

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.No.2359/2000

Hon'ble Shri M.P.Singh, Member(Admn.)
Hon'ble Shri Shanker Raju, Member (Judicial)

New Delhi, this the 28h day of August, 2001

G.S.Kataria
s/o late Sh. Alam Singh
r/o C-2, New Gobindpura, Street No.13
Near Ram Mandir, Krishna Nagar
Delhi - 51. Applicant
(By Advocate: Shri M.P.Singh with Shri J.Ravichandarn)
Vs.

1. The Controller General of Defence Accounts
West Block -V
R.K.Puram
New Delhi - 66.
2. Controller of Defence Accounts
Western Command Chandigarh. Respondents
(By Advocate: Shri M.M.Sudan, through Shri Sunil
Kumar)

O R D E R(Oral)

By Shanker Raju, Member (J):

The applicant, who was employed as Clerk on account of remaining absent unauthorizedly, had been removed from service by an order dated 23.2.1987. As per the applicant he has preferred an appeal on 10.4.1987, the same was not disposed of as such he filed another appeal dated 19.3.1991 attaching the copy of the appeal filed on 10.4.1987 which was not disposed of by the respondents and ultimately he had sent two letters to the respondents on 9.3.2000 and 15.5.2000. In pursuance of letter dated 15.5.2000 the respondents have replied to the applicant by stating that the appeal dated 10.4.1987 addressed to CGDA, New Delhi was not received in the concerned office but was directly received in the Headquarters Office and as the same was considered by the appellate authority and rejected the same after careful consideration as per the extant orders and the reply thereto was sent through a Registered Letter dated 8.8.1991. According

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to applicant, letter dated 8.8.1991 was not served upon him. In this back ground, it is stated that the applicant has filed his OA within the limitation period as the cause of action had arisen to him only on 27.6.2000 whereby the applicant has been informed about the out come of the appeal. It is also stated by taking resort to Rule 27(2) of the CCS (CCA) Rules, 1965 and the decision of the Apex Court, in Ram Chander Vs. Union of India and Others, AIR 1986 SC 1173 that in case the appeal has been entertained under the provision of CCS (CCA) Rules, the same would not be rejected on the ground of limitation alone. On merits he states that applicant has not been served with a copy of the report of the enquiry officer and despite his communication to the department and submission of medical certificate he has been awarded an extreme punishment after completing his service of more than 11 years.

2. The learned counsel for the respondents strongly rebutting the contentions of the applicant stated that the present OA is highly barred by limitation and is not maintainable as per the provisions of Rule 21(2) of the Administrative Tribunals Act, 1985. It is stated that the cause of action had arisen to the applicant in 1988 itself when his appeal preferred on 10.4.1987 was not answered even after a period of one and half year from the date of filing of the appeal. Alternatively it is also argued that keeping in view of the balance of inconvenience, without admitting that the cause of action had arisen to the applicant, again on 19.3.1991 when he preferred another appeal which was rejected as

time barred, the applicant could have resorted to for redressal of his grievance before this Court after one and half of year as stipulated in Section-21 (2) of the A.T.Act *ibid*. On merits it is stated that the applicant remained unauthorizedly absent despite according several opportunities by way of sending Telegrams for second medical examination, he has not turned up, the enquiry officer has taken *ex-parte* proceedings and there is no procedural lacunae in the enquiry, as such no interference of this Court is called for.

3. We have carefully considered the rival contentions of the parties and perused the material on record. We find that in response to the communication by the applicant dated 15.5.2000 the respondents have stated that the appeal preferred by the applicant was considered by the Headquarters but they have not stated the exact date on which the same was considered or whether the reply was sent to the applicant or not. As regards the appeal dated 19.3.1991, the respondents have stated that the same has been rejected on 27.6.1991 is time barred and to this effect, a communication, through a registered post, was sent to the applicant on 8.8.1991 vide Registered No.318. Having regard to the ratio laid down by the Apex Court in *R.K.Vashisht Vs. Union of India & Others*, 1993 Supp(1) SCC 431 wherein it has been held that in absence of any proof of service or acknowledgement as to service on registered post addressee presumption would be that the same has not been served upon him. We find that the respondents have not tendered/furnished to any proof of service or

acknowledgement to indicate that the communication dated 27.6.1991 was ever communicated to the applicant. We also agree with the learned counsel for the applicant that as to the provisions of Rule 27(2) of the CCS (CCA) Rules ibid once the applicant has been entered under Rule 23 of the CCS (CCA) Rules ibid the same would be considered on merits. Admittedly the appeal of the applicant has been dismissed as time barred without dealing with the merits of the case, which has greatly prejudiced the rights of the applicant as to the consideration regarding proportionality of punishment and also any illegality or infirmity which has found crept in the disciplinary proceedings.

4. In the interest of justice, we dispose of the present OA and set-aside the order dated 4.5.2000 and also the appellate order dated 26.7.1991. The matter is remanded back to the appellate authority to consider the appeal of the applicant on merits including the proportionality of punishment within a period of two months from the date of receipt of a copy of this order and also to pass a detailed and speaking order. However, as the applicant was also liable to some extent in delay of filing the present OA, we make it clear that any order passed by the appellate authority shall not give any fresh cause of action to re-agitate the matter again before this Tribunal. The OA is accordingly disposed of. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

M.P. Singh
(M.P. SINGH)
MEMBER(A)