex Court in the case of ***New Delhi Municipal Council vs. Pan Singh***, (2007) 9 SCC 278 by referring to the judgment rendered in the case of *Lipton India Ltd. vs. Union of India*, (1994) 6 SCC 524 has observed that:

“17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India [(1994) 6 SCC 524] and M.R. Gupta v. Union of India [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186].”

26. Adverting to the factual aspect of the present case, the petitioner while approaching the Tribunal has not filed any delay condonation

application as required to be filed under Section 21(3) of the Act, 1985.

27. The learned counsel for the petitioner has tried to impress upon the Court that the substantive justice is to be there and as such, the aforesaid consideration which has been given by the learned Tribunal is fit to be ignored but we are not in agreement with such submission reason being that even if the substantive justice is to be there, but by ignoring the statutory provision, there cannot be any adjudication by the Tribunal on the garb of substantive justice. If the statute is there and if the litigant is not following the statutory command, such litigant cannot be allowed to raise the issue of substantive justice by ignoring the statutory provision.
28. This Court is exercising the power of judicial review as conferred under Article 226 of the Constitution of India in the light of the observation made by the Hon'ble Apex Court in ***L. Chandra Kumar Vs. Union of India & Ors.*** (supra) at paragraph-99 as quoted and referred above and the power of judicial review is only to be exercised if there is any error apparent on the face of order.
29. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised. The scope of judicial review conferred to the High Court under Article 226 of the constitution of India in sowing interference with the award passed by the adjudicator/Tribunal as has been held by the Hon'ble Apex Court in the case of ***Syed Yakoob vs. Radhakrishnan, A.I.R. 1964 SC 477.*** Paragraph no.7 of the said judgment is being reproduced as under:

“The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal Acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in

dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104 : ((S) AIR 1955 SC 233); Nagendra Nath v. Commr. Of Hills Division, 1958 SCR 1240 : (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168.

In *Hari Vishnu Kamath vs. Ahmad Ishaque and Ors.*, AIR 1955 Supreme Court 233, the Hon'ble Supreme Court has held in paragraph no.21 as under:

“With regard to the character and scope of the writ of certiorari and the conditions under which it can be issued, the following propositions may be taken as established:

(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Writ of certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of

appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence and substitute its own findings in certiorari.”

In ***Sawarn Singh and Anr. vs. State of Punjab and Ors., (1976) 2 SCC 868*** their Lordships, while discussing the power of writ under Article 226 of the Constitution of India for issuance of writ of certiorari, has been pleased to hold at paragraph nos.12 and 13 as hereunder:

“12. Before dealing with the contentions canvassed, it will be useful to notice the general principles indicating the limits of the jurisdiction of the certiorari jurisdiction can be exercised only for correcting errors of jurisdiction committed by inferior courts or tribunals. A writ of certiorari can be issued only in the exercise of supervisory jurisdiction which is different from appellate jurisdiction. The Court exercising special jurisdiction under Article 226 is not entitled to act as an appellate Court. As was pointed out by this Court in Syed Yakoob's case (supra)

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.”

In ***Heinz India (P) Ltd. and Anr. vs. State of U.P. and Ors., (2012) 5 SCC 443*** their Lordships have been pleased to hold at paragraph nos.66 and 67 as hereunder:

“66. That the court dealing with the exercise of power of judicial review does not substitute its judgment for that of the legislature or executive or their agents as to matters within the province of either, and that the court does not supplant “the feel of the expert” by its own review, is also fairly well settled by the decisions of this Court. In all such cases judicial examination is confined to finding out whether the findings of fact have a reasonable basis on evidence and whether such findings are consistent with the laws of the land.

67. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra this Court held that decision of a tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless it is shown to be totally unsupported by any evidence. To the same effect is the view taken by this Court in Thansingh Nathmal case where this Court held that the High Court does not generally determine questions which require an

elaborate examination of evidence to establish the right to enforce for which the writ is claimed.”

In the case of **West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39**, their Lordships have been pleased to hold at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

“30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.”

30. In the case of **T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250**, their Lordship have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

“11. ... An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

31. Thus, on the basis of the aforesaid settled legal position it is evident that the power of judicial review can be exercised, if error on the face of the order impugned, challenged under the Article 226 of Constitution of India, appears to be there.

32. Herein, admitted position is that no delay condonation application has been filed along with original application, as such, Tribunal became unable to consider or to exercise the power conferred under Section 21(3) of the Act, 1985 wherein as has been mandated that the delay can be condoned depending upon the sufficient cause if shown.
33. The Tribunal, if in absence of such delay condonation application, has taken the view and the same having been objected on behalf of the respondent, this Court cannot come to the conclusion that such observation on the basis of which the original application has been rejected, can be said to suffer from error.
34. The law is well settled that if a statutory provision is there, the same is to be complied with in its strict sense and there cannot be any deviation. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***Uttar Pradesh vs. Singhara Singh and Ors.***, reported in ***AIR (1964) SC 358***, wherein it has been held at paragraph 8 as under:

“....its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted....”

Reference has also made to the judgment rendered by the Hon'ble Apex Court in the case of ***Babu Verghese and Ors. vs. Bar Council of Kerala and Ors.***, reported in ***(1999) 3 SCC 422***, wherein it has been at paragraphs 31 & 32 as under:

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

“[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.”

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-judge bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction

by courts and has also been recognized as a statutory principle of administrative law.”

Reference to the judgment rendered by the Hon'ble Apex Court also needs to be made in the case of ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors.***, reported in (2002) 1 SCC 633, wherein it has been held at paragraph 27 as under:

“..... it is a normal rule of consideration that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself....”

Reference has also made to the judgment rendered by the Hon'ble Apex Court in the case of ***State of Jharkhand & Ors. vs. Ambay Cements & Anr.***, reported in (2005) 1 SCC 368, wherein it has been held at paragraph 26 as under:

“....it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed.....”

Reference has also made to the judgment rendered by the Hon'ble Apex Court in the case of ***Zuari Cement Ltd. vs. Regional Direction ESIC Hyderabad & Ors. (in Civil Appeal No.5138-40/2007)***, reported in (2015) 7 SCC 690, wherein it has been held at paragraph 14 as under:

“14. As per the scheme of the Act, the appropriate Government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In State of Jharkhand v. Ambay Cements, it was held that: (SCC p. 378, para 26)

26.... it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.”

35. Thus, on the basis of the aforesaid settled legal position of law it is evident that a thing is required to be done strictly in pursuance to the provisions of law, if any deviation, then ultimately the provision as contained under the statute will have no effect.

36. This Court, taking into consideration the aforesaid discussion is of the view that the impugned order needs no interference.

37. Accordingly, the instant writ petition stands dismissed.

38. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

(Subhash Chand, J.)

Saurabh/-
A.F.R.