COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Video-Conferencing)

1.

MA 321/2018 in RA (Diary No. 10920/2018 in OA 64/2016 (RB, CHENNAI)

In the matter of :

Union of India & Ors. ... **Applicants**

Versus

Ex Sep M Anthony Victor ... **Respondent**

For Applicants : Dr. V.S. Mahndiyan, Advocate
For Respondent : Shri M.K. Sikdar, Advocate
Shri S.S. Pandey, Advocate (Amicus Curiae)

CORAM :
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER(J)

O R D E R

A reference under Section 28 of the Armed Forces Tribunal Act 2007 (hereinafter referred to as the "Act") was made by Regional bench, Chennai, Armed Forced Tribunal to Hon'ble Chairperson due to dissenting views expressed by the Judicial Member and Administrative Member in the order dated 3rd January 2019 with regard to the point of condonation of delay of 26 days in filing the review application in OA 64/2016 (RB Chennai). Thereafter, the matter was assigned to me.

2. A few relevant facts leading to this reference case may be required to be stated for proper decision of the question.

3. OA No. 64/2016 was filed by Ex Sep M. Anthony Victor before Regional Bench, Chennai under Section 14 of the Act for quashing the impugned Movement Order/dismissal order passed by the respondents and for reinstatement with all

consequential benefits. Vide order dated 27th July 2018, the respondents were directed to reinstate the applicant and to pay him 50% of the amount out of total of the back wages and other consequential benefits.

4. Respondents filed Review Application vide Diary No. 10920 of 2018 seeking review of the order dated 27th July 2018. Along with this application, MA No. 321/2018 was filed seeking condonation of delay of 26 days in filing review application on the ground that certain facts and legal aspects could not be brought to the notice of the Tribunal. The application was heard by Learned Tribunal. Learned Judicial Member was of the view that the applicants in the review application are Union of India & Ors. through the Secretary, Government of India, Ministry of Defence, New Delhi, the Chief of Army Staff, Integrated HQ, New Delhi, Officer-in-Charge, AOC, Records and The Commandant, Administrative Battalion (Depot Coy), Secunderabad in the OA. A decision has to be made consciously bearing in mind that in case of Government organization, it has its own limitations with regard to movement of files and necessary procedure as required under the rules of business or administration for necessary sanction which may consume time. In this background sufficient cause has to be considered. Further, the review applicants are not to gain anything by deliberately causing delay in prosecuting its legal remedy including filing the application of review along with condonation of delay application. Moreover, there is no

provision in AFT Act, 2007, which expressly excludes the provisions contained in Section 5 of the Limitation Act as observed in the case of **K. Veerasamy Vs. Secretary to Government** reported in 2012(1)CTC 138.

5. It was further observed that the procedural law, like law of limitation and others are meant for doing substantial justice and when the procedural/technicalities of law are pitted against the substantial justice, it is the substantial justice which observes to be allowed and prevail by overruling the procedural/technicalities of law. The delay in filing the MA for review application is not intentional, but is due to the sufficient cause beyond the control of the applicants. In case the application is not allowed, the review applicant's case would not be considered on merit and also in accordance with law, which would cause irreparable loss to the applicants. Based on the principles of equity, justice and good conscious, the delay application deserves to be allowed. The same was accordingly allowed and delay of 26 days in filing the review application was condoned.

6. However, a dissenting opinion was given by Learned Administrative Member by holding that the Tribunal has no jurisdiction to condone the delay beyond 30 days in filing the review application for the reason:-

i) Rule 18 of AFT (Procedure) Rules 2008 prescribes that no application for review shall be entertained

unless it is filed within 30 days from the date of receipt of the order.

ii) There is no provision either in the Act or in the Rules made thereunder enabling the Tribunal to condone the delay.

iii) Provisions of Limitation Act are not applicable and reliance was placed on Hon'ble Supreme Court Order dated 26th October 2017 in Civil Appeal No. 16962 of 2017 arising out of SLP (C) No. 29534 of 2014 *International Asset Reconstruction Company of India Ltd. Vs. The Official Liquidator of Aldrich Pharmaceuticals Ltd. and Ors. with Civil Appeal No. 16963 of 2017 arising out o SLP (C) No. 29543 of 2014 Iridium India Telecom Ltd. Vs. Doha Bank QSC and another where it was observed as follows:*

> 11. Section 5 of the Limitation Act provides that the appeal or application, with exception of Order XXI, 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, it cannot be placed at par with proceedings before a court. The Tribunal shall therefore have no powers to condone delay, unless expressly conferred by the Statute creating it.
>
> "3.....*that the provisions of the Limitation Act, 1963 apply only to proceedings in 'courts' and not to appeals or applications before bodies other than courts such as quasi judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authority may be vested with certain specified powers conferred on courts under the Code of Civil or Criminal Procedure."*....
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> The application was accordingly rejected.

7. In this background, considering the difference in opinion between the Members, in accordance with Section 28 of the Act, the matter was referred to Hon'ble Chairperson.

8. Dr. V.S. Mahndiyan, Learned Counsel for the applicant/Union of India & Ors. contended that there was delay of only 26 days in filing the review application which has occurred due to the fact that various agencies are involved. In case of Govt. organization, it has its own limitation with regard to movement of files which consume time. Balance of convenience lies in favour of the applicant to condone the delay in filing review application. Same is not intentional but due to circumstances, beyond the control of the applicant. Tribunal has all the trapping of court and therefore, law of limitation is squarely applicable to Tribunal. Since sufficient cause has been assigned for not filing the application within time, delay is liable to be condoned.

9. Countering the submission, Mr. M.K. Sikdar, learned counsel for the respondents submitted that purpose of enacting the Act was speedy disposal of matters relating to Armed Forces Personnel. AFT Act is a self-contained legislation. Wherever it wanted to condone delay, specific provision has been made in the Act itself. Reference was made to Section 22 of the Act where specific provision has been made for condoning delay in filing an application under Section 14 of the Act on showing sufficient cause. In terms of Rule 18, the application for review

has to be filed within 30 days of the passing of the order and there is no specific provision for extending the time by the Tribunal. According to him, the framers of law, in their wisdom have thought of not giving this power to the Tribunal with the main objective of speedy disposal of the cases. In case the Tribunal assumes the power to condone delay, the said objective will get frustrated.

10. Mr. S.S. Pandey, Advocate, Learned Amicus Curiae submitted that the reference in question requires answers to the following questions:-

i) Whether Armed Forces Tribunal is a Court within the meaning of Section 5 of Limitation Act

ii) Whether having regard to the provisions of Rule 18 of AFT (Procedure) Rules 2008 (hereinafter referred to as 'The Rules') even in the absence of a specific provision in the Act enabling the Tribunal to condone delay, the Tribunal can take recourse of Section 5 read with Section 29(2) of Limitation Act to condone delay.

11. Learned counsel submitted that the term Court has not been defined in the Code of Civil Procedure, 1908, General Clauses Act or AFT Act. However, there is a definition in the Evidence Act which states:-

> "Courts include all Judges and Magistrates and all persons except arbitrators, legally authorized to take evidence."

12. Reference is also made to Section 14(4) (c) of the Act for contending that when the definition of Court as provided in the Evidence Act is read with Section 14(4) (c) of the Act, there remains no ambiguity that AFT would be a Court for the purpose of the cases as brought before it as also for attracting the mandate of Limitation Act.

13. It is the submission of Learned Amicus Curiae that Learned Administrative Member dismissed the application for condonation of delay on the ground that Tribunal is not a Court by relying upon **International Reconstruction Company of India Ltd.(supra),** which pertained to the powers of a Recovery Officer, therefore, that judgment is not applicable in the instant case. On the other hand, reliance is placed on **UOI & Ors. Vs. Paras Laminates (P) Ltd. (1990) 4 SCC 453** for submitting that Tribunal functions as a Court. Being a judicial body, it has all powers for effective functioning of the statutory powers. Reference is also made to the observations made by the Principal Bench in **Gp Capt Ajit Singh Vs. UOI & Ors.** (MA No. 417 of 2017 in MA No. 418/2017 in OA No. 117/2012) that AFT is a judicial body and has the trapping of powers of the Court. Therefore, it is submitted that provisions of Section 5 of Limitation Act are applicable to Armed Forces Tribunal.

14. Learned counsel further submitted that no doubt, there is no positive provision contained in Rule 18 of the Rules for

extending the period beyond 30 days, yet there is no negative cap as well, therefore, the Tribunal which has the trappings of court can condone the delay in exercise of the powers under Section 29(2) read with Section 5 of the Limitation Act. He also referred to the important departure made by Limitation Act, 1963 in so far as provisions contained in Section 29, sub-Section (2) is concerned from 1908 Act.

15. For raising these submissions, reliance is placed on:-

1. **Mangu Ram Vs. Municipal Corporation of Delhi** (1976)1 Supreme Court Cases 392

2. **R. Kandavel and Ors. Vs. DG, P&T Deptt,** New Delhi and Ors. (1988) 7 Administrative Tribunal Cases 696

3. **UOI and Ors. Vs CAT & Anr.** (2002) SCC Online cal 597

4. **Akshaya Kumar arida (dead)** and after him **Manoj Kumar parida & Ors. Vs. UOI & Ors.** (2015) SCC Online Ori 22

5. **Gp Capt Ajit Singh Vs. UOI and Ors.** (MA No. 417 of 2017 in MA 418 of 2017 in OA No. 117 of 2012)

16. Learned counsel further referred to the decision of Hon'ble Supreme Court in **ONGC Ltd. versus Gujarat Energy Transmission Corpn Ltd and others** (2017) 5 SCC 42 where the Apex Court was dealing with Electricity Act 2003. As per Section 125 of the Act, period for filing appeal was 60 days which was condonable for further period of 60 days. However,

there was a delay of stipulated period in filing the application. Under those circumstances, it was held by Hon'ble Supreme Court as under:-

> ***"When there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy. The policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, and therefore, the prescription with regard to the limitation has to be binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that the Supreme Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is un-condonable and it cannot be condoned taking recourse to Article 142 of the Constitution."***

17. It is the submission of learned amicus curiae that present is not such a case where a specific period may have been prescribed for condoning the delay. Therefore, on the strength of aforesaid submission and the law cited, learned amicus curiae submitted that the Tribunal has the power to

condone the delay in filing review application, there being no negative cap in this regard provided in the statute itself.

18. Before dealing with the question as aforesaid, it is necessary to note the relevant provision in the light of which the present controversy can be resolved.

19. Chapter III of the AFT Act deals with the jurisdiction, power and authority of the Tribunal.

20. Chapter IV deals with the procedure for the Tribunal. Section 14 of the Act says that subject to the other provision of this Act, a person aggrieved by any order pertaining to any service matter may make an application to the Tribunal for redressal of his grievance. For the sake of convenience, Section 14 is reproduced as under:-

> "***14. Jurisdiction, powers and authority in service matters.—(1)*** *Save as otherwise expressly provided in this Act, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that day by all courts (except the Supreme Court or a High Court exercising jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters.*
>
> *(2) Subject to the other provisions of this Act, a person aggrieved by an order pertaining to any service matter may make an application to the Tribunal in such form and accompanied by such documents or other evidence and on payment of such fee as may be prescribed.*
>
> *(3) On receipt of an application relating to service matters, the Tribunal shall, if satisfied after due inquiry, as it may deem necessary, that it is fit for*

adjudication by it, admit such application; but where the Tribunal is not so satisfied, it may dismiss the application after recording its reasons in writing.

(4) For the purpose of adjudicating an application, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

(5) The Tribunal shall decide both questions of law and facts that may be raised before it."

21. Section 21 of the Act deals with applications not to be admitted unless other remedies are exhausted.

22. Section 22 of the Act deals with limitation in filing such original applications. Since in this case we are to consider the question whether an application for condonation of delay can

be filed in a review application, it is expedient to quote Section 22 of the Act which runs as under:-

> ***22. Limitation.—The 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 21 has been made unless the application is made within six months from the date on which such final order has been made;***
>
> ***(b) in a case where a petition or a representation such as is mentioned in clause (b) of sub-section (2) of section 21 has been made and the period of six months has expired thereafter without such final order having been made;***
>
> ***(c) in a case where 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 jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.***
>
> ***(2) Notwithstanding anything contained in sub-section (1), the Tribunal may admit an application after the period of six months referred to in clause (a) or clause (b) of sub-section (1), as the case may be, or prior to the period of three years specified in clause (c), if the Tribunal is satisfied that the applicant had sufficient cause for not making the application within such period."***

23. On a plain reading of the provisions under sub-section (3) of Section 22 of the Act, it is clear that Section 22(2)

confers powers on the Tribunal to condone delay in filing the OA if the applicant satisfies that he has sufficient cause for not making the application within the period of limitation as prescribed in the Act.

24. Section 23 of the Act is also important to decide the question in hand. Accordingly, same is quoted as under:-

> ***"23. Procedure and powers of the Tribunal.—(1) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and any rules made thereunder, the Tribunal shall have the power to lay down and regulate its own procedure including the fixing of place and time of its inquiry and deciding whether to sit in public or in camera.***
>
> ***(2) The Tribunal shall decide every application made to it as expeditiously as possible after a perusal of documents, affidavits and written representations and after hearing such oral arguments as may be advanced:***
>
> ***Provided that where the Tribunal deems it necessary, for reasons to be recorded in writing, it may allow oral evidence to be adduced.***
>
> ***(3) No adjournment shall be granted by the Tribunal without recording the reasons justifying the grant of such adjournment and cost shall be awarded, if a party requests for adjournment more than twice."***

25. A bare reading of Section 14 (sub-section (4)) makes it clear that the Tribunal while entertaining an application for

review is conferred with the same powers as are vested in a Civil Court under the Code of Civil Procedure i.e. to say for the purpose of entertaining an application for review, the Tribunal acts as a Civil Court and is conferred to exercise all powers as are vested in a Civil Court. Hon'ble Apex Court in the case of **Paras Laminates (P) Ltd.** (supra) while dealing with the powers and functions of the Custom, Excise and Gold (Control) Appellate Tribunal, held as follows:-

> ***"The Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognized as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. The powers of the tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The Implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes (11th edn.) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or***

employing such means, as are essentially necessary to its execution."

26. Further in **Gp Capt Ajit Singh** (supra), Principal Bench, AFT while dealing with the powers of the Tribunal to condone delay in filing application for leave to appeal, considered the report of Standing Committee on Defence (2005-2006), MoD, before preparation of Armed Forces Tribunal Bill 2005 enquiring about the nature of proposed Tribunal, whether it would be a judicial, quasi-judicial body in line of Central Administrative Tribunal, the Ministry replied that since the Armed Forces Tribunal would be dealing with offences, legally awardable punishment and termination of service etc. it would be a judicial body. So it can be comfortably said that AFT has the trapping of power of court.

27. The Apex Court in **Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker,** (1995) 5 SCC 5 examined the question, whether the provision of the Limitation Act will apply to the Kerala Buildings (Lease and Rent Control) Act, 1965. The apex Court held that that appellate authority under the Kerala Act acts as a court and since the Act prescribes a period of limitation, which is different from the period of limitation prescribed under the Limitation Act, those sections shall be applicable to the Kerala Act. In paragraph-8 of the report, it is held as follows:

"8. *Once it is held that the appellate authority functioning under Section 18 of the Rent Act is not a persona designata, it becomes obvious that it*

functions as a court. In the present case all the District Judges having jurisdiction over the areas within which the provisions of the Rent Act have been extended are constituted as appellate authorities under Section 18 by the Government notification noted earlier. These District Judges have been conferred the powers of the appellate authorities. It becomes therefore, obvious that while adjudicating upon the dispute between the landlord and tenant and while deciding the question whether the Rent control Court's order is justified or not such appellate authorities would be functioning as courts. The test for determining whether the authority is functioning as a court or not has been laid down by a series of decisions of this Court. We may refer to one of them, in the case of Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd. In that case this Court was concerned with the question whether the Assistant Registrar of Cooperative Societies functioning under Section 48 of the Bihar and Orissa Cooperatives Societies Act, 1935 was a court subordinate to the High Court for the purpose of Contempt of Courts Act, 1952. While answering the question in the affirmative, a Division Bench of this Court speaking through Mitter, J. placed reliance amongst others on the observations found in the case of Brajnandan Singh v. Jyoti Narain wherein it was observed as under:

"It is clear, therefore, that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment

which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

Reliance was also placed on another decision of this Court in the case of Virindar Kumar Satyawadi v. State of Punjab. Following observations found therein were pressed in service:

"It may be stated broadly that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declares the rights of parties in a definitive judgment. To decide I a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it. And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a court. When the aforesaid well settled tests for deciding whether an authority is a Court or not are applied to the powers and functions of the Tribunal constituted under the AFT Act. It becomes obvious that all the aforesaid essential trappings to constitute the Tribunal as a Court are found to be present."

28. The judgment **International Asset Reconstruction Company of India Limited** (supra) relied upon by the Learned Administrative Member was pertaining to "Recovery

Officer" and proceeding before the Recovery Officer was held not to be before a Tribunal and under those circumstances it was held that prescribed period of 30 days under Section 30(1) of Recovery of Debts & Bankruptcy Act 1993 for preferring an appeal against the order of the Recovery Officer cannot be condoned by application of Section 5 of Limitation Act.

29. When the aforesaid well settled tests for deciding whether an authority is a court or not are applied to the powers and functions of the Tribunal constituted under the AFT Act, it becomes obvious that all the aforesaid essential trapping to constitute the Tribunal as a court are found to be present.

30. This leads to the next question whether in the absence of the specific provision in the Act enabling the Tribunal to condone delay, the Tribunal can condone the same taking recourse to the provisions of Limitation Act.

31. Mr. M.K. Sikdar, Advocate appearing on behalf of the respondents has drawn attention to Rule 18 of the AFT (Procedure)Rules 2007 for submitting that in view of this Rule the Tribunal is not conferred with the power to condone delay in filing the review application after the expiry of 30 days from the date of receipt of copy of the order sought to be reviewed. In order to appreciate this submission, it will be relevant to quote Rule 18 which run as under:-

> ***"18. Application for review.(1) No application for review shall be entertained unless it is filed within thirty days***

from the date of receipt of copy of the order sought to be reviewed.

(2) An application for review shall ordinarily be heard by the same Bench which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, an application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct notice to be issued to the opposite party.

(4) Where an application for review of any judgment or order has been disposed of, thereafter no application for further review shall lie.

(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed."

32. From a plain reading of this Rule, it appears that this rule only prescribes that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed. It does not take away the right of the Tribunal to condone delay in filing an application for review. In my view, Rule 18 deals with the power of the Tribunal to entertain an application for review. That is to say the Tribunal has not been conferred with jurisdiction to entertain an application for review when the application was not filed within 30 days of the receipt of the order sought to be reviewed. This Rule does not stand in the way of making an application for condonation of delay in filing Review Application.

33. The question thus arises whether by invoking Section 5 of the Limitation Act, the Tribunal can condone the delay, if the applicant satisfies the Tribunal that he was prevented by sufficient cause in not preferring the application for review within the prescribed period of limitation.

34. The Limitation Act 1963 is the general legislation in the law of limitation. Section 5 of the Limitation Act provides thus:-

> ***"5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), maybe admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.***
> ***Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."***

35. Besides Section 5 of the Limitation Act, another relevant Section of Limitation Act is Section 29(2) which reads as under:-

> ***29. Savings.—(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.***
> ***(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were***

the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

36. In **UOI & Ors. Vs. Central Administrative Tribunal** (supra), the question before the Larger Bench of Calcutta High Court was "whether having regard to the provisions of Rule 17 of the Central Administrative Tribunal (procedure) Rules 1987 & Section 21 & 22 of the Administrative Tribunal Act 1985, the Tribunal had jurisdiction to condone the delay in filing review application."

37. Rule 17 of the Central Administrative Tribunal (Procedure) Rules 1987 reads as under:-

"Rule 17. Application for review.-(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.
(2).....
(3).....
(4).....
(5)....."

38. Rule 17 is paramateria the same as rule 18 of the Rules. After considering various provisions of Administrative Tribunal Act 1985, Central Administrative Tribunal (Procedure) Rules

1985, Section 5 and Section 29(2) of Limitation Act, the bench observed that the Tribunal is conferred with powers under the Act and the Rules to condone delay under Section 5 of Limitation Act in filing a review application despite Rule 17 of the said Rules. In arriving at this conclusion, the bench relied upon various judgments passed by Hon'ble Supreme Court. It will be relevant to reproduce Para 13 to 16 of the judgment as under:-

> ***"13. In the case of Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5, the Supreme Court while dealing with applicability of the provision under section 5 of the Limitation Act in view of section 29(2) of the same observed as follows:—***
>
> > ***"A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.***
> > ***(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.***
> > ***(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act."***
>
> ***14. If the aforesaid two requirements are satisfied the consequences contemplated by section 29(2) would automatically follow. These consequences are as under:***

(i) In such a case section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

15. Keeping the aforesaid two requirements in our mind as enunciated by the Supreme Court, let us now consider whether in view of section 29(2) of the Limitation Act, whether Rule 17 of the Rules satisfies the aforesaid two conditions for attracting the applicability of section 29(2) of the Limitation Act. It would be disputed that the Act is a special Law. It is also not in dispute that the Act or the Rules prescribes for filing a review application under Rule 17 of the said Rules which is different from the period prescribe by the Schedule as the schedule to the Limitation Act does not contemplate any period of Limitation for filing a review application before the Tribunal under Rule 17 of the said Rules. In view of the decision of the Supreme Court in the case of Mukri Gopalan (supra) it is also now well settled that a situation wherein a period of limitation is prescribed by a special or local law for an application for review and for which there is no provision made in the Schedule to the Act, the second condition for attracting section 29(2) would get satisfied. In our view, relying on the aforesaid decision of the of Mukri Gopalan (supra) it is therefore evidently clear that section 29(2) would apply even to a case where a difference between the special law and the Limitation Act arose by the omission to provide for limitation to

a particular proceeding under the Limitation Act. The Supreme Court in the aforesaid decision in the case of Mukri Gopalan (supra), after considering the provisions under section 29(2) of the Limitation Act and the applicability of section 5 of the Limitation Act, has clearly laid down the principle that when there is no express exclusion anywhere in the special or local law taking out the applicability of section 5 of the Limitation Act to such Act or

Rules, all the requirements to apply section 5 of the Limitation Act to a particular special law or local law either in appeals or in applications in the light of section 29(2) of the Limitation Act can be said to have been satisfied. From the aforesaid decision of the Supreme Court it is clear to us that the Supreme Court has clearly laid down that the express language of section 29(2) indicates that such special or local law must provide for period of limitation for suit, appeal or application entertainable under such laws and for computing period of limitation under such special or local law the legislature has made available the machinery of sections 4 to 24 inclusive as found in Limitation Act. Accordingly, in view of the aforesaid decision of the Supreme Court, it must be held that in view of section 29(2) of the Limitation Act the Tribunal has the jurisdiction to entertain an application for condonation of delay filed under section 5 of the Limitation Act and dispose of the same in accordance with law. As noted herein earlier, from a plain reading of the provisions under Rule 17 of the Rules it may be admitted that the language of Rule 17 is mandatory and compulsive, in that it provides in no uncertain terms that the application for reviving a decision from an order of the Tribunal shall not be entertained by it after the expiry of thirty days from the date of receipt of the order sought to be reviewed. But in our view, applicability of an application under section 5 of

the Limitation Act cannot depend on the words used in Rule 17 of the said Rules. As discussed hereinabove, in our view, Rule 17 of the Rules only bars a review application to be admitted after the expiry of thirty days from the date of receipt of the order sought to be reviewed. Therefore, Rule 17, in our view, does not take away the jurisdiction of the Tribunal to entertain and dispose of an application under section 5 of the Limitation Act when applicability of section 5 of the Limitation Act has not been expressly excluded by the Act.

15. There is yet another aspect of the matter. While dealing with the applicability of section 5 of the Limitation Act, 1908, in a proceeding under sections 417(3), (4) of the Code of Criminal Procedure, the Supreme Court in the case of Kaushalya Rani v. Gopal Singh, AIR 1964 SC 260 has held that section 5 of the Limitation Act, 1908 is not applicable to an application for Special Leave from an order of acquittal under sub- section (3) of section 417 of the Code of Criminal Procedure. This decision of the Supreme Court was taken into consideration by the Supreme Court in its later decision in the case of Mangu Ram v. Ram Prashad Gondamal, AIR 1976 SC 105. In this decision of the Supreme Court, the Supreme Court distinguished the aforesaid decision of the Supreme Court relying on the provision of the Limitation Act, 1963. In paragraph 7 of the said decision, the Supreme Court observed as follows:—

> *"7. There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in section 29, sub-section (2) is concerned. Whereas under the Indian Limitation Act, 1908 section 29, sub-section (2), clause (b) provided that for the purpose*

of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Indian Limitation Act, 1908

.....

other than those contained in sections 4, 8 to 18 and 22, shall not apply and, therefore, the applicability of section 5 was in clear and specific terms excluded. Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in sections 4 to 24, which would include section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29 sub-section (2). clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of section 5, while section 29 sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provides for the applicability of section 5 and the ratio of the decision in Kaushalva Rani's case can, therefore, have no application in cases governed by the Limitation Act, 1963 since that decision proceeded on the hypothesis that the applicability of section 5 was excluded by reason of section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, section 5 is specifically made applicable by section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local expressly excludes the applicability of section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani's

case AIR 1964 SC 260 : 1964 (1) Cri. L.J. 1952. The time limit of sixty days laid down in sub-section (4) of section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of section 5. It is true that the language of sub-section (4) of section 417 is mandatory and compulsive, in that, it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order or acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever pre-emptory or imperative language is not sufficient to displace the applicability of section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it."

16. From the aforesaid observations of the Supreme Court as noted hereinearlier in which the earlier decision of the Supreme Court in the case of Kaushalya Rani v. Gopal Singh (supra)

was duly considered and the departure made in section 29(2) of the 1963 Act from 1908 Act. But from the aforesaid two decisions of the Supreme Court it would be evident that the Code of Civil Procedure was also found to be a Special Law in which section 29(2) would be made applicable. The Supreme Court in the case of Manguram v. Ram Prashad Gondamal (supra) has clearly considered the provisions under section 29(2) of the Limitation Act, as well as, the provisions made in section 29 (2) of the 1963 Act. By considering the provisions under section 29(2) the present Act of 1963, Supreme Court held that an application under section 5 of the Limitation Act must be held to be maintainable in view of a fact that in the Code of Criminal Procedure for the purpose of sections 417(3), (4) of the Court was a special law. So far as the present case is concerned, we have no dispute that the Administrative Tribunal Act, 1985 is a special law. It is also not disputed that in this Act a special period of limitation has been provided. Therefore, applying the principles laid in the aforesaid decision of the Supreme Court in the case of Manguram v. Ram Prashad Gondamal (supra), we have no hesitation in our mind to hold that the Administrative Tribunal Act, 1985 more precisely section 22 of the Act and Rule 17 of the Rules do not expressly exclude the applicability of section 5 of the Limitation Act, 1963."

(Emphasis added)

39. Similar view was taken by Larger Bench of Calcutta High Court in **Akshaya Kumar Parida Vs. Union of India** (supra) and **Central Administrative Tribunal in R. Kandavel and Ors. vs. DG, P&T Deptt.** (supra).

40. In **Gp Capt Ajit Singh** (supra), the Principal Bench, Armed Forces Tribunal while dealing with the question as to whether the Tribunal had the power to condone delay in filing application for grant of leave to appeal in the absence of specific provision in the Act or the rules made thereunder to that effect, after referring the various decisions rendered by Hon'ble Supreme Court and High Court, came to the conclusion that in the absence of there being any negative cap set out in sub-section (2) of 31 of the Act for grant of extension of time by the Tribunal beyond 30 days, there should not be any bar in dealing with the prayer for extension of time for leave to appeal to Hon'ble Supreme court, which prayer undoubtedly, will be considered on the facts of each individual case.

41. The logical sequitur on the analysis made in the preceding paragraphs is that Armed Forces Tribunal is charged with a duty to decide disputes in a judicial manner and declares the rights of the parties in definitive judgment. For the purpose of discharging its function under the Act, the Tribunal has the same power as are vested in Civil Court under the Code of Civil Procedure. The Tribunal thus acts as a Civil Court and is conferred to exercise all powers as are vested in a Civil Court. It is thus evident that provision of Section 5 of Limitation Act are applicable to it and prescribed period of limitation can be extended if the Tribunal is satisfied

that the applicant has sufficient cause for not preferring the application within the period of limitation.

42. Although it is true that avowed object of enacting the Act, as contended by Mr. Sikdar was to grant urgent relief to Defence Force Personnels but if an aggrieved party is able to bring on record any error crept in the order which is apparent on the face of the record then, it is the paramount duty of the Tribunal to correct the same, otherwise, it may cause hardship to the affected party. Further, provision for review is inherent in the Rules, the only question is if for any sufficient cause, the affected party was prevented in filing the application within time, can he be estopped from doing so only on the ground that the application was not made within time. As rightly observed by Learned Judicial Member, the procedural law like law of limitation are meant for doing substantial justice and when the procedural/technicalities of law are pitted against the substantial justice, it is the substantial justice which deserved to be allowed to prevail by overruling the procedural/technicalities of law.

43. Needless to say, when such an application seeking condonation of delay is filed it will be incumbent upon the applicant to show sufficient cause which prevented him from filing the application and such application will have to be decided on case to case basis.

44. The reference is, accordingly, answered in the following manner:-

> ***"The Tribunal is conferred with power under the Act and the Rules framed thereunder to condone delay under Section 5 of the Limitation Act in filing the Review Appliction despite rule 18 of the Rules"***

45. Before parting with this order, a word of appreciation deserves to be made for Shri S.S. Pandey, Learned Advocate who has assisted the Tribunal as Amicus Curiae with regard to the issue of powers vested with the Tribunal for extending the time for entertaining an application for review beyond the period of 30 days, which has been answered in the affirmative.

Pronounced in open court on this 16th day of November 2021.

[JUSTICE SUNITA GUPTA]
MEMBER (J)

/sm/

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No. 64 of 2016

Friday, the 27th day of July, 2018

THE HONOURABLE MR.JUSTICE V.S.RAVI
(MEMBER – J)
AND
THE HONOURABLE LT GEN C.A.KRISHNAN
(MEMBER – A)

Ex-Sep M.Anthony Victor
Service No.6946726-H
Son of Miched, aged about 35 years
Velangani Street, Village & Post Perumanam
Taluk & District – Thiruvannamalai-621306
Tamil Nadu ...Applicant

By Legal Practitioners:
M/s M.K.Sikdar & S.Biju

vs.

1. Union of India,
Through the Secretary
Government of India, Ministry of Defence,
New Delhi-110 011

2. The Chief of the Army Staff
Integrated Head Quarters of MOD(Army)
Post-DHQ, New Delhi-110 011

3. The Officer-in-Charge,
AOC Records, C/o APO, Pin-900453

4. The Commandant
Administrative Battalion (Depot Copy)
AOC Centre, Secunderabad, PIN-500015 ...Respondents

By: Shri V.Balasubramanian
Central Government Sr. Panel Counsel for Respondents

कप्तान
Capt
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मुख्यालय दक्षिण भारत एरिया
HQ Dakshin Bharat Area