

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 369/94

T.A. No.

199

(8)

DATE OF DECISION 5.8.1999.

Mahavir Prasad.

....Petitioner

Shri Shankar Divate.

....Advocate for the
Petitioner(s)

VERSUS

Union of India & Ors.

....Respondent

Shri N.S. Mehta, Sr. Standing Counsel.Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J);

The Hon'ble Shri S.P. Biswas, Member (A).

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? NO.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-369/94

(9)

New Delhi this the 5th day of August, 1999.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

Sh. Mahavir Prasad,
S/o Sh. Hem Raj,
R/o Bashir Pur,
Distt. Mahendra Garh,
Haryana.

..... Applicant

(through Sh. Shankar Divate, advocate)

versus

1. Union of India through
Secretary, Deptt. of
Expenditure, Ministry of
Finance, New Delhi.

2. Comptroller and Auditor
General of India,
Bahadur Shah Zafar Marg,
New Delhi.

3. Principal A.G.(A&E),
Anna Salai,
Madras-600018. Respondents

(through Sh. N.S. Mehta, Sr. Standing Counsel)

ORDER(ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

The applicant who was working as Assistant Accountant General in the office of Accountant General, Tamil Nadu, Madras at the relevant time is aggrieved by the penalty order ^{of dismissal} passed by the respondents dated 12.6.90 and rejection of his appeal/revision by the President by order dated 2.12.90.

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2. The learned counsel for the applicant has submitted that subsequent to the aforesaid orders, the applicant had submitted several review petitions/reminders to the President to set aside the aforesaid orders, the last of which was on 21.8.93. He has submitted that since there was no response to these review petitions, hence this O.A. was filed on 24.12.93 and refiled on 9.2.94. The applicant had been issued ¹⁸ ~~four~~ Articles of charge as set out in the impugned penalty order dated 12.6.90. Briefly stated, Article I was for securing LTC advances for August 1986 to December 1986 and September 1986 to November 1986 for home town and preferring false and fraudulent claims for himself and members of his family; Article II referred to certain bills which were submitted by ^{of 18} him for adjustment transfer TA claim in the office of the A.G. (A&E), Madras on 10.10.1986; Article III was for his not reporting for duty on 14.5.1987; and Article IV was that he absented himself from duty from 31.12.1986 to 23.1.1987 and sought quarantine leave for the said period on the plea that a member of his household was suffering from diphtheria, whereas it was alleged that actually ^{a 18} cousin of the applicant and not a member of his family was suffering from that disease. The applicant was placed under suspension by order dated 24.9.87 and the Headquarter was declared as Madras. Disciplinary proceedings were initiated during the period when he was under suspension.

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3. According to the respondents, in spite of a number of notices ^{which} ~~though~~ had been issued to the applicant, he did not participate in the enquiry and ^{therefore} ~~ex parte~~, the disciplinary proceedings were held ex parte against him, followed by the aforesaid penalty orders.

4. Shri Shankar Divate, learned counsel for the applicant has submitted that many of the notices which had been issued by the respondents with regard to the enquiry, to his address at Madras, Headquarter Office at New Delhi and his village address at Bashirpur in Haryana were not received by him and hence, the applicant was not in a position to attend the disciplinary proceedings. Another ground taken by the learned counsel is that considering the nature of the charges which were levelled against the applicant, the penalty of dismissal from service is excessive and harsh and it may, therefore, be modified. He has also submitted that an application for condonation of delay has been filed by the applicant vide MA No. 494/94 in which it has been mentioned that since no reply was forthcoming to several review petitions and reminders submitted after the order of dismissal from service was served on him and rejection of his revision petition by order dated 21.12.90, the fault is that of the respondents. After waiting for considerable time, ^{he has prayed that} he has filed this Original Application and the delay may, therefore, be condoned on these grounds.

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5. The respondents in their reply have taken a preliminary objection that the application is barred by limitation and needs to be dismissed on this ground alone. They have submitted that even on merits there is no valid ground to set aside the impugned penalty orders. Shri N.S. Mehta, learned Sr. Standing Counsel has also submitted that the respondents have repeatedly sent notices to the applicant giving him an opportunity to participate in the enquiry at the various addresses known to them, namely, his address at Madras, Headquarter Office at New Delhi and his village address at Bashirpur (Haryana) and the applicant himself had failed to participate in the enquiry. The respondents have, therefore, submitted that there is no infirmity on this ground. They have also submitted that in any case the O.A. filed in January 1994 after the penalty order was passed in December 1990, shows that the same is barred by limitation under Section 21 of the Administrative Tribunals Act 1985. He further submits that the grounds taken by the applicant in the M.A. are also not sufficient to condone the delay. The learned counsel for the applicant has, however, submitted that the revision order dated 21.12.90 had been received by the applicant only on 15.2.91. The learned counsel for the respondents has also drawn our attention to the annexures to the O.A., giving details of the various notices issued to the applicant.

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6. In the rejoinder, the applicant has reiterated the grounds taken in the Original Application. As mentioned above, the learned counsel has submitted that his main ground is that the penalty order imposed is excessive and should be modified.

7. We have carefully perused the pleadings and the submissions made by the learned counsel for the parties.

8. We find force in the contention of the learned counsel for the respondents that this O.A. is hopelessly barred by limitation and is liable to be dismissed on this ground alone. On perusal of MA-494/94, we note that even if the applicant had received the revision order dated 21.12.90 only on 15.2.91, even then the O.A. was filed in February 1994, which is well over one year and ~~6~~ ¹⁸ months as provided under Section 21 of the Administrative Tribunals Act, 1985. It is well settled law that repeated representations and reminders or as in this case review petitions will not have the effect of extending the period of limitation. The reasons given in the application for condonation of delay are hardly sufficient to condone the delay of more than 2 years. Hence this O.A. is liable to be dismissed on this ground alone.

9. Apart from the ground of limitation, we have also seen the relevant records. The applicant

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had not responded to the notices issued by the respondents or participated in the enquiry and it appears he chose not to do so. Therefore, it cannot be held that the respondents have in any way violated the principles of natural justice of not affording ^{him} an opportunity to put forth his case.

10. Regarding the contention of the learned counsel for the applicant that the penalty order is excessive, we are also unable to agree with him on this point. Taking into account the nature of the articles of charges which have been held proved by the competent authority, we do not consider this a fit case to interfere in the matter. In B.C. Chaturvedi Vs. U.O.I. & Ors. (1995(6) SCC 749), the Hon'ble Supreme Court has held that it is for the competent authorities to consider the evidence and pass appropriate orders with regard to ^{the} penalties and it is only in exceptional cases where the penalty imposed shocks the judicial conscience, that the Court/ ^{Tribunal} can interfere ^{in the matter} while exercising the powers of judicial review.

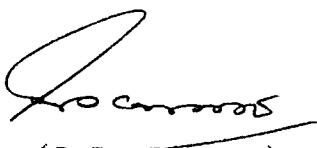
11. After careful perusal of the relevant documents and particularly having regard to the nature of the charges which have been held proved in the case, we are unable to agree with the contentions of the applicant that the penalty imposed is in any way excessive or not commensurate with the charges. The Disciplinary Authority has held that the charges

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proved against the applicant amount to grave misconduct unbecoming of a Government servant, exhibiting lack of integrity and hence the punishment order of dismissal from service was passed against the applicant.

12. In the facts and circumstances of the case, we find no good ground, even on merits, warranting ^{any} ~~any~~ interference in the matter, particularly with regard to modification of the impugned penalty order.

13. For the reasons given above, the O.A. is dismissed both on the grounds of limitation as well as merit. No order as to costs.



(S.P. Biswas)
Member(A)



(Smt. Lakshmi Swaminathan)
Member(J)

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