

Central Administrative Tribunal  
Principal Bench

O.A.No.1080/2001

Hon'ble Shri Govindan S. Tampi, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 22nd day of October, 2002

Shri Mahender Singh  
s/o Shri Man Singh  
r/o F-138, Village Lado Sarai  
Gali Mirza Wali,  
New Delhi. ... Applicant

(By Advocate: Shri Sarvesh Bisaria)

Vs.

1. Union of India through  
Secretary  
Ministry of Information & Technology  
6, CGO Complex  
New Delhi.
2. Joint Secretary  
Ministry of Information & Technology  
6, CGO Complex  
New Delhi. ... Respondents

(By Advocate: Sh. R.N.Singh, proxy of Shri R.V.Sinha)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant, through this OA, has put a challenge to the order of penalty of compulsory retirement issued by the respondents vide order dated 15.5.2000 as well as appellate order dated 23.2.2001 rejecting the appeal as barred by limitation.

2. Applicant, who was enrolled as a Staff Car Driver, was proceeded against in a major penalty charge under Rule 14 of the CCS (CCA) Rules for damaging the vehicle and absent from duty as well as disobeying the directions of the superiors. Inquiry officer held the applicant guilty of the charge. Disciplinary authority, on the basis of the

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ex-parte proceedings, imposed upon the applicant a major penalty of compulsory retirement w.e.f. 15.5.2000.

3. Applicant preferred an appeal along with a request for condonation of delay on the basis of the medical record which was not acceded to by the appellate authority, rejected his appeal as time barred, giving rise to the present OA.

4. Though the applicant has taken several contentions to assail the impugned orders, but at the out set, Shri Bisaria contends that the appellate authority without going into the grounds of delay in preferring the appeal, in a mechanical manner without considering the documentary proof, submitted by the applicant regarding his illness and illness of his son and wife, rejected the appeal as time barred without dealing with on merits resulting great prejudice to the applicant. It is also stated that without going into the proportionality of the punishment, which is a prerogative of the appellate authority, rejected the appeal in a mechanical manner.

5. On the other hand, respondents' counsel Shri R.N.Singh denied the contentions and stated that applicant has committed a grave misconduct for which the punishment is commensurate. It is also stated that the applicant has taken, before the appellate authority, the ground of his illness and illness of his son and wife which has been gone into and after

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considering the documentary proof, rejected the same as time barred, which does not suffer from any legal infirmity.

6. We have given careful thought to the rival contentions of the parties. It is not disputed that applicant has received a copy of the order of disciplinary authority on 15.5.2000 but preferred the appeal, after the statutory period of 45 days, on 11.10.2000. It is also not disputed that the applicant has annexed with his appeal the documentary proof regarding his illness and illness of his wife and son do prevented him from filing an appeal in time. From the perusal of the appellate order it appears that the documents have not been considered and mechanically the appellate authority found them as not to be sufficient.

7. As per the provisions of Rule 25 of CCS (CCA) Rules, 1965 it is within the jurisdiction of the appellate authority to entertain the appeal after the expiry of the 45 days on his satisfied that there has been a sufficient cause for not preferring the appeal in time. Moreover, while considering the appeal, under Rule 27 of the Rules ibid, it is mandatory for the appellate authority to consider non-compliance of the rules and also the fact whether finding of the disciplinary authority warranted by evidence as well as to go into the adequacy of the punishment.

8. In our considered view, the appellate authority merely on technical ground without showing his application of mind regarding as to why the

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medical record was not found ~~proper~~<sup>for</sup> entertaining the

appeal beyond the prescribed period of limitation rather adopted the short-cut method to dismiss the appeal as time barred without exercising the jurisdiction under Rule 27 *ibid*. This has greatly prejudiced the applicant as against the extreme punishment of compulsory retirement, he preferred an appeal on merits. By rejection of his appeal on limitation, the appellate authority had no opportunity to go into the legality of the order passed by the disciplinary authority or the proportionality of punishment.

9. For the aforesaid reasons, ~~and~~<sup>the</sup> ends of justice would be met if the present OA is partly allowed by setting aside the appellate order and remand the case back to the appellate authority to decide the appeal of the applicant on merits by passing a detailed, reasoned and speaking order within three months from the date of receipt of a copy of this order, which should be in consonance with the law laid down by the apex court in Ram Chander v. Union of India, 1986(2) SLJ 249. No costs.

S. Raju  
(Shanker Raju)  
Member(J)

(Govindan S. Rampi)  
Member(A)

/rao/

fresh MA for extn of time