

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00062/2019

Jabalpur, this Friday, the 07th day of February, 2020

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

Jageshwar Prasad Choudhary, S/o Late Shri Ramcharan Choudhary, Age – 42 years, Occupation : Government Servant, R/o Purani Basti, Maharajpur, Adhartal, Jabalpur (M.P) 482004.

-Applicant

(By Advocate – Shri Aditya Narayan Shukla, proxy counsel of Shri Akash Choudhary)

V e r s u s

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi 110001.
2. The Chairman, Ordnance Factory Board, 10-A, Shaheed Khudiram Bose Marg, Kolkata – 700001, W.B.
3. The General Manager, Vehicle Factory Jabalpur, Shobhapur, Jabalpur Madhya Pradesh - 482009

-Respondents

(By Advocate – Shri N.K. Mishra)

OR D E R (R E A S O N E D)

By Navin Tandon, AM.

The applicant is aggrieved by the order dated 08.05.2009 (Annexure A-1) imposing punishment of reduction of pay by one stage for a period of one year with cumulative effect. He is also challenging the order dated 17.02.2010 (Annexure A-2) of

the Appellate Authority, whereby his appeal against the said punishment order has been rejected.

2. Alongwith the Original Application, the applicant has also filed MA No.200/175/2019 for condonation of delay wherein he has submitted that the punishment imposed against the applicant is a continuing cause of action as he is getting less salary. Therefore, the same is recurring loss in the salary.

2.1 The applicant has also placed reliance on a decision of Hon'ble Supreme Court in the case of **M.R. Gupta vs. Union of India and others**, (1995) 5 SCC 628, wherein it has been held that continuing wrong gives rise to a recurring cause of action every month on the occasion of payment of salary.

3. The respondents have filed their reply to the application for condonation of delay, wherein they have submitted as under:

“(2) That, the aforesaid claim of the applicant suffers from delay and laches. The order of punishment was passed on 8.5.2009 and the Appellate Authority passed the order on 17.2.2010 dismissing the appeal. Thus, the limitation for filing the original application expired on 17.02.2011. The application has been filed with inordinate delay of more than eight years.

(3) That, the only reason which has been stated is that the delay occurred due to certain personal issues and financial problems being faced by applicant. Thus, it is clear that the applicant has not explained the delay properly.

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(5) That, the applicant was still in service and drawing handsome salary and thus, there could have been no financial problem in approaching the Court.

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(7) That, it was the statutory appeal decided by the Appellate Authority and since the application has not been filed within limitation, the orders passed by the Disciplinary Authority and Appellate Authority have attained finality in absence of any challenge to them within the limitation period.

(8) That, reliance placed upon the decision in the case M.R. Gupta rendered by the Hon'ble Apex Court is of no help to the applicant. The decision in M.R. Gupta relates to the facts and circumstances where pay fixation of an employee therein was done improperly against the rules. The Court held that a fresh cause of action arose every month when he was paid his monthly salary on the basis of wrong computation made contrary to rules. However, in the present case, on account of misconduct committed by the applicant, he was placed under suspension and charge-sheeted. The charges were found proved in the disciplinary proceedings for which he was imposed with the punishment. He preferred an appeal, which was decided against the applicant citing cogent reasons which were duly communicated to the applicant but he did not choose to assail the same. Thus, the original application which has been filed in the month of February, 2019 challenging the order dated 17.2.2010, suffers from delay and laches. In M.R. Gupta's case cited by the applicant it was the employer who was at fault in fixing the pay of the applicant therein wrongly, which mistake was required to be rectified for which delay would not run against the employee but in the present case, the action was taken due to own lapse and misconduct of the applicant which was appropriately dealt with by giving opportunity of hearing and defend the case to the applicant. Hence, the decision in M.R. Gupta's case is clearly not applicable in the present case being distinguishable on facts."

4. Heard learned counsel for the parties and perused the pleadings and the documents available on record.

5. 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 subsection (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.”

6. The present O.A. is regarding disciplinary proceedings where all the stages have been completed 8 years back.

7. Section 21 of the Act has been considered by the Hon'ble Supreme Court in the case of **Union of India & Ors. vs 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."

8. 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."

9. We have given our thoughtful consideration to the entire matter and find that there is no merit in the application for condonation of delay. We also agree with the submission of the respondents that the decision in **M.R. Gupta (supra) relates to the facts and circumstances where pay fixation of an employee therein was done improperly against the rules, whereas in the instant case, the charges were found proved in the disciplinary**

proceedings for which the applicant was imposed with the punishment way back in 2009. The appeal as per rules was also rejected in 2010. Imposition of penalty is a “one time action” and does not fall under “recurring cause of action”. Accordingly, the application for condonation of delay is rejected.

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

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-