

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

DA-No.901 of 1989

Dated at New Delhi, this the 13th day of July, 1994

Hon'ble Shri J. P. Sharma, Member (J)
Hon'ble Shri B. K. Singh, Member (A)

Shri R. D. Ram
R/o 9, Transit Camp
State Entry Road
NEW DELHI ... Applicant
By Advocate: Shri S. K. Duggal

VERSUS

Union of India through

1. The Secretary
Railway Board
Rail Bhawan
NEW DELHI
2. General Manager
Northern Railway
Baroda House
NEW DELHI
3. Shri Khubi Ram
Asst. Chief Cashier
Northern Railway
Lucknow.

By Advocate: Shri H.K. Gangwani

O R D E R
(Oral)

Shri J. P. Sharma, M(J)

At the time of filing this application in April, 1989, the applicant was Assistant Chief Cashier, Northern Railway, New Delhi. It appears that the applicant had submitted a representation to the Minister of Railways with a copy to the Divisional Railway Manager regarding his grievance of having been awarded punishment under Rule 9 of the Railway Servants (Disciplinary & Appeal) Rules, 1968. The applicant was down graded to three stages by the punishment imposed.

The order of punishment was passed on 12.6.81. The applicant preferred an appeal which was dismissed vide order dated October 3, 1981. He preferred a revision to the higher authority as a result of which the punishment was modified to down grade the two stages in the same grade for a period of three years with cumulative effect vide order dated 26.7.82 which was communicated to the applicant on 6.8.82. Though it is said that the applicant has preferred a representation to the Railway Minister in November, 1983 against the above order and a copy of that has also been annexed as Annexure-J to the application, but this is denied by the respondents as not substantiated by any better pleadings of the applicant. The applicant in this OA has challenged the order rejecting his representation of August, 1988 vide order dated 3.2.89 wherein it is said that the applicant's representation was forwarded to Railway Board for consideration and directives. The Railway Board vide their confidential letter dated 12.1.89 have communicated that the case of the applicant was reviewed by the then General Manager, Northern Railway who mitigated the punishment after consideration of the facts relevant to the case. Accordingly, no further action was warranted in the case. The applicant has assailed this order in this application praying for the reliefs that the order dated 3.2.89 as well as punishment order of 6.8.82 and other orders passed, be quashed. It is further

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Prayed that the suspension of the applicant from 10.9.79 to 12.6.81 was illegal and the same be treated as period spent on duty and he be granted pay for this suspension period.

2. The respondents have contested this application on a number of grounds. It is stated that the application is barred by time and reference is made to the case, Sukumar Dey Vs U.O.I. (1987)3 ATC 427. The respondents have also referred to the decision of the Hon'ble Supreme Court in the case, Jagdish Narain Maltiar Vs the State of Bihar, reported in 1973(2) SLR 521 where it is held: "Petitioner continued' sending memorials to Government for 3 years which did not lie - delay not excusable." The respondents have also denied various averments made in the OA. Applicant has also filed the rejoinder.

3. We heard the learned counsel Shri S. K. Duggal, appearing on behalf of the applicant, on 16.6.94. We again heard him on 12.7.94. After hearing for sometime, the learned counsel for the applicant sought more time to cross the hurdle of jurisdiction on limitation and so the matter has been heard again to-day. The Administrative Tribunal Act came into force w.e.f. 1.11.85. The Tribunal has been

conferred jurisdiction with respect to those causes of action which have arisen three years earlier to enforcement of this Act, i.e. w.e.f. 1.11.82. The applicant in this case has also assailed the order in the relief clause of 6.8.82. The applicant, at that time should have assailed this order before the competent forum either by way of Civil Suit or filing a Writ Petition before the High Court. The applicant has preferred to make further representations, now alleged to be memorials, to the President, then he has confidence in the respondents and did not like the judicial review of the impugned order of 6.8.82. At this point of time, this Tribunal has no jurisdiction to look to the punishment which has finally been upheld by the impugned order of 26.7.82 conveyed to the applicant on 6.8.82. The present application, therefore, does not come in the purview of jurisdiction because of the cause of action having arisen three years before the enforcement of the Administrative Tribunal Act, 1985.

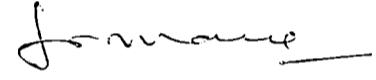
4. We have also considered the matter most emphatically and persuasively. The contention of the learned counsel for the applicant that a representation to the Railway Minister can be taken to be memorial to the President, is not tenable. Firstly, the Indian Railway Establishment Code Chapter-II gives the

details as to how and when the ~~the~~ memorials to the President could be made, but that has not been followed in the present case. Secondly, after the punishment has been conveyed to the applicant in August, 1982, on his own saying, he makes first representation to the Railway Minister in November, 1983, after a gap of more than a year. He waits for the reply as if that would be in his favour. Getting disappointed after waiting, he makes another representation in August, 1988 i.e. six years after the final order of punishment and still waits for a decision which was conveyed to him in February, 1989 which has been challenged in this case. Thus, by no stretch of magnanimity and mercy, the case of the applicant could be brought within the jurisdiction of the Tribunal and also the same is barred by time under Section 21 of the Administrative Tribunal Act, 1985. Thus, the contention of the learned counsel for the applicant that this be treated as a memorial, cannot be accepted.

5. The Present application is also hit by delay and laches. Delay, unexplained and inordinate, even defeats a rightful claim of a person who is indolent and not vigilant. On this ground also this application does not deserve any consideration on merit.

6. Again we have considered that the applicant, if he goes on well personally and professionally, will retire after completion of 38 years of service and as such he will not be in any disadvantage position in the pensionary benefits. Shri Gangwani, who appears as counsel for the respondents, supported the various contentions raised in the reply by the respondents. We have also discussed the major part of the arguments and do not repeat the same. The application, is therefore dismissed, leaving the parties to bear their own costs.


(B. K. Singh)
Member (A)


(J. P. Sharma)
Member (J)

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