

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 283 of 2015

Date of order: 18.12.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

B. Umeshwar Rao,
 Son of Late B. Mohan Rao,
 Aged about 36 years,
 Residing at Railway Quarter No. CM/1/5,
 P.O. – Kharagpur,
 Dist. – Paschim Medinipur,
 Pin – 721301.

... Applicant

- V E R S U S -

1. Union of India,
 Through the General Manager,
 S.E. Railway,
 Garden Reach,
 Kolkata – 700 043.
2. The Area Manager,
 S.E. Railway,
 Santragachi,
 Dist. Howrah.
3. Sr. Divisional Mechanical Engineer (C&W),
 S.E. Railway,
 Santragachi,
 Dist. Howrah,
 Pin – 711 112.

..... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. A. Mitra, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "(a) Order passed by the Disciplinary Authority dated 12.5.2005 cannot be tenable in the eye of law and as such the same may be quashed.
- (b) Order dated 25.10.2005 passed by the Appellate Authority & Area Manager, S.E. Railway, Santragachi cannot be tenable in the eye of law and as such the same may be quashed.
- (c) An Order 28.3.2006 passed by the Revisionary Authority cannot be tenable in the eye of law and as such the same may be quashed.
- (d) Order dated 3.10.2007 issued by the CME, S.E. Railway, cannot be tenable in the eye of law and as such the same may be quashed.
- (e) An order do issue directing the respondents to reinstate in service the applicant at an early date."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The facts, in a narrow compass, is that the applicant, while working as a Khalasi (Helper), used to absent himself unauthorisedly and, between the period 22.7.2000 to 21.10.2001, had remained unauthorisedly absent in intervals for 396 days.

He was issued with a major penalty chargesheet and was removed from service upon culmination of the proceedings. The appellate authority, however, upon sympathetic consideration of his appeal, reinstated him as a Safaiwala.

The applicant, however, despite such clemency being shown to him, continued his practice of unauthorized absence and again absented unauthorisedly for 75 days for the period from 17.4.2003 to 30.6.2003. He was once again issued with a major penalty chargesheet, and, the disciplinary authority, after considering his defence statement, appointed an enquiry officer. The applicant participated in the said enquiry but the enquiry officer found that he was guilty of charges leveled against him.



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The Disciplinary authority, having considered the said enquiry report and the defence submissions of the applicant/charged officer, imposed the penalty of removal from service w.e.f. 12.6.2006. The applicant appealed to the appellate authority which was rejected on 25.10.2005 and his revisional appeal also stood rejected on 28.3.2006. The applicant, thereafter, represented before the CME, S.E. Railway, KGP which was not considered as the applicant had exhausted all his departmental remedies. The applicant, thereafter, approached this Tribunal on 18.2.2015 which was almost 10 years after the imposition of penalty by the disciplinary authority in the instant O.A.

4. During hearing, Ld. Counsel for the applicant would very fairly submit that there is an unexplained delay of nearly 10 years not supported by any prayer for condonation of delay towards delayed filing of such O.A.

5. Both Ld. Counsel would agree that this matter deserves to be dismissed on grounds of delay as it is hopelessly barred by limitation with no suitable, cogent or alternative explanation having been advanced in explaining the delay in filing the instant O.A.

6. In this context, we are supported by the ratio in **D.C.S. Negi v. Union of India and others, (2019) 1 Supreme Court Cases (L&S) 321**, wherein the Hon'ble court held as follows:-

“..... We consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard to the mandate of Section 21, 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.

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(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."

13. A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."



7. In our considered view, no satisfactory and cogent explanation having been offered on the delay in filing of the application, the same does not merit consideration. The maxim of "vigilantibus, non dermientibus, jura sub-veniant" (law assists those who are vigilant and not those sleeping over their rights) is applicable in this case.

8. Accordingly, this O.A. is dismissed on grounds of delay.

There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Bidisha Banerjee)
Judicial Member