

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

MA No.668/98 in  
OA No.744/97

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New Delhi this the 24th day of August, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (ADMNV)

Mahesh Prasad,  
S/o Shri Devi Deen,  
R/o 359, DDA Flats,  
Seelampur, Near Welcome PS,  
Delhi.

...Applicant

(By Advocate Shri G.D. Bhandari)

-Versus-

1. Union of India through  
the General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

2. Divisional Railway Manager,  
Northern Railway,  
Moradabad.

...Respondents

(By Advocate Shri B.S. Jain)

O R D E R

By Justice V. Rajagopala Reddy:

The applicant was appointed as a casual labour under Permanent Way Inspector, SPC from 1.2.78 to 15.11.81, in different spells. The respondents issued a casual labour card to the applicant showing the period of working as casual labour. After a casual labour completes 150 days of service he was entitled for according 'temporary status'. The applicant was subsequently appointed as sub loco cleaner and he has joined as such in 1988. The respondents, however, issued the major penalty chargesheet on 4.9.90, alleging that the applicant produced wrong certificate of having worked as casual labour for the period from 1.2.78 to 15.11.81. As the applicant denied the charges an enquiry officer has been appointed and after enquiry the enquiry officer found the charge as fully substantiated. Relying

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upon the findings of the enquiry officer the disciplinary authority removed the applicant from service by order dated 11.10.94. He submitted an appeal on 18.11.94 against the order of his removal. The appeal was, however, rejected on 9.2.95. The applicant filed the OA, questioning the orders of the disciplinary authority as well as that of the appellate authority.

2. The learned counsel for the applicant Sh. G.D. Bhandari raised several grounds contending that the impugned orders are illegal and ab initio void. He contends that the relevant documents by which the applicant could establish that he has actually worked during the relevant period, were not supplied in spite of several applications in that regard and that the respondents in fact had admitted that the documents sought for were relevant for the enquiry. It is further contended that the prosecution had failed to prove the charge by any evidence. The only witness that has been examined is Sh R.P. Saxena, who not denied the contents of the letter sought to be relied upon by the prosecution which clearly goes to show that the applicant had worked for more than 120 days.

3. The learned counsel for the respondents, however, refutes the contentions. He also raised a preliminary objection as to the maintainability of the OA on the ground of limitation.

4. We have given anxious consideration to the contentions raised.

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5. The principal objection as to limitation has to be considered before we go into the merits of the case. In fact the applicant had filed MA-668/98, seeking condonation of delay, to which the respondents had filed the reply. In the MA it is stated that though the appeal has been rejected on 9.2.95 the appellate orders were not sent to the applicant but addressed to the Loco Foreman under whom the applicant was working before he was removed from service. Hence, the applicant was under the impression that the appeal was not disposed of. However, in the first week of April, 1995 he came to know about the rejection of appeal and eventually the orders have been handed over to him on 18.4.95.

6. Two reasons are given to explain the delay in filing the OA; (i) the applicant's father had been suffering from Cancer and had expired on 12.6.65; and (ii) he approached an Advocate in the District Court in Delhi to file the OA and he was wrongly advised that the limitation for filing the OA was till April, 1997.

7. Controverting the reasons given in the MA it is stated in the reply to the MA that there was no valid reasons to approach an Advocate in the District Court as he had earlier approached an Advocate practising in the Tribunal to file OA-1978/94. The averments are, therefore, denied. The learned counsel for the respondents contends that the applicant had not shown sufficient cause for condonation of delay.

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8. Having considered the averments in the OA and the arguments advanced, it has to be held that the delay in filing the OA is not properly explained. Even assuming that the applicant had received a copy of the appellate authority's order on 18.4.95 as stated by him and even assuming that the applicant's father had expired on 12.6.95 as true, there is no reason for not filing the OA within the period of limitation from the date when the appellate authority's order was handed over to him on 18.4.95. Under Section 21 of the Administrative Tribunals Act, 1985 the limitation starts from the date when an adverse order was communicated to the employee and the OA has to be filed within one year from that date. In fact the delay that is caused from 18.4.95 to 18.4.96 need not have been explained. The delay that is to be explained by the applicant is for the period from 18.4.96 to 1.4.97 when the OA was filed. In order to substantiate this delay the applicant states that he was given a wrong advice by an Advocate in District Court, Delhi. Excepting a mere ipsi dixit, no material is placed before us in support of this averment. The name of the Advocate in the District Court or the date when he approached him and other relevant details in support of this averment are not stated. Since the applicant had earlier filed OA-1978/94, there could be no reason for him to approach the District Court's Advocate for filing the present OA. It is not as though the applicant is an illiterate person. As he was working in the Railways for several years it can be implied that he is reasonably literate at least to know whom to approach for filing a case before the Central Administrative Tribunal. Though a wrong legal advice may be a justifiable ground for consideration

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to condone the delay, in view of the fact that no material is placed to substantiate the said averment it is not possible for us to accept it.

9. The learned counsel for the applicant persuasively tries to contend that as the Tribunal has given relief in similar circumstances, condoning the delay wherever it was pleaded, the present case should not be discriminated. But we will have to consider the limitation on the facts of each case. The applicant may have a good case on merits and in fact the Tribunal had allowed the similar matters, quashing the impugned orders. But compliance of Section 21 of the Administrative Tribunals Act, 1985 is peremptory in the sense that unless the OA was filed within the period of limitation "the Tribunal shall not admit an application." Though the OA has been admitted by order dated 23.4.98 but it was clearly stated that it was subject to limitation and other preliminary objections.

10. In P.K. Ramchandran v. State of Kerala, JT 1997 (8) SC 189 the Supreme Court has observed as under:

"Law of limitation <sup>may</sup> harshly affect a party but it has to be applied with all its vigour when the statute so prescribe and the courts have no power to extend the period of limitation on equitable grounds."

11. It was also held in State of Karnataka and Others v. S.M. Kotrayya and Others, 1996 (6) SCC 267 that coming to know of the relief granted in another similar case by the Tribunal is not a valid explanation for the delay caused from the date of passing the adverse order.

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12. In the circumstances, upholding the objection as to limitation, without going into the merits of the case, the OA is dismissed. No costs.

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(Mrs. Shanta Shastry)  
Member (Admnv)

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*V. Rajagopala Reddy*

(V. Rajagopala Reddy)  
Vice-Chairman (J)