

10

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 150/1989.      DATE OF DECISION: 8th August, 1991.

Shri Phool Chand      ....      Applicant.

V/s.

Union of India & Ors.      ....      Respondents.

CORAM:      Hon'ble Mr. G. Sreedharan Nair, Vice Chairman (J).  
                 Hon'ble Mr. S. Gurusankaran, Member (A).

Shri B.S. Mainee, counsel for the applicant.  
Shri B.K. Aggarwal, counsel for the respondents.

(Judgment of the Bench delivered by Hon'ble  
Mr. G. Sreedharan Nair, Vice Chairman (J).)

JUDGMENT

The applicant, who was a Khalasi, was proceeded against under the Railway Servants (Discipline & Appeal) Rules and by the order dated 13.10.1981, <sup>and</sup> the penalty of Removal from Service was imposed on him for the charge of unauthorised absence. He has prayed for quashing the said order and for reinstatement in service. It is urged that the removal was without holding disciplinary inquiry, he was suffering from T.B. and was under treatment, and that the order of removal is a non-speaking order.

2.      In the reply filed by the respondents, it is contended that the application is barred by limitation, as the removal was in the year 1981. It is stated that he remained on unauthorised absence frequently from the year 1976 onwards and that it was after serving the Memorandum of Charges on the applicant that an inquiry was duly conducted and the order of removal passed.

3.      The applicant has filed M.P. No.2027/1989 for condoning the delay in filing the application. It is stated therein that at the time of removal from service, he was undergoing treatment and after he was declared fit, he submitted a representation to Hon'ble Minister of State for Railways in March, 1987. Besides, his case was also taken up by the Union. It is alleged that though his request was rejected by the Divisional Railway

y      2

Manager, the matter was pursued with the Railway Board and no final reply has yet been given.

4. The preliminary objection raised by the respondents regarding the bar of limitation has to be determined at the outset, as it is seen that on 16.5.1989, a Bench of this Tribunal admitted the application leaving the question of limitation open and directing that the petition for condonation of delay will be considered at the time of final hearing.

5. This is a case where though the applicant has alleged otherwise, from the <sup>records it is clear & the</sup> ~~papers it appears~~ that removal from service was done by an order dated 13.10.81 based on the disciplinary proceedings initiated against the applicant on the strength of <sup>e</sup> Memorandum of Charges <sup>issued</sup> under the Railway Servants (Discipline & Appeal) Rules, 1968. It is stated in the application that though the applicant was ill, an appeal was submitted by him against the order, but it was rejected. However, the respondents have denied having received any such appeal. There is no reference in the application to the date on which the appeal was filed, nor a copy of the Memo of Appeal made available. Counsel of the applicant invited our attention to the statement in the letter dated 13.4.87 to the Divisional Secretary of the Union, wherein it is stated that the appeal of the applicant has already been examined at length and rejected. It cannot be gathered from the said letter that the appeal was a statutory appeal against the order of the disciplinary authority imposing the penalty of removal from service. On the other hand, what is gatherable from the records as a whole is that the claim that is put-forward by the applicant was about 4½ years after the order of termination and it was for the purpose of re-appointment. This is clear from the copy of the letter of the General Manager dated 13.10.1987 (Annexure A-9).

6. This is a case where the order that is under challenge was passed more than three years prior to coming into force

12

of the Tribunal and, as such, the Tribunal does not even have the jurisdiction under the Administrative Tribunals Act to condone the delay. Even otherwise, we are not satisfied that sufficient grounds have been made out in the M.P. No.2027/89 for condonation of delay.

7. M.P. No.2026/89 is hereby dismissed.

8. We hold that the application is barred by limitation. It is accordingly dismissed.

*S. Gurusankaran*  
8/8/1991  
(S. GURUSANKARAN)  
Member(A)

*G. Sreedharan Nair*  
8/8/1991  
(G. SREEDHARAN NAIR)  
Vice Chairman (J)

8.8.1991.