

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2881/2002

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New Delhi this the 27th day of August, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Raj Kumar Sharma,
S/O Shri M.P. Sharma,
R/O D-122, Sector-9,
New Vijay Nagar, Ghaziabad.

(By Advocate Sh. Prakash Chandra)

Applicant

VERSUS

Union of India through :

1. General Manager,
N.Railway, H.Q.office,

2. D.R.M.,
Northern Railway, New Delhi.

(None for the respondents)

Respondents

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The applicant has impugned the order dated 4.4.2001, issued by the respondents imposing on him a penalty of reduction to the lower post of Booking Clerk (Grade Rs.3050-4590 (RP)) for a period of five years with commulative effect, by reducing the penalty of dismissal from service imposed by the revision authority.

2. The brief relevant facts of the case are that the applicant was charge sheeted for major penalty under the provisions of Railway Servants (Discipline and Appeal) Rules, 1968. After holding a Departmental enquiry against him, receipt of the Inquiry Officer's report and the reply from the applicant, the disciplinay

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authority imposed a penalty of reduction by ^{one} stage for a period of four years with commulative effect by order dated 22.9.1999. The applicant did not file any appeal against this order to the appellate authority. However, the revision authority after issuing a show cause notice to the applicant, by his order dated 7.11.2000 enhanced the penalty to that of dismissal from service with immediate effect. In this order, the applicant was also informed that he could file an appeal under ^{the 1952} L Railway Servants (Discipline and Appeal) Rules, 1968, which he did against the enhanced penalty. The appellate authority, after considering his appeal reduced the penalty to that of reduction to the lower post of Booking Clerk Gr.3050-4590 for a period of five years with commulative effect.

3. As none has appeared for the respondents even on the second call and the OA is listed at Serial No.4 under regular matters, we have proceeded to hear Shri Prakash Chandra, learned counsel for the applicant and have also perused the pleadings and documents on record.

4. Learned counsel for the applicant has very vehemently submitted that even though the OA has been filed on 7.11.2002 impugning the aforesaid order issued by the appellate authority dated 4.4.2001, the same is within limitation. According to him, as the impugned penalty order deals with reduction to the lower post involving reduction of his pay which is a recurring and

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continuous cause of action no bar of limitation applies. He has relied on Tribunal's order dated 3.7.2001 in Kewal Kumar Luthra Vs. UOI and Ors. (OA2408/2000), copy placed on record. He has also relied on Section 9 of the Limitation Act, 1963, copy placed on record to support his arguments.

5. We note from the counter affidavit filed by the respondents that they have taken a preliminary objection that the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 as he is assailing the order dated 4.4.2001. They have also submitted that on merits, there is nothing wrong or illegal in the penalty orders issued by the competent authority/appellate authority which has been done in accordance with the provisions of the Rules.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the applicant.

7. The impugned order dated 4.4.2001 in the present case is the appellate authority's order and the OA has been filed on 7.11.2002 i.e. much after the period of limitation provided under Section 21 of the Administrative Tribunals Act, 1985. The judgement of the Hon'ble Supreme Court in M.R.Gupta Vs. UOI (1995(5) Scale 29) is also not relevant to the facts of this case. No sufficient reasons have been given by the applicant for nor any Miscellaneous Application filed for the

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purpose with sufficient reasons to condone the delay. In fact, the contention of the learned counsel for the applicant is that the penalty order gives him a continuous cause of action and is also a recurring cause of action on which there is no limitation. We are unable to agree with either of these contentions, having regard to the provisions of Sections 14, 19 and 21 of the Administrative Tribunals Act, 1985. The Judgement of the Tribunal in Kewal Kumar Luthra's case (supra) will not assist the applicant in the present case because that was a case relating to pay fixation whereas the present case deals with the impugned penalty order issued by the respondents after holding a Departmental enquiry under the provisions of the Railway Servants (D&A) Rules, 1968. Similarly, the provision of the Limitation Act, 1963 as amended will not also assist the applicant in the present case, as what is applicable are the provisions of Section 21 of the Administrative Tribunals Act.

8. In the result, for the reasons given above, the OA fails as barred by limitation under Section 21 (3) of the Administrative Tribunals Act, 1985. OA is accordingly dismissed.

V.K.Majotra
(V.K.Majotra)
Member (A)

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Vice Chairman (J)

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