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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 990 / 1988.
~~F.A. No.~~

DATE OF DECISION January 25, 1990.

Mahesh Chand Applicant (s)

Shri J.C. Singhal and Advocate for the Applicant (s)
Shri P.L. Mimroth

Versus
Union of India & Others Respondent (s)

Shri Arvind Sinha Advocat for the Respondent (s)

CORAM :

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

The Hon'ble Mr. J.P. Sharma, Member (J).

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 has challenged order dated 20.1.1983 by which he was removed from service, and he has prayed that -

- (1) the report of the Inquiry Officer should be quashed;
- (2) the order of removal from service should be set aside and the applicant should be deemed to have continued in service;
- (3) the respondents be directed to take back the applicant on duty immediately and arrears of pay and allowances for the intervening period be paid with interest @ 10% ;
- (4) increment falling due during the intervening period be given;
- (5) any other rights accrued to the applicant on account of his seniority such as trade test, promotion etc. be given; and
- (6) all other benefits such as leave, counting of service for pension etc. be given.

2. The relevant facts, in brief, are that the applicant was

appointed as a substitute Boiler Maker Khalasi in the pay scale of Rs.196 - 232 on 23.6.1978 and his services were later on regularised. A charge-sheet for minor penalty was issued on 23.5.1981 for unauthorised absence from duty and he was awarded the penalty of stoppage of one set of privilege ticket order. Another charge-sheet was issued on 8.1.1982 for unauthorised absence from 1.12.1981 and he was awarded the penalty of stoppage of increments for three years without postponing future increments. Again, a charge-sheet was issued on 24.6.1982 for major penalty for unauthorised absence from duty from 5.3.1982. After holding an inquiry, he was removed from service, vide impugned order dated 20.1.1983.

3. The applicant has challenged his removal from service on the grounds of mala-fide, violation of principles of natural justice, a number of irregularities alleged in connection with the inquiry and the impugned removal order. He has also pleaded that he preferred an appeal dated 3.3.1983 to the Divisional Mechanical Engineer - P.II, Northern Railway, New Delhi against the impugned order of removal, which is said to have been received by him on 17.2.83, but he has not received any reply to this appeal so far. Reminders dated 6.7.1983 and 10.12.1983 to the appellate authority, and representations dated 1.3.84, 5.6.84, 12.12.84, 9.3.85^{and}/11.12.85 addressed to D.R.M., Northern Railway; representations dated 6.3.86, 6.11.86, and 25.3.1987 sent to the Chief Mechanical Engineer, Northern Railway; and the detailed representation dated 3.5.1987 addressed to the General Manager, Northern Railway, were neither acknowledged nor replied to. The learned counsel for the applicant also cited some rulings in connection with the legal infirmities and irregularities in the inquiry conducted against the applicant.

4. The respondents' case, in brief, is that the application is hopelessly time-barred; the applicant has not

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availed of the departmental remedies, as he did not file any appeal within the prescribed 45 days; the inquiry against the applicant has been conducted fully in accordance with the rules and that he participated in the inquiry by making his own statement and cross-examining the prosecution witness; and that they did not receive any appeal or the alleged representations of the applicant.

5. We have perused the record of the case and have also heard the learned counsel for the parties.

6. The plea of the respondents to the effect that the applicant did not avail of the departmental remedies and as such the application is not maintainable under Section 20 of the Administrative Tribunals Act, 1985 does not carry much weight inasmuch as the application has already been admitted and the provision in Section 20 of the Act pertains to admission. Moreover, the applicant's case is that he did submit his appeal against the impugned order within the prescribed period of 45 days.

7. The learned counsel for the respondents vehemently argued at the bar that the application is hopelessly time-barred. Strong pleas have also been taken in this regard in the reply filed by the respondents. It was also argued that the applicant has also not filed any petition for condonation of delay with his application or even later.

8. On the point of limitation, the applicant, in his rejoinder, has stated that he never got a reply to his appeal dated 3.3.83 and he pursued the matter with the D.M.E., D.R.M., C.M.E., and with the General Manager, but did not get any reply and he has, therefore, approached the Tribunal for redressal of his grievance and his application is within time under the extant law. It is further submitted that as the applicant's contention is that he has filed the application in time, the question of his applying for condonation of delay does not arise. It is further stated that the question of

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limitation was raised by the Tribunal itself and they were satisfied with the reply given by the applicant's counsel.

9. The order-sheet of the case does not show any decision of the Tribunal on the question of limitation either at the time of admission or subsequent thereto. The respondents have categorically denied the receipt of the communications alleged to have been sent by the applicant except one dated 3.3.83, which is said to have been received through a D.O. letter of Member of Parliament Shri B.L. Bairwa in the office of Minister of Railways on 25.4.1984. The certificates of posting issued by the Postal Authorities are a proof only of the fact that certain letters had been posted; it is no proof of the letters having been actually delivered to or received by the addressees or the contents thereof. Presumption as envisaged in Section 27 of General Clauses Act, 1897 can also not be made in this case as neither the appeal of the applicant was sent by registered post, nor the service rules required the service of appeal on the appellate authority by post.

10. The word "representation" used in sub-section (2) of Section 20 as well as in sub-section (1) of Section 21 of the Administrative Tribunals Act, 1985 does not cover non-statutory representations. An appeal or representation provided by law ^{alone} is relevant for the provisions ^{mere} ibid. For fixing limitation, submission of a/memorial or a representation to the Head of the establishment is not to be taken into account (S.S. RATHORE Vs. STATE OF MADHYA PRADESH - 1989 (2) SCALE 510 - para 22). Moreover, repeated representations do not extend the limitation (Gian Singh Vs. High Court of Punjab & Haryana and Another - 1980 (4) SCC 226).

11. The impugned order in this case had been passed on 20.1.1983 and the application has been filed on 26.5.1988. Sub-section (2) of Section 21 of the Administrative Tribunals

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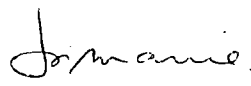
Act, 1985 is relevant on the point of limitation in this case. It is provided herein that if the order in respect of which the applicant is aggrieved had been made during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of subsection (1) or within a period of six months from the said date, whichever period expires later. The appointed date within the meaning of clause (c) of Section 3 of the Act *ibid* for the Central Administrative Tribunal was notified by the Central Government as the 1st day of November, 1985 (Notification No. G.S.R. 764 (E), dated September 28, 1985). Thus, it is clear that the cause of action in this case had arisen within three years immediately preceding the date on which the Central Administrative Tribunal came into existence; no proceedings had been commenced by the applicant in the High Court; and this application has not been filed within the limitation prescribed. The learned counsel for the applicant argued that the Central Administrative Tribunal has all the powers of a High Court in service matters pertaining to Central Government employees and that as no limitation is prescribed for filing writ petitions in a High Court under Article 226 of the Constitution, the Tribunal should also ignore the bar of limitation in this case. This argument is not legally sustainable. Had the applicant filed a writ petition in the High Court before 1.11.1985 and if such a writ petition had been admitted, it would have stood transferred to the Tribunal under Section 29 of the Act and in that case, the plea of limitation would not have been relevant. Moreover, the High Court would have considered before admitting the writ petition whether

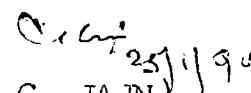
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the delay had been properly explained. This is not so in this case as the applicant has filed an Original Application in the Tribunal and the provisions of Section 21 of the Act are mandatory. The contention of the applicant in para 5 of the application to the effect that the applicant's representations^{are} to the highest authority, viz., the General Manager, Northern Railway, New Delhi, against his removal from service was sent on 3.5.1987 to which no reply was received and, as such, the period of one year during which application can be filed starts running from 3rd November, 1987 in terms of Section 20(c)(b) of the Administrative Tribunals Act, 1985 is not/^acorrect interpretation of law. Moreover, there is no such Section 20(c)(b) in the Act.

11. The learned counsel for the applicant also contended at the bar that the applicant belongs to a Scheduled Caste and is a poor man, and, as such, the question of limitation should not be given importance. This plea is also not legally sustainable. An order on an application which is time-barred would be without jurisdiction. There was no prayer for condonation of delay in this case. The delay involved is not of weeks or months, but of years.

10. In view of the above discussion, we are of the view that it is not necessary to go into the rival contentions of the parties on the merit of the case. We find that this application is not maintainable under Section 21(2) of the Administrative Tribunals Act, 1985 and is dismissed as such. Parties shall bear their own costs.


(J.P. SHARMA)
Member(J)


(P.C. JAIN)
Member(A)

January 25, 1990.