

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



No. M.A. 350/00367/2015
O.A. 350/01269/2015

Reserved on: 16.12.2019
Date of order: 26.12.2019

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

Asit Kumar Mondal,
Son of Late Anil Chandra Mondal,
Dismissed Labourer (Unskilled),
Metal and Steel Factory, Ishapore,
North 24 – Parganas,
Residing at Village – Bat Tala, Kayla Gola,
P.O. Phingapara,
District – North 24-Parganas,
Pin 743127.

..... Applicant.

Versus

1. Union of India,
Service through the Secretary,
Ministry of Defence,
South Block,
New Delhi – 110 001.
2. The Chairman,
Ordnance Factory Board,
10A, Auckland Road,
Kolkata – 700 001.
3. The General Manager,
Metal & Steel Factory,
Ishapore, Nababgunj,
District – North 24-Parganas,
Pin – 743144.
4. The Dy. General Manager,
Metal & Steel Factory,
Ishapore, Nababgunj,
District – North 24-Parganas,
Pin – 743144.

..... Respondents.

For the Applicant : Mr. G. Choudhury, Counsel

For the Respondents : Mr. S. Paul, Counsel

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ORDER**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) A direction that the entire proceeding including the final order of dismissal from service is liable to be quashed and set aside and an order quashing and setting aside the entire proceeding and the final order and also direction upon the respondents to re-instate the applicant in service and to pay the applicant all arrears of salaries and allowances and also go on paying the salaries and allowances month by month;

(b) Issuance of any other order and/or direction as this Hon'ble Tribunal may deem fit and proper."

2. Heard rival contentions of both Ld. Counsel, examined documents on records.

3. The applicant has prayed for condonation of delay through his M.A. No. 350/00367/2015, in which the applicant admits that there has been a delay of 8^{1/2} years in preferring his O.A. before this Tribunal.

The M.A. praying for condonation of delay is taken up at the outset prior to adjudication of the matter on merit.

4. The applicant has furnished the following grounds towards explanation of his delay of 8^{1/2} years in filing the O.A.

(i) That, the applicant had furnished all his papers and documents to one, Shri Angshumoy Guha, Ld. Advocate and had authorized him in the month of December, 2005 for filing the Original Application and was informed by the said Ld. Advocate that his O.A. has been filed bearing No. 99 of 2006.

(ii) That, on 5.7.2012, the applicant was further informed that his matter was heard finally and kept reserved for orders.

(iii) That, on 3.4.2014, the applicant was further advised that an order has been issued by this Tribunal directing the appellate authorities to issue their appellate orders within 12 weeks from the date of communication of the Tribunal's order, and, that the

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Original Application stood disposed of accordingly. By way of documentary evidence, the applicant would annex Annexure A-8 to the O.A. wherein an order, purportedly issued on 4.3.2014 in O.A. No. 301 of 2008 reveals that the applicant in the present O.A. was also the applicant in O.A. 301 of 2008.

(iv) The applicant approached the departmental authorities with a certified copy of the said order dated 4.3.2014 but the respondent authorities informed him that they were unaware of any such orders passed by this Tribunal in this context.

(v) The applicant thereafter met the Registrar of this Tribunal, who retained the certified copy and asked the applicant to return after a week. When the applicant once again met the Registrar, the Ld. Registrar informed him that the O.A. number as quoted in the certified copy was not correct and thereafter the applicant produced an Original Application purportedly filed by him wherein the number of the application was noted as 99 of 2006.

(vi) That, thereafter, the applicant was informed by the office of the Ld. Registrar that no such order was passed on 4.3.2014 in O.A. No. 301 of 2008 with regard to the applicant.

(vii) On 6.6.2014, the applicant engaged another Ld. Counsel but as he had no papers in his custody, he could only collect the same and contact his new Counsel on 10.7.2015 and, hence, there has been a delay of 8^{1/2} years in filing this Original Application on 10.8.2015.

5. Ld. Counsel for the respondents, on the other hand, would vociferously argue as follows:-

(i) That, the applicant, who was Labourer (Unskilled), Metal and Steel Factory, Ishapore, was found to be leaving the factory with material

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stolen from the factory premises. The security office, thereafter, submitted his report on 5.10.94 (Annexure A-1 to the O.A.) and a departmental enquiry was conducted on one article of charge. The applicant submitted his defence statement against the charge memorandum dated 1.12.94 but neither forwarded any witness nor agreed to cross-examine any prosecution witness. The enquiry officer came to the conclusion that the charge of theft of government property was established. The applicant, thereafter, represented on 4.10.1996 against the findings of the enquiry officer communicated to him on 29.5.1996 (Annexure A-2 to the O.A.). Thereafter, the disciplinary authority, who was the respondent No. 3, namely, the General Manager, Metal & Steel Factory, Ishapore, upon perusal of the enquiry report as well as the applicant's/CO's submissions in defence, imposed upon him the penalty of dismissal from service w.e.f. 17.8.1996 (Annexure A-4 to the O.A.).



The applicant claims that he had preferred an appeal on 4.10.1996 and issued a reminder dated 20.5.1997 (Annexure A-5 to the O.A.) against such orders of the disciplinary authority. The respondents, however, by virtue of written instructions, would argue that no such appeal of the applicant had ever been received by the respondent authorities till date.

6. The applicant has referred to certain interactions he had with the Lt. Registrar of this Tribunal, and, has also referred to pendency of two O.A.s, No. 99 of 2006 and O.A. No. 301 of 2008 as contributing to his delay in preferring the instant original application. Registry was hence directed to submit reports on the following:-

"(i) Clarifications on the contentions of M.A. 367/2015 arising of this O.A. and particularly para 4 thereof.

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(ii) To produce records confirming whether an order dated 4.3.2014 was issued by this Tribunal in O.A. No. 301/2008 as referred by the applicant in Annexure – 8 to the O.A."

The Registry in compliance with such directions, would report as follows:-

1. The applicant produced an order dated 4.3.2014 passed in O.A. 301 of 2008 before the then Ld. Registrar of this Tribunal. The Ld. Registrar denied the existence of such order passed on 24.3.2014 in O.A. 301 /2008 as the Hon'ble Court already had dismissed the case for default three years ago on 1.7.2011.

Being disconcerted by sheer indecency of the applicant for production of above order before him, the Registrar lodged an FIR with Bhawanipore Police Station bearing Case No. 94 dt. 17/03/2015 U/S - 120B/465/466/471 IPC. O.A. 301 of 2008/ For the sake of investigation, the Officer-in-Charge of Bhowanipore P.S. then seized some of Registry's records (copy of seizure list enclosed as flag-B) namely "Part-A of the OA 301 of 2008, original Cause lists of Court No. I & II and the issue- Register for certified copy and also collected some more information (flag - C) i.e. (a) The name and particulars of the applicant and respondent in respect of O.A. 99 of 2006 (records enclosed as flag -D) and the date of filing of the case. (b) The name and particulars of the applicant and the respondent in respect of O.A. No. 1269 of 2015 and when the case was filed.

The Registrar refuted the applicant's further claim as being his name included as party-applicant in the case of O.A. 99 of 2006. This was also the applicant's another misleading presentation before the Ld. Registrar. For kind perusal of the Hon'ble Bench, the case-records of O.A. 99 of 2006 is also attached with the present pending case (O.A. 1269 of 2015) of the applicant.

2. The Division Bench consisting of Hon'ble Mr. G. Shanthappa, Judicial Member and Hon'ble Mr. Champak Chatterjee, Administrative Member dismissed the O.A. No. 301 of 2008 for default on 1.7.2011 and thus arises no question of Registry's issuance of certificate copy of order dated 4.3.2014 to the applicant. For production of records of O.A. No. 301 of 2008 before the Hon'ble Bench, the Registry recently wrote to the Office-in-Charge of Bhawanipore P.S. to get the case-records. However, they have responded to the Joint Registrar as per their letter dated 27.11.2019 (flag - F).

As an alternative of A – Part of O.A., the registry now submits the complete B- part of the O.A. 301 of 2008 along with confidential file of the applicant Shri Asit Kr. Mondal for kind perusal of Hon'ble Bench."

From the above report and its enclosures, the following transpires:

- (a) That O.A. No. 301 of 2008, filed by one P.K. Bose was already dismissed for default by this Tribunal on 1.7.2011, and, being disconcerted by the audacity of the applicant in producing a forged document before the office of the Ld. Registrar, an FIR was lodged in the Bhawanipore Police Station on 17.3.2015 U/S- 120B/465/466/471 IPC.

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- (b) That, O.A. No. 99 of 2006 filed by one Kausik Bhattacharya was dismissed as infructuous.
- (c) It transpires that neither O.A. No. 301 of 2008, nor O.A. No. 99 of 2006 relates to the applicant. O.A. No. 301 of 2008, dismissed for default on 1.7.2011 and O.A. No. 99 of 2006, disposed of as infructuous on 11.8.2006, were not pending adjudication after July, 2011 and August, 2006 respectively.

Accordingly, we are not convinced with the applicant's claim that he was misled by his Ld. Advocate with incorrect and spurious details of O.A.s, later recognized as an act of forgery by the Registry and culminating in a police case which, as per reports of the concerned Police Station has resulted in filing of Charge Sheet and pendency of the matter before the appropriate Trial Court.



Chronologically speaking, what transpires from records, are as follows:-

- (i) The applicant was dismissed by the disciplinary authority from service on 17.8.1996. Although the applicant claims that he had filed an appeal thereon on 4.10.96 and issued a reminder thereon on 20.5.1997 (Annexure A-5 and A-6 to the O.A. respectively), the respondents have categorically denied in writing that no such appeal has ever been revived by the authorities and the applicant has not been able to produce before us that any proof of receipt of the said appeal.
- (ii) During hearing, Ld. Counsel for the applicant would candidly admit that Annexure A-8 to the O.A. is a forged document and he came to learn that an FIR has been registered thereupon. As the said O.A. and its purported instructions on the appellate authority in the context of the applicant's appeal

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are fabricated documents, the said documents cannot rightfully substantiate that the applicant had approached the Tribunal within one year of the order issued by the appellate authority in compliance to this Tribunal's directions dated 4.3.2014.

It is also obvious that O.A. Nos. 99 of 2006 had been filed by one, Kausik Bhattacharya and the said O.A. having been disposed of as infructuous on 11.8.2006, under no circumstances could have been preferred by the applicant.

(iii) Accordingly, the entire period from August, 1996, namely, the date of issue of penalty orders by the disciplinary authority to the date of filing of this O.A. on 10.8.2015 amounts to a long period of 19 years. The applicant has attempted to explain such delay by referring to the actions of his erstwhile Ld. Counsel in misleading him with unreliable information and fabricated documents. In support, Ld. Counsel for the applicant would also cite the ratio contained in ***Rafiq & another v. Munshilal and another (1981) 2 SCC 788*** wherein the Hon'ble Court had ruled that contesting parties should not suffer for lapses on the part of their counsel.

We respectfully note that the cited matter related to an exparte order of dismissal on account of non-appearance of applicant's Counsel on date of hearing. The Hon'ble Court had also mentioned in passing that there was no material to ascertain as to whether the Ld. Advocate absented himself deliberately or intentionally, and, that the Court cannot be party to an innocent party suffering injuries merely because his advocate had defaulted.

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Herein also, the present Ld. Counsel for the applicant submits that the erstwhile Counsel of the applicant was entirely to be blamed for incorrect information and fabrication of documents culminating in a criminal case. What remains to be established, following the ratio of **Rafiq (supra)** is the innocence of the applicant in the dubious acts of misquoting O.A. Nos. and in producing forged orders of the Tribunal. We are also not convinced that the applicant took vigilant steps to pursue his remedies after receiving his penalty orders given the fact that his purported appeals are no longer a matter of record as the respondents have denied receipt of the same and the applicant has not been able to establish receipt thereof.

Even if we were to accept the submissions of the applicant that he was misled by his erstwhile Counsel since 2006, there are no explanations on his inaction for the long intervening period of nearly 10 years between August, 1996 to December, 2005, namely his dismissal and his admitted interactions with his Ld. Counsel. The ratio contained in **Rafiq (supra)** does not come to his aid in explaining this 10 years' delay.

7. 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 –

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- (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).

14. In the present case, the Tribunal entertained and decided the application without even adverting 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."

8. In our considered view, no satisfactory and cogent explanation having been offered on the long delay of 19 years the original application, the same does not merit consideration. The maxim of "vigilantibus, non

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

9. 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.

10. Accordingly, M.A. No. 367 of 2015 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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