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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1176/1995

New Delhi, this 26th day of March, 1996

Hon'ble Shri B.K. Singh, Member(A)

Shri Vijay Kumar Saxena
E-47, Sector 9, New Vijay Nagar
Ghaziabad

.. Applicant

By Shri G.D. Bhandari, Advocate

Versus

Union of India, through

1. The General Manager
Northern Railway, Baroda House
New Delhi
2. The Dvl. Railway Manager
Northern Railway, State Entry Road
New Delhi

.. Respondents

By Shri H.K. Gangwani, Advocate

ORDER

This application is directed against Order dated 27.3.92 (Annexure A-1). The uncontroverted facts are these. The applicant was appointed on 12.5.1955 against a Group D post in the Electrical Department of Northern Railway, Delhi Division. He was lastly promoted as Train Lighting Fitter-II in the pay scale of Rs.1230-2040 and was posted at Ghaziabad. He has since retired from railway service on 28.2.93 and has been paid retirement dues except for the periods from 1.3.85 to 1.4.85 and 2.4.85 to 21.4.85, the previous period having been adjusted against leave due and the latter period being treated as leave without pay and the period from 14.11.85 to 13.12.85 has been treated as waiting for posting. It is further stated that the period from 19.8.85 to 13.12.85 relates to the period when the respondents were asked to maintain statusquo in respect of posting of the applicant. This OA is primarily directed against the adjustment of period from 1.3.85 to 1.4.85 against leave due as a result of which leave encashment has been reduced to him and certain



periods having been treated as leave without pay for which no payment has been made. The applicant filed representation to which no reply has been received. Aggrieved by the inaction on the part of the respondents, this OA was preferred on 4.7.95 seeking the following reliefs:

- (i) to set aside and quash order dated 27.3.92;
- (ii) to direct the respondents to operate their order dated 9.3.88 (Annexure A-2) and make payment of the wages to the applicant for the period from 1.3.85 to 13.12.85 expeditiously;
- (iii) to direct the respondents to pay penal interest on the amount due to the applicant; and
- (iv) pay costs to the applicant.

2. The applicant had filed a suit in the court of Sub-Judge, Ghaziabad against the previous order and the learned Sub-Judge passed an order for maintaining statusquo as regards transfer of the applicant from Ghaziabad and in response to that order the applicant remained at Ghaziabad. Subsequently, the applicant filed TA 53/86 and judgement was delivered in that TA on 11.8.97 setting aside and quashing the impugned order. A perusal of this judgement indicates that the transfer order was treated as punitive but no directions were issued regarding regularisation of the period in dispute.

3. On notice, the respondents filed their reply contesting the application and grant of reliefs prayed for in the OA. Heard the learned counsel for the parties and perused the records of the case.

4. The learned counsel for the applicant argued that regularisation of the period from 1.3.85 to 1.4.85 against the leave due has resulted in pecuniary loss to the applicant



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since his leave encashment to that extent has been reduced. He further argued that non-payment of wages has also resulted in recurring cause of action and further he argued that the provisions of Limitation Act are not applicable to the present case. He referred to certain office notings in the file and stated that the respondents passed certain orders but subsequently due to manipulation of the dealing clerk working in the office of the respondents, the previous order was changed to Annexure A-2 order. He wanted that the records should be summoned and seen by the Tribunal in the interest of justice as the respondents are likely to make further changes in the records.

5. The learned counsel for the respondents vehemently argued on preliminary objection that this application is barred by delay and laches and is not maintainable under Section 21 of the CAT Act, 1985. The order which is impugned is dated 27.3.92 and the application has been preferred in July, 1995 and according to him, there has been practically a delay of 3 years in filing the OA. The second preliminary objection he raised is that order of the Hon'ble Chairman for retention of this OA in the Principal Bench under Section 25 of the CAT Act, 1985 has not been obtained and therefore the Principal Bench is not competent to deal with this OA unless there is a specific permission of the Hon'ble Chairman to retain this OA under its territorial jurisdiction. Thirdly, he argued that if malafides are alleged, the dealing clerk against whom the said manipulation has been vociferously



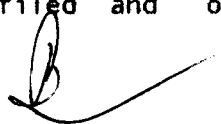
canvassed could have been made a party so that notice would have been issued and served on him. This has not been done and therefore charge of malafide against the dealing clerk can not be sustained in the eyes of law.

6. After hearing the learned counsel for the parties and going through the records, it is clear that the entire dispute regarding regularisation of leave relates to the period 1985. The genuineness and authenticity of the letter at Annexure A-2 have been vehemently rebutted by the respondents. However, the learned counsel for the applicant stated that this letter was subsequently changed and revised. This letter shows two dates i.e. 9/3/88 and 11/3/88. Neither the signature of the Assistant Personnel Officer is there nor is any stamp of the officer issuing this letter. If this letter is taken into consideration, it will be barred by serious delay and laches but if we accept the contention that this was not issued from the official file as there is no signature or stamp of the authority issuing the said letter, the presumption is that this letter is not genuine and authentic. The only letter that has been impugned by the applicant is dated 27.3.92 and if he had filed representation he should have approached this Tribunal within 18 months, i.e. sometime in October, 1993, whereas this application was filed in July, 1995 and obviously it is hit by limitation. The MA for condonation of delay does not indicate any substantial or reasonable cause and also moves in circles. On the one hand, it is stated that it is a recurring cause of action and on the other hand the condonation application is filed and the learned counsel for the respondents rightly raised the objection that the applicant can not be permitted to blow hot and cold in the same breath. When an application

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for condonation of delay is filed, the applicant is under an obligation to explain the delay satisfactorily for not approaching this Tribunal within 18 months. The period of limitation is one year if no representation/appeal is filed and if a representation/appeal is filed it will be one and a half years from the date the cause of action arose. Even presuming that he has filed representation which the respondents have denied having received, MA 1176/95 does not explain the delay satisfactorily.


7. The Hon'ble Supreme Court has categorically laid down the law that Tribunal is not vested with any inherent power to condone the delay. It has to apply its mind and record reasons if exemption is to be granted in regard to limitation prescribed under Section 21. The exemption can be granted only if the delay is satisfactorily explained. As stated above, the delay has not been satisfactorily explained and the application is hit by limitation as rightly argued by the learned counsel for the respondents. The Hon'ble Supreme Court in a catena of judgements has held the view that the party aggrieved by an order has to approach the court for redressal within the statutory period of limitation since after the expiry of that statutory period, the court is not competent to grant the reliefs prayed for. This view was held in case of State of Punjab Vs. Gurdev Singh (1991) 4 4 SCC page 1. This view was further reiterated in case of S.S.Rathore Vs. State of MP AIR 1990 SC 10 which laid down the law that cause of action shall be taken to arise on the date of order of the higher authority disposing the appeal/representation. The maximum period prescribed under Section 21 of the CAT Act is 18 months if any representation/appeal is filed and one year if no



representation/appeal has been filed against the order. It was further held that repeated representations and memorial to the President do not extend the period of limitation. This view was further reiterated in case of UOI Vs. Ratan Chandra Samanta JT 1993(3)SC page 418. It was clearly held that after expiry of statutory period of 18 months remedy is lost and alongwith it the right is also lost to the aggrieved party. The delay deprives one of the remedy available to him and if the remedy is not available no relief can be granted. The same view was reiterated in case of ex-Captain Harish Uppal Vs. UOI JT 1994(3) page 126 that if the parties just slumber over their rights, the court should decline to interfere. With the efflux of time, the remedy is lost and right also is lost alongwith it.

8. It is also true that no application under Section 25 of the CAT Act has been filed for retention of the application in the Principal Bench and therefore the Principal Bench does not have territorial jurisdiction to entertain this unless there is order from the Hon'ble Chairman. Also the charge of malafide levelled against the dealing clerk can not be sustained in the eyes of law unless he is made a party and a notice is served on him to show cause.

9. The application is therefore dismissed on the ground of delay and laches alone without entering into the merits of the case. In the facts and circumstances of the case, there shall be no order as to costs.


(B.K. Singh)
Member(A)

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