

Reasoned
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS:BILASPUR

Original Application No.203/00579/2019

Bilaspur, this Wednesday, the 22nd day of January, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

N. Prasanna Lakshmi, Widow of Late N. Laxman Rao,
Aged about 44 years, resident of Door No. 58-9-15,
New Karasa P.O. Nad, Tehsil and Dist. Vishakhapatnam,
State-Andhra Pradesh, Pin 530001, Ph. 922987997

-Applicant

(By Advocate –**Shri D.K.Swain**)

V e r s u s

1. Union of India, though the Secretary,
Ministry of Railways,
Rail Bhawan, 1, Raisina Road,
New Delhi 110001
2. General Manager, South East Central Railways,
Raipur Division, Raipur,
Chhattisgarh, Pin 492008
3. Additional Divisional Railway Manager
and Revisionary Authority S.E.C.Railway,
Raipur C.G. Pin- 492008
4. Sr. Divisional Engineer (Line)/R,
The Appellate Authority, S.E.C.Railway,
Raipur, C.G.,Pin 492008
5. Assistant Divisional Engineer-1,
S.E.C. Railway, Bhilai, Disciplinary Authority,
Bhilai, Chhattisgarh, Pin-490001

- **Respondents**

(By Advocate –**Shri Vivek Verma**)

ORDER**By Navin Tandon, AM:-**

The applicant is a widow of deceased Railway employee, who was awarded a penalty of “Compulsory Retirement”. Being aggrieved, this Original Application has been filed.

2. Brief facts of the case as submitted by the applicant are as under:

2.1 The deceased Railway employee was working as Gate Keeper, where he was found to be in intoxicated condition on 27.05.2010 while on duty.

2.2 A major penalty charge sheet was issued on 22.06.2010 (Annexure A-4) which was followed by imposition of penalty of “Compulsory Retirement” on 30.11.2010 (Annexure A-1).

2.3 The appeal was rejected on 28.06.2011 (Annexure A-2).

2.4 He submitted a Revisionary Petition. However, before the same could be decided, the employee left for heavenly abode on 13.09.2011.

2.5 The Revisionary Authority passed his order on 09.11.2011 (Annexure A-3) upholding the punishment.

2.6 The applicant is challenging the punishment stating that the deceased employee was found to be having alcohol level of 60 mg/100ml. The punishment norms prescribed in Revised Policy on “Drunkenness on duty” issued by Railway Board on 27.11.2001 (Annexure A-5) states that “Staff who is found with alcohol level of between 41-70 mg/100 ml of blood will be issued a major penalty in each case.” The words “ in each case” imply that there should be scope for further occasion of punishments, whereas in the instant case the employee has been compulsorily retired in the first instance.

2.7 News item in Times of India dated 01.05.2019 (Annexure A-6) have been cited about a pilot who tested positive in breath analyses test on 11.11.2018 before boarding New Delhi-London flight. His flying license was suspended but after a week he was posted as Executive Director.

3. The applicant has filed M.A. No. 203/00843/2019 for condonation of delay, wherein it has been stated that the applicant went to her parents place at Vishakhapatnam. She was in pathetic financial condition. In February 2019 she came to

Raipur where the present counsel agreed to take up her case. Hence she prays for condonation of delay.

4. The respondents have filed their reply wherein they have stated that the disciplinary proceedings were initiated and finalized after following all the procedure. They have objected to the condonation of delay application saying the O.A. has been filed after nearly 8 years of cause of action.

5. Heard the arguments of learned counsel for the parties and perused the pleadings available on record.

6. Learned counsel for the applicant relied on following judgment of Hon'ble Supreme Court in

(i) SLP (Civil) No. 28938 of 2014 in the matters of **Bhivchandra Shankar More vs. Balu Gangaram More & Ors.**

(ii) (2014) 14 SCC 127 in the matters of **Dhiraj Singh (DEAD) Through Legal Representatives and Ors. vs. State of Haryana and Ors.**

6.1 He averred that Hon'ble Supreme Court has held that rules of limitation should not be used to destroy the rights of the parties.

7. Learned counsel for respondents cited case of **Ravinder Kumar vs. Union of India & Ors.**, 2018(1) CAT AISLJ 150 wherein long delay has not been condoned.

8. We find that in the matters of **Bhivchandra Shankar More** (Supra) and **Dhiraj Singh (DEAD)** (Supra), the delay has been considered by the Hon'ble Supreme Court under Limitation Act, 1963, whereas the O.A. is to be considered under Section 21 of the Administrative Tribunals Act, 1985

9. Section 21 of the Administrative Tribunals Act, 1985 (for short 'the Act') deals with limitation for filing O.A. before this Tribunal, which reads 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 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.”

10. The present O.A. is regarding disciplinary proceedings where all the stages have been completed 8 years back. No irregularities of the said proceedings have been brought out in the said O.A.

11. Section 21 of the Act has been considered by the Hon'ble Supreme Court in the case of **Union of India & Ors. v M.K. Sarkar**, reported in 2010 (2) SCC 58, wherein it has been said that limitation has to be counted from the date of original cause of action and stale matters should not be entertained. It has further been held as follows:-

“The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.

When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. Moreover, a court or tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

12. In the case of *Union of India* vs. *Harnam Singh* (1993)

2 SCC 162, the Hon'ble Apex Court has held that "the Law of Limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to aid of those who sleep over their rights and allow the period of Limitation to expire."

13. We have given our thoughtful consideration to the entire matter and find that there is no merit in the application for condonation of delay. Accordingly, the application is rejected.

14. Since the application for condonation of delay has been rejected, this O.A. is dismissed as barred by limitation.

(Ramesh Singh Thakur)

Judicial Member

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(Navin Tandon)

Administrative Member