

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A. NO. 1915 of 1995

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 27th day of October, 1995

Shri B.R.Bhatia
s/o Late Shri S.L.Bhatia
aged about 75 years
r/o Sector 15
Flat No.C/7/42
Rohini
NEW DELHI - 110 085. Applicant

(By Shri B.B.Raval, Advocate)

Versus

Union of India, through

1. The Secretary
Ministry of Railways
Rail Bhawan
NEW DELHI.

... Respondents

ORDER (Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

This application has been filed under
Section 19 of the Administrative Tribunal Act

1985. The applicant was working in Railways (IRCA) ^{wh.}
~~which he~~ was dismissed from service on 27.4.1970
~~✓~~ has prayed for the following relief:

has prayed for the following reliefs:

i) As the Respondents have failed to supply or produce a copy of the order of dismissal in the Lower Court/Honourable Tribunal or even provided a copy to the applicant consequent to the observation of the Honourable Supreme Court dated 30th July, 1993, till date, the Honourable Tribunal may be graciously pleased to treat the alleged order of dismissal as non-existent.

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ii) Consequent to relief at (i) being granted, direct the Respondents to make immediate pension and other retiral benefits to the applicant with 24% interest till realisation.

iii) Award exemplary cost for this application with a further request to pass any other order/orders or direction/directions or grant any other relief/reliefs as deemed fit in the light of the facts and circumstances of the case.

Obviously and apparently, the Tribunal will have no Jurisdiction in regard to the grievance which arose in the year 1970. In page - 15 of the Original Application, it is stated that while a Civil Suit filed by him before the Lt. Senior Sub-Judge, Delhi (Civil Suit No.405 of 1984), it was contended by the respondents that the applicant was dismissed from service on 27.8.1970. However, whether it was August, 1970 or April, 1970 the fact is, that the applicant was dismissed from service way back in the year 1970. The case of the applicant seems to be, that he was never informed of the dismissal either in 1970 or at any time before the Suit was filed in the year 1984. If that be so, it could be said that the grievance of the applicant in regard to the dismissal arose in the year 1984 when it came to his notice. But even then he did not assail the dismissal till the date of this Original Application. The Suit filed before the Civil Court was for retiral benefits.

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The Suit was transferred to this Tribunal after the commencement of the Administrative Tribunals Act and it was eventually dismissed by order dated 20.11.1991. It was held in that case that as the applicant ^{was} dismissed from service in the year 1970, he had no right to get retirement benefits. Aggrieved by the dismissal of the transfer application, the applicant approached the Hon'ble Supreme Court in Special Leave Petition No.13064/93. This SLP was disposed of by the Hon'ble Supreme Court after condoning the delay with the following order:

"As it appears from the adjudication made by the Central Administrative Tribunal that the petitioner was dismissed from service and as such the complimentary passus claimed by him cannot be issued, no order on this application and the same is dismissed. The learned counsel submits that till today the petitioner has not been served with the order of dismissal and he has been prevented from challenging such order of dismissal. It is not necessary for us to make any comment on such submission. The petitioner will be free ~~to~~ to challenge the order of dismissal before appropriate forum as may be available in law."

2. On the basis of the observation of the Hon'ble Supreme Court that the petitioner was free to challenge the order of dismissal before appropriate forum as may be available in law, the applicant has filed this Original Application, on 10.10.1995. Shri B.B.Raval, counsel for the applicant argued that the period of limitation should start in this case only from the date on which the representation

was made by the applicant, after disposal of the SLP to the Respondent No.4 for getting a copy of the order of dismissal. He made a representation to the Deputy Secretary, IRCA, New Delhi on 21.10.1993. As ^{he} did not get a copy of the order within a period of six months from that date he could have filed the application within a year thereafter. Thus, counting from that date according to the applicant, the applicant is well within the time specified in the Administrative Tribunals Act. The observation of the Supreme Court that the petitioner would be free to challenge the order of dismissal before the appropriate forum as may be available in law, clothe the applicant with a right to challenge the order of dismissal before the Tribunal though the dismissal took place in the year 1970, according to Shri B.B.Raval. We are not able to agree to this view. Taking note of the submission made on behalf of the applicant before the Supreme Court that the order of dismissal was not served on him, the court observed that it was not necessary for the court to comment on such submission and that it would be open to the petitioner before it to challenge the dismissal before appropriate forum as may be available in law. A relief will be available in law to a person till the same is barred by limitation. The Supreme Court has not stated either way on the submissions made on behalf of the Petitioner about his case that he did not get a copy of the dismissal order. If the applicant did not get the order of dismissal, as he was not admittedly working on any post, he would normally have taken steps to get either

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pay or the retirement benefits. It was only in 1984 the applicant filed a Suit for retiral benefits. That Suit came to the Tribunal ~~as~~ transfer under Section 29 of the Administrative Tribunal Act and dismissed finding that as the applicant stood dismissed from service in 1970, he was not entitled to any post-retirement benefits. Even if the applicant had not been served ^{with} the order of dismissal from service when the respondents contended before the Civil Court in OA No.405/84 that the applicant ~~stood~~ took dismissed from service in August, 1970, the ^{and} applicant should have sought an ~~lement~~ of order of dismissal if the dismissal ~~occurred~~ was unjustified. Having known at last in 1984, from the written statement in the Suit that the respondents took a stand that the applicant had been dismissed from service in 1970, the applicant should have assailed the dismissal. Even if an order of dismissal was not really served on the applicant he could have impugned it seeking permission to call upon the respondents to produce the same.

3. As has stated by us at the outset, the first time the applicant has challenged the order of dismissal is by filing this application. The order of the Supreme Court disposing the SLP in our view does not save the limitation, in this case. Hon'ble Supreme Court has only taken note of the submissions made on behalf of the applicant that he had not been served with a copy of the order of dismissal, but has not stated either way about the truth of that statement and while dismissing the appeal observed that it would be open for the applicant to challenge the dismissal before the appropriate forum

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as may be available in Law. Here the relief of the applicant to challenge the order of dismissal of the year 1970, known to him at least in 1984 as admitted in the pleadings has been hopelessly barred by limitation and therefore, that remedy/relief not being available to him now, in law the application does not deserve to be admitted. Hence the application is rejected under Section 19(3) of the Administrative Tribunal Act, 1985. No costs.

Rao —
(R.K. AHOJA)
MEMBER(A)

M
(A.V. HARIDASAN)
VICE-CHAIRMAN(J)

/RAO/