

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1735/ 1989.
~~FA No.~~

DATE OF DECISION November 20, 1989.

Shri Arun Kumar Gupta Applicant (s)

Shri Sant Lal Advocate for the Applicant (s).

^{Versus}
The D.G. of Shipping & Ors. Respondent (s)

Shri K.C. Mittal Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (J).

The Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No.*
4. To be circulated to all Benches of the Tribunal ? *No.*

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was employed as temporary Peon with effect from 25.3.1985, by the Directorate General of Shipping, in the office of the Chairman, National Shipping Board, has challenged the impugned order of termination of his services and has prayed for a direction to the respondents to reinstate him in service with consequential benefits of seniority and full back wages.

2. The relevant facts, in brief, are that the applicant was appointed as temporary peon with effect from 25.3.1985, vide Office Memorandum dated 24.4.1985 (Annexure A-4 to the application). By telex dated 8.10.1986 (Annexure A-1 to the application), he was informed that his services stood terminated with effect from 9.10.86 as per Temporary Service Rules and that letter will follow. In the order dated 9.10.1986

(Annexure A-2 to the application), he was informed that in pursuance of sub-rule (1) of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be tendered to him. In Memo dated 3.10.1986 (Annexure A-3 to the application), he was informed, with reference to his representation dated 21.10.1986, that his services stand terminated from 15.11.1986 (F.N.). He surrendered his Identity Card and C.G.H.S. Card on 5.11.86 (Annexure A-5 to the application) and he was sanctioned Earned Leave from 5.11.86 to 14.11.86 vide Office Memo dated 23.12.1986 on his leave application. His mercy appeal dated 21.10.86 (addressed to the Director General - Shipping, and to the Chairman, National Shipping Board, New Delhi - Annexures A-8 and A-9 respectively) is said to have been disposed of vide Memo dated 30.10.1986 (Annexure A-3 to the application). The applicant's case is that his appeal has not been decided so far and that the impugned orders are illegal, arbitrary, discriminatory, against the principles of natural justice and the provisions of Articles 14 and 16 of the Constitution. It has also been pleaded that the impugned order of termination has been issued by an authority subordinate to the authority who had appointed the applicant. It is further pleaded that the authority who issued the impugned termination order did not apply his mind as is evident from the different orders issued by him. The order of termination is stated to be punitive and not a discharge simpliciter.

3. The respondents have taken the plea of limitation and have refuted the contentions of the applicant in other respects.

4. We have gone through the pleadings of the case and have also heard the learned counsel for the parties.

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5. In para 3 of the application, it is admitted by the applicant that the application is not within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. He, therefore, also filed Misc. Petition No.1917/1989 along with his O.A. under Section 21(3) of the Act *ibid* for condonation of delay. In this M.P., it is stated that no decision on his appeal had been communicated so far and that the applicant had been waiting for a favourable decision on his appeal to avoid litigation. The P.S. to Chairman, National Shipping Board, is also stated to have promised for sympathetic consideration of his appeal. It is further stated that the applicant was not conversant with the intricacies of law and was advised that the period of limitation was three years from the date of order and that he could wait for decision on his appeal. A general averment has also been made that he could not file this application due to circumstances beyond his control and not due to any negligence on his part. The impugned order allegedly being void *ab-initio* can be challenged at any time. Three judgements* have also been cited in support of his plea for condonation of delay.

6. The learned counsel for the respondents vehemently opposed the petition for condonation of delay.

7. As already mentioned above, the application itself declares that it is not within the limitation prescribed under Section 21 of the Administrative Tribunals Act. Sub-section (3) of Section 21 of the Act *ibid* provides for condonation of delay by the Tribunal if it is satisfied that the applicant had sufficient cause for not making the

* 1) Food Corporation of India Vs. Garib Singh (1984 (1) SLJ 425).
2) Shri Ram Nath Chadha Vs. Union of India (1988 (2) SLJ 273 - C&T New Delhi Bench).
3) Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and others (AIR 1987 S.C. 1353).

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application within the period prescribed. Thus, it has to be seen whether the Misc. Petition for condonation of delay provides satisfactory reasons for condoning the delay.

8. The decision on the appeal dated 21.10.1986 was conveyed vide Memo dated 30.10.1986. Annexure R-IV to the counter reply shows that this was received in original by the applicant on 4.11.1986. Thus, the contention of the applicant that he had not been communicated any decision on the appeal is not substantiated by the documents on the records of the case. He should, therefore, have filed the application within one year from 4.11.86. The application was, however, filed on 25.8.1989, i.e., after a delay of nearly two years. The reasons for this delay, as given by the applicant in his petition for condonation of delay and as mentioned above are far from convincing and in no case explain even the larger part of the period of delay, what to say of the total period of delay. The onus to satisfactorily explain^{the} the delay is that of the applicant. The cases cited by the applicant also do not help him.

9. The case of Food Corporation of India Vs. Darib Singh (1984 (1) SLJ 425) is not relevant. In the case of Shri Ram Nath Chadha Vs. Union of India (1988 (2) SLJ 273 - CAT New Delhi Bench), the question of limitation was considered on the facts and circumstances of that case which are different from the facts and circumstances of the case before us. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and others (AIR 1987 S.C. 1353), their lordships of the Supreme Court stated reasons for adopting a liberal approach in the matter of condonation of delay. Recently, in the case of S.S. Rathore Vs. State of Madhya Pradesh*, a Bench of seven Judges of the Hon'ble Supreme Court has laid down the law on the question of limitation. The provisions on the point of limitation

* 1989 (2) SCALE - p. 510.

in the Administrative Tribunals Act, 1985 also came up for consideration in that case, wherein the Hon'ble Supreme Court observed as under: -

"21. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed as representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

10. In view of the ruling of the Hon'ble Supreme Court in the aforesaid case as also in view of the fact that there is no satisfactory explanation for the delay of nearly two years in filing the application, we are of the view that the Misc. Petition No.1917/1989 for condonation of delay is devoid of merit and, therefore, the O.A. No.1735/1989 which is admittedly barred by limitation is not maintainable.

11. In view of the above discussion, we do not consider it necessary to go into the merits of the rival contentions of the parties and dismiss the Original Application at the

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admission stage itself, as not maintainable in accordance with the provisions of Section 21 of the Administrative Tribunals Act, 1985. Parties will, however, bear their own costs.

(Secy 29/1/89)
(P.C. Jain)
Member(A)

[Signature]
20.1.89
(T.S. Oberoi)
Member (J)