

12
Central Administrative Tribunal
Principal Bench, New Delhi.

...
Date of decision: 12.7.91

O.A. No. 1931/89
...

Shri Amarjit Singh Dhanjal ... Applicant

Vs.

UOI & Ors. ... Respondents.

For the applicant: Shri Astender Kumar, Advocate

For the respondents: Smt. Raj Kumari Chopra, Adv.

CORAM:

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

Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reports of local Papers may be allowed to see the Judgment ? Yes.
2. Whether their Lordships wish to see the fair copy of the Judgment ? No.
3. To be referred to the Reporter or not ? No.
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.

JUDGMENT
(delivered by Hon'ble Shri T.S. Oberoi, Member).

By this application filed under Section 19 of the Administrative Tribunals Act, 1985 on 14.9.1989, the applicant Shri Amarjit Singh Dhanjal has prayed for quashing an order dated 24.11.1978, by which the minor penalty of stoppage of periodical increment for one year with cumulative effect due to him in 1978, was imposed on him after an enquiry. The applicant has also sought a direction from this Tribunal for setting aside order dated 13.3.1979 and order dt. 6.5.1987, rejecting the representation of the applicant against the aforesaid penalty.

2. This application came up for admission on

4/26/2023

22.9.1989 with notice to the respondents. The respondents have filed their reply on the question of admission as well as on merits of the case.

3. We have heard the learned counsel for the applicant and the respondents. The applicant has filed an application for condonation of delay. In this application, the applicant has stated that the order dated 6.5.1987 of the Vice-Chief of Staff was conveyed to him on 3.6.1987. Although he could file the application against this order within one year from the date of communication thereof, but he could not do so as he met with a road accident on 30.5.1988 resulting in grievous head injury. He has thus prayed for condonation of delay in filing the application.

4. The learned counsel for the respondents has resisted strongly the prayer for condoning the delay. It is contended on behalf of the respondents that the application is barred under Section 20 of the Administrative Tribunals Act (for short 'the Act') and as such, it is not maintainable. She further pleaded that the applicant is trying to raise a stale matter which was decided way back in 1978. In support of her contention, the learned counsel relied on the decision of this Tribunal in O.A.No.696/88 - Satish Kumar Vs. U.O.I. etc., wherein the application was filed more than a year after the representation was rejected on merits. It was held in that judgment that the application suffered from the bar of limitation. She has further cited the judgment of the Hon'ble Supreme Court in P.S. Sada Siwa Swamy Vs. St. of Tamil Nadu - AIR 1974 SC 2271, wherein it was observed that the delayed and stale cases should not be entertained so as to unsettle the settled matters.

b3e

5. Even though the punishment was awarded to the applicant as far back as on 24.11.1978, his representation was rejected by the Vice Chief of the Army Staff on 6.5.1987. According to the applicant, this order was communicated to him on 3.6.1987. It is true that this Tribunal has, in a *catena* of judgments, held that an application against an order made before three years immediately preceding the date of setting up of the Tribunal is time barred and the Tribunal has no power to condone the delay in such cases - *Sukumar Dey V. Union of India* (1987) 3 ATC 427 CAT (Cal). However, in this case, the applicant is entitled to reckon the period of limitation from 3.6.1987. Taking this date as the date on which the cause of action should be deemed to have arisen to the applicant, he should have filed the application within one year thereof. However, he has filed the present application on 14.9.1989. He has filed documents to show that he met with an accident on 30.5.1988 in which he received severe head injury. From a perusal of Discharge Summary at page 17 of the paper book, issued by the Batra Hospital & Medical Research Centre, New Delhi, it is clear that the applicant developed severe head ache from 7th of September, 1988. In the reply to the application for condonation of delay, the respondents have averred that the applicant was attending to his duties continuously from May to September, 1988. We do not find sufficient ground for the applicant as being unable to move the Tribunal within one year from the date of communication of the impugned order passed by the Vice Chief of the Naval Staff.

6. Section 21 (1) of the Act prohibits the Tribunal from admitting an application/within one year from the date on which final order has been made. It is well settled law

Decd.

that one who does not speak, when he ought to, should not be heard when he desires to speak (later).

7. After hearing the learned counsel for the parties on the question of limitation, we also desired them to address arguments, on other aspects of the case. The learned counsel for the respondents emphasised that because of the matter being very stale and delayed, the case deserves to be rejected on that ground alone, the learned counsel for the applicant, emphasised one more aspect, mentioned in para 4(ix) of the O.A., dilated upon. The learned counsel for the applicant pointed out that the applicant had remained away from duty from 16.8.1977 to 13.11.1978, which was considered as unauthorised, and as a result of disciplinary proceedings against him, for being absent from duty for the said period, without sufficient cause or permission of the Competent Leave Sanctioning authority, he was held guilty of disobedience of legitimate orders and failure to maintain devotion to duty, thereby violating Rule 3 of CCS (Conduct) Rules, 1964, and was subjected to with-holding of one increment for the year 1978, with cumulative effect, vide order dt. 24.11.1978. But the yearly increment of the applicant which fell due on 1.5.1978 could not be stopped and so the punishment inflicted vide the impugned order Annexure-A (P.10 of the OA) could not be enforced in the year 1978, rather it was enforced in the year 1979, which was not legal and hence inoperative and unenforceable. The respondents in their counter have resisted applicant's contention, and relying upon the Government of India decision No. 4(b), appended below Article 13 of CSR Vol.I Edition 1976, held the implementation of the punishment in the year 1979, as valid and proper.

8. We have considered the rival contentions, and in the face of the explanation given by the respondents in the reply, supported with Government of India decision, referred to therein,

1b

we are of the view that even this contention put forth by the applicant is without any merit and hence deserves to be rejected, especially in view the application being otherwise time-barred, as per our findings in the earlier paragraphs of this judgement.

9. As a result of the foregoing, the O.A. is dismissed without, however, any order as to costs.

Subhash
(I.K. RASGOTRA)

MEMBER (A)

Obey (2.7.91)
(T.S. OBEROI)

MEMBER (J)