

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1293 of 2013
M.A. 23 of 2016

Reserved on: 5.12.2019
Date of order: 17.12.2019

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

Dina Nath Ram,
Son of Late Basjit Ram,
Aged about 59 years,
Working as Senior Booking Clerk
Under the Senior Divisional Commercial Manager,
Eastern Railway, Howrah
And residing at Village - Basudevpur, Loknath,
Balikuri,
Police Station - Tarakeswar,
District - Hooghly, Pin - 712410.

..... Applicant.

Versus



1. Union of India,
Service through the General Manager,
Eastern Railway,
17, N.S. Road,
Fairlie Place,
Kolkata - 700 001.
2. The Divisional Railway Manager,
Eastern Railway,
Howrah Division,
Post Office and District - Howrah - 711101.
3. The Additional Divisional Railway Manager,
Eastern Railway,
Howrah Division,
Post Office and District - Howrah - 711101.
4. The Chief Commercial Manager,
Eastern Railway,
14, Strand Road,
Kolkata - 700001.
5. The Senior Divisional Commercial Manager,
Eastern Railway,
Howrah Division,
Post Office and District - Howrah-711101.
6. The Senior Divisional Personnel Officer,
Eastern Railway,

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..... Respondents.

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Ms. T. Das, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

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

- a) To quash and/or set aside the impugned major penalty charge-sheet memo No. COM/CC/110/LOK/02/VO dated 19.02.2003 issued by the Senior Divisional Commercial Manager, Eastern Railway, Howrah along with Articles of Charges against the applicant being Annexure A-3 of this original application;
- b) To quash and/or set aside the impugned enquiry proceedings dated 5.7.2004 along with Enquiry Report dated 27.08.2004 which was submitted by not taken into consideration the request of the applicant the he may be allowed to inspect the relied upon documents and he may be allowed to cross-examine the most vital witness and allow to defend his case through defence helper and to supply with relied upon documents being Annexures A-6 and A-8;
- c) To quash and/or set aside the impugned major penalty order of punishment imposed by the Senior Divisional Commercial Manager, Eastern Railway, Howrah dated 4.11.2004 by issuing the reversion order from Grade Rs. 5000-8000 to Grade Rs. 3200-4900 along with office order No. 98 of 2004 issued by the Senior Divisional Personnel Officer, Eastern Railway by acted in respect of reducing your applicant's Grade from Grade Rs. 5000-8000 to Grade Rs. 3200-4900 as per the order of the disciplinary authority being Annexure A-10 and A-11;
- d) To quash and/or set aside the impugned non-speaking and cryptic order of the appellate authority dated 16.03.2005 which was issued by not taken into account the statutory appeal preferred by the applicant dated 24.12.2004;
- e) To quash and/or set aside the impugned order of revisional authority dated 5.5.2006 i.e. Senior Divisional Commercial Manager, Eastern Railway, Howrah which he has issued by not taking into account the revisional application preferred by the applicant and passed a cryptic order and the order of appellate authority stand good;
- f) To hold that the applicant is not guilty in respect of the any of articles of charges framed by the respondent authority against the applicant on the basis of the order passed by the Hon'ble High Court at Calcutta in C.R.R. No. 661 of 1991 dated 11.10.1991;
- g) To declare that the disciplinary proceeding initiated by the respondent authority against the applicant is otherwise bad in law and illegal;
- h) To pass an appropriate order directing upon the respondent authority to reinstate the applicant in his original post to the post of Head Booking Clerk



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under B.S.(G), Eastern Railway, Howrah Division and to give all consequential benefit from the actual date of reversion from Head Booking Clerk to Assistant Booking Clerk and to reinstate him in the post of Head Booking Clerk along with all consequential benefit from such date;"

2. Heard rival contentions of both Ld. Counsel. An M.A. bearing No. 350/00023/2016 arising out of the said O.A. No. 1293 of 2013 has been filed praying for condonation of delay in filing O.A. upon availing of the liberty granted by this Tribunal on 5.1.2016.

3. Prior to adjudication of the matter on merit, we would take up the applicant's prayer for condonation of delay as contained in the M.A. filed by the applicant.

This applicant has primarily challenged the disciplinary proceedings initiated vide memorandum dated 19.2.2003 vide which a major penalty chargesheet was issued to the applicant. The alleged grounds were that the applicant, while functioning as APC/Howrah, (during the period 1987), had committed grave misconduct inasmuch as he had entered the particulars of a consignment in sealed van unloading register before unloading, and, also that, although it was within his knowledge that the condition of the consignment was defective in that, he had prepared a damaged deficiency message but the same was not delivered to the concerned authorities including RPF and thereby he had deliberately concealed facts regarding the defective condition of the consignment.

The applicant participated in the proceedings, denying the charges. The enquiry report found him guilty in not issuing the message of the damaged delivery memo. The disciplinary authority, having accepted the findings of the enquiry officer held him responsible, and, as a measure of major penalty, reverted him on 4.11.2004 to lower grade of Rs. 3200-4900/- from his earlier grade of Rs. 5000-8000/-. The applicant preferred an appeal on 24.12.2004 which was disposed of by the

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appellate authority on 16.3.2005 by the appellate authority in an allegedly cryptic order. The applicant, thereafter, preferred a revision petition on 26.10.2006 which was also disposed of on 5.5.2006 whereby the revisional appellate authority upheld the decision of the appellate authority.

The applicant, thereafter, moved the office of respondent No. 1, namely, the General Manager, Eastern Railway, Kolkata on 1.8.2007 for further review of the purported wrongful revisional order, which, according to the applicant, remains unresponded till date. He was further informed, when he sought information through RTI, that, there is no scope of further review on a revisional appeal which has been decided conclusively in his matter.

4. The respondents, both in their reply dated 9.7.2014, as well as in their written notes of arguments filed in September, 2019, have strongly contested the maintainability of the instant O.A. as being hopelessly barred by limitation. According to the respondents, the applicant's final recourse to statutory remedies had ended on 5.5.2006 when the revisional authority had conclusively passed the following orders:

"There is no extenuating circumstances to warrant any consideration.

Punishment stands."

That, the applicant waited for seven long years before he came to the Tribunal seeking to quash the major penalty chargesheet dated 19.2.2003, the enquiry proceedings dated 5.7.2004, to quash and set aside the impugned punishment order dated 4.11.2004, and, to set aside the orders of the appellate authority dated 16.3.2005 and revisional authority dated 5.5.2006 respectively.

By way of explanation, the applicant would submit as follows:-

- (i) The applicant had preferred a representation before the highest authority, namely, respondent No. 1, who is the

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General Manager, Eastern Railway, Kolkata on 1.8.2007 and waited till 2011, when he was informed by a reply received through RTI that there is no further scope to review the decision of the revisional authority. Upon obtaining such information on 6.1.2012, the applicant approached the Tribunal vide his original application filed on 1.10.2013 praying for relief against the entire disciplinary proceedings.

- (ii) And, in view of the liberty granted by this Tribunal dated 5.1.2015, the applicant filed his prayer for condonation of delay as claimed by the applicant of four years, in filing the Original Application.

We find from the applicant's explanation that,

- 5.(i) The final orders in case of the applicant, as far as the revisional authority was concerned, was passed on 5.5.2006. The applicant, thereafter, prayed to the General Manager on 1.8.2007 and followed it up with a reminder dated 18.10.2007. Then he waited for four years before trying to seek information on his pending review petition only on 28.12.2011.
- (ii) The applicant obtained requisite information on 6.1.2012, and then waited for nearly two years to file this Original Application on 1.10.2013.
- (iii) The applicant was aware that there was a delay of five years from the date of his preferring the review application (not sustainable under statutory provisions), upto the date of filing the original application, and, also there was a delay of twenty two months from the date of obtaining the information through RTI and filing the O.A. Nevertheless, being supremely



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confident, the applicant decided to pursue his Original Application without any prayer for condonation of delay.

- (iv) This Tribunal, upon acknowledging that there was significant delay in filing the Original Application as vociferously agitated by the Ld. Counsel for the respondents, granted him liberty to file an application for condonation of delay, and, hence, the M.A. bearing No. 23 of 2016.

6. The respondents have relied on the following ratio in **Bhoop Singh v. Union of India 1992 AIR 1414** as well as in **Ratan Chandra Samanta v. Union of India & ors. 1994 SCC (L&S) 182**, namely, that:

"Delay itself deprives a person of his remedy available in law. In absence of fresh cause of action or any legislation a person who have lost his remedy by lapse of time loses his right as well",

to argue that the Original Application does not deserve consideration on the grounds of limitation.



Section 21 of the Administrative Tribunal Act, 1985 provides for limitation of filing an O.A. 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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Further, sub Section 3 of Section 21 of the said Act, provides as under:-

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"(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."

7. In this context, we would refer to a judgment delivered by the Hon'ble Supreme Court in the matter of **Chennai Metropolitan Water Supply & Sewerage Board and ors. V. T.T. Murali Babu**, reported in **AIR 2014 SC 1141** in which the Hon'ble Apex Court had heavily come down on the Courts/Tribunals for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of the observations of the Hon'ble Apex Court as contained in paragraph 16 is quoted herein below:-



"Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principles that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects activity and inaction on the part of a litigant - a litigant who has forgotten the basic norms, namely "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay also brings in hazard and causes injury to the lis. In the case at hand, though there has been four years delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unauthorizedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which is acceptable realm of probability, may have been

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treated to have attained finality. A court is not expected to give indulgence to such indolent persons - who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

Further, in the matter of **Lanka Venkateswarlu v. State of AP (2011) 4 SCC 363**, the Hon'ble Apex Court has held as under:-

"26. Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay."

In **D.C.S. Negi v. Union of India and others, (2019) 1 Supreme Court Cases (L&S) 321**, 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.

(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



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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).

14. In the present case, the Tribunal entertained and decided the application without even advertg to the issue of limitation. The learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondents / non-applicant is not at all relevant."

In **Prahlad Raut v. All India Institute of Medical Sciences**

2019 (3) AISLJ 140, the Hon'ble Apex Court has also held as under:-



"44. The High Court rightly held that the law of limitation is founded on public policy. The object of limitation is to put a quietus on stale and dead disputes. A person ought not to be allowed to agitate his claim after a long delay. There can be no doubt that when retiral benefits are withheld without cause, there would be a continuing cause of action. However, when retirement benefits are withheld by way of disciplinary action, the order would necessarily have to be challenged within the period of limitation or alternatively there would have to be sufficient cause for the delay. Once there is cessation of employer-employee relationship by an order of termination, the cause of action would necessarily arise when the order of termination is passed."

This applicant has reached the age of superannuation but any claim made to the effect that the penalty will have an adverse effect on his retiral benefits cannot be countenanced as no strong alternative grounds have been advanced praying for condonation of delay.

8. 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 dormientibus, jura sub-veniant" (law assists those who are vigilant and not those sleeping over their rights) is applicable in this case.

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We are also of the opinion that this is not a fit case for condonation of delay, which could not be explained suitably by the applicant, and that this O.A. as hopelessly barred by limitation under Section 21 of the Administrative Tribunal Act, 1985.

9. Accordingly, M.A. No. 00023 of 2016 containing the applicant's prayer for condonation of delay stands rejected and, consequently, O.A. is dismissed on the ground of delay. There will be no orders as to costs.



(Dr. Nandita Chatterjee)
Administrative Member



(Bidisha Banerjee)
Judicial Member

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