

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.295/96

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this the 22nd day of November, 1999

Maha Singh S/o Sh. Mukhtiar Singh
Ex Heavy Vehicle Driver
Delhi Milk Scheme
R/o Vill & PO Karala
Delhi - 110 081

...Applicant

(By Advocate: Shri S.M. Garg)

Versus

1. Union of India
through the Secretary
Ministry of Agricultural
Department of Agricultural &
Cooperation, Krish Bhawan
New Delhi

2. The General Manager
Delhi Milk Scheme
West Patel Nagar
New Delhi

...Respondents

(By Advocate: Shri K.R. Sachdeva)

O R D E R (ORAL)

HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

The applicant while working in the Delhi Milk Scheme was proceeded against on the charge of absence from duty with effect from 10.4.1981. By an order dated 11.12.1982 he was imposed a penalty of termination from service. The applicant thereafter filed a revision petition having overshot the period for filing an appeal. The revisionary authority by its order dated 24.7.1987 advised that a fresh enquiry may be initiated and final report sent to it so that a final view may be taken by the revisionary authority. The applicant, in the mean time, also filed an O.A. No.1140/87 which was disposed of by an order dated 25.9.89 with the observation that the revisionary authority should give the applicant an opportunity of

Ans.

being heard before passing a final order after disciplinary enquiry is completed. The disciplinary authority issued a fresh charge-sheet against the applicant and on the finding that the charges were proved, imposed a penalty of compulsory retirement. The applicant filed an appeal against that order but the same was not disposed of. An O.A. No.884/89 which was filed by the applicant before the order of disciplinary authority was passed was disposed of as infructuous with the observations that applicant was free to challenge the final order ^{through} ~~on~~ his appeal.

2. As no order on appeal has been passed, the applicant has now challenged the order of the disciplinary authority on various grounds.

3. A preliminary objection has been raised by the respondents that the present O.A. is time barred. They have also pointed out that the appeal filed by the applicant cannot be entertained as it has been filed after the prescribed time.

4. We have heard the counsel on the question of limitation. Shri K.R. Sachdeva, learned counsel for the respondents submits that under Section 21(4) the limitation expires after the period of one year and six months. He also submits that in view of the decision of the Supreme Court in L. Chandra Kumar Vs. Union of India [(1997) 3 SCC 261], the Tribunal has no power to condone delay in filing the application beyond the period of limitation.

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5. Section 21 of the Administrative Tribunals

Act, 1985 reads as follows:-

"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 expiry⁷ 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) or 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."

Or

As we read Section 21(3), the Tribunal may admit an application beyond the period of one year as prescribed in Section 21(1)(a), i.e. one year as well as admit an application beyond a period of six months as provided in Section 21(1)(b).

6. According to Shri Sachdeva, Sections 21(1)(a) & (b) have to be read together and this will mean that the Tribunal cannot admit an application beyond a total period of one year and six months. In our view, if the Tribunal is satisfied that the applicant had a sufficient cause for not making an application during the period prescribed in Section 21(1)(a) and (1)(b) it can still admit the application by condoning the delay. The period of one year and six months is covered by sub-section 21(1)(a) and (1)(b) by themselves. If the applicant is aggrieved by an order, he can wait upto a period of one year under Section 21(1)(a). If he has filed a representation on which final order has to be made, he can wait for another six months under Section 21(1)(b). Therefore Section 21(3) would come into operation only after the period of one year and six months has passed. If the interpretation put forward by Shri Sachdeva were to be accepted then Section 21(3) would be infructuous which could never be the intention of the legislature.

7. As pointed out by the learned counsel, the Constitution Bench in L. Chandra Kumar (supra) has observed as follows:-

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"16. Chapter IV ("Procedure") comprises Sections 19 to 27. Section 21 specifies strict limitation periods and does not vest the Tribunals under the Act with the power to condone the delay."

8. We notice that the question before the Hon'ble Supreme Court in L. Chandra Kumar (supra) was whether the jurisdiction of the High Courts could be excluded under Section 28 of the Administrative Tribunals Act. In dealing with this question the scheme and salient features of the Administrative Tribunals were described in paragraphs 10 to 17 of the aforesaid judgment. It is in this context that the aforesaid observation was made in para 16 of the judgment. The Supreme Court has held in other judgments, where the question of limitation was specifically raised, either directly or by inference that the Tribunal can condone the delay in the filing of the application. In a recent judgment of the Constitution Bench in K.C. Sharma and others Vs. Union of India and others [JT 1997(7) SC58], the Supreme Court in the facts and circumstances of the case observed as follows:-

"Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No.774 of 1994 is condoned and the said application is allowed. The appellant would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters. No order as to costs." (emphasis supplied)

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9. In view of the aforesaid judgment of the Supreme Court we are of the view that Section 21(3) empowers the Tribunal to admit applications beyond the limit prescribed in Section 21(1)(a) and (b) if it is satisfied that the applicant had good and sufficient reasons to explain the delay.

10. In the present case we find that the applicant had filed an appeal against the order of the disciplinary authority. It is stated in the short counter filed by the respondents that the appeal could not be considered as it had been filed after the prescribed period. However, no order has been passed dismissing the appeal as time barred. The learned counsel for the applicant has submitted that the Tribunal in its order dated 5.5.1994 in O.A. No.884/89 had given liberty to challenge the order of the appellate authority. However, till May, 1996 when he filed the O.A. the appellate authority had still not given its final order. Hence there could be no question of delay.

11. We are not aware as to what explanation for delay was given by the applicant to the appellate authority. Suffice it to say that as already the case of the applicant has been hanging fire for such a long time, it would be proper to condone the delay and decide the question on merits.

12. Shri Sachdeva, learned counsel for the respondents states that the present O.A. is time barred because the O.A. has been filed after a delay of six years. Considering that there is no

21

prescribed time for disposal of the appeals and the appeal filed by the applicant has not been disposed it may not be said that the O.A. filed by the applicant is barred by limitation. We also further notice that the Tribunal in its order in O.A. No.884/89 had also specifically stated that the applicant was free to approach the Tribunal after his appeal was decided.

13. In view of the facts and circumstances of the case we dispose of the application with the direction that the appellate authority will dispose of the appeal within a period of four months from the date of receipt of a copy of this order. No costs.

~~R.K. Ahuja -~~
(R.K. AHOOJA)
MEMBER (A)

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(ASHOK AGARWAL)
CHAIRMAN