

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/1157/2011**Jabalpur, this Tuesday, the 23rd day of June, 2020**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBERBasant Baliram Sonwane, S/o Late Baliram Rewaji Sonwane, aged about 58 years, Diesel Khalasi, Token No. 1164, West Central Railway, Diesel Shed, Itarsi (M.P) - 461111 **-Applicant****(By Advocate – Shri S.K. Mishra)****V e r s u s**

1. Union of India through General Manager, West Central Railway, South Civil Lines, Indira Market, Jabalpur (M.P) – 482001.

2. Divisional Railway Manager, West Central Railway, Bhopal (M.P) – 462001.

3. Divisional Mechanical Engineer (Diesel), West Central Railway, Diesel Shed, Itarsi (M.P) – 461111.

4. Assistant Mechanical Engineer (Diesel), West Central Railway, Diesel Shed, Itarsi (M.P) – 461111.

5. Assistant Sub Divisional Engineer (Loco), West Central Railway, Itarsi (M.P) 461111 **- Respondents****(By Advocate – Shri J.S. Rathore)***(Date of reserving order : 14.02.2019)***O R D E R****By Ramesh Singh Thakur, JM.**

The applicant is aggrieved by the order dated 30.09.1997

(Annexure A-3) passed by the Disciplinary Authority imposing the

punishment of reduction in rank from the post of Diesel Mechanic III to Diesel Khalasi. He is also challenging the order dated 03.07.1998 (Annexure A-5), whereby his appeal against the said punishment order has been rejected.

2. The applicant, has therefore, sought for the following reliefs:

“7. (i). Quash and set aside the impugned order dated 30.09.1997 Annexure A/3, order dated 03.07.1998 Annexure A/5 passed by appellate authority and communication dated 9.3.99 (Annexure A/6).

(ii). Direct the respondents to take decision on the pending appeal and representations of the applicant treating it as revision and give relief to the applicant.

(iii) Any other suitable order/direction which this Hon’ble Tribunal deems fit and proper may also be granted to the applicant.”

3. Brief facts of the case, as stated in the Original Application, are that while working on the post of Diesel Mechanic III, the applicant was served with a charge sheet dated 15.07.1997 (Annexure A-1) alleging misbehavior with his superior officer and absconding from duty on 13.07.1997. The applicant submitted his reply to the charge sheet. However, the Inquiry Officer proceeded ex-parte and submitted his inquiry report to the Disciplinary Authority, who imposed the punishment of reduction in rank from the post of Diesel Mechanic III to Diesel Khalalsi with cumulative effect vide order dated 30.09.1997 (Annexure A-3). The applicant

preferred an appeal against the said punishment order. However, the Appellate Authority, without considering the submissions made in the appeal, affirmed the punishment order. Thereafter, the applicant made many correspondence to the respondent department (Annexure A-7 to A-9), which were not replied by the respondents. Hence, this Original Application.

4. Along with the O.A, the applicant has also filed MA No.1122/2011 for condonation of delay, wherein it has been stated that the applicant was under bonafide impression that his request would be considered by the Department and he would be granted relief. When the respondents have not taken any action on his request, the applicant has chosen to approach this Tribunal for redressal of his grievance.

5. The respondents have filed their para-wise reply wherein the main objection regarding delay in filing this Original Application has been raised. It has been submitted by the respondents that the case of the applicant has been concluded in the year 1999 and the applicant has approached this Tribunal after a lapse of more than 13 years. On merits, the respondents have submitted that as the applicant has chosen not to participate in the inquiry proceedings, therefore, ex-parte inquiry was conducted against him, wherein the charges were found proved. Further, the punishment imposed by

the Disciplinary Authority upheld by the Appellate Authority is reasonable looking to the misconduct of the applicant.

6. Heard both sides.

7. Learned counsel for the applicant contended that after rejection of applicant's appeal on 03.07.1998 (Annexure A-5), the applicant preferred another appeal to the respondent No.2. However, vide letter dated 09.03.1999 (Annexure A-6), it has been informed that there is no provision of re-appeal. He submits that there is provision of revision under Rule 29 of the Railway Servants (Discipline and Appeal Rules) 1968. Hence, his appeal ought to have been forwarded to the competent authority and it should have been treated as revision. Learned counsel for the applicant further submits that the applicant has preferred representations dated 25.07.2005 (Annexure A-7) and 26.08.2008 (Annexure A-8). However, no action has been taken by the respondents. Thus, the delay in filing this Original Application is bonafide and the matter may be decided on merits.

8. In support of his contention, learned counsel for the applicant placed reliance on a decision of Hon'ble High Court of Madhya Pradesh in the matters of **Ramesh Chand s/o Laxmichand Dubey vs. Union of India and others**, 2011 (3)

M.P.L.J. 58, wherein it has been held that the Court must adopt a liberal and justice oriented approach to enable a litigant to get his dispute decided on merits and not otherwise.

9. We have given our thoughtful consideration to the entire matter.

10. Section 21 of the Administrative Tribunals Act, 1985 (for short '**the Act**') deals with limitation for filing O.A. before this Tribunal, which reads as under:-

“21. Limitation.- (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time 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 in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

11. It is clear that under the Act, the limitation has been prescribed for filing O.A. before this Tribunal within one year from the date of cause of action. The same can be extended by another six months from the date of filing of appeal if the same is not decided. It has further been mentioned in the Act that if the application is not filed within time as stipulated in Section 21 of the Act, then the applicant has to move a Miscellaneous Application seeking condonation of delay by explaining the delay in not filing the Original Application within the limitation.

12. Learned counsel for the applicant while placing reliance on a judgment of the Hon'ble Apex Court in the case of **Ramesh Chand** (supra), submitted that since none of the representations of

the applicant (Annexure A-7 to A-9) were replied to by the respondents on merits, therefore, cause of action shall accrue in favour of the applicant and there is no delay in filing this Original Application. However, we find that claim of the applicant therein was rejected in the year 2006, which was communicated to him in the year 2007, whereas he was representing the authorities since 1978. However, in the instant case, the punishment of reduction in rank was imposed upon the applicant on 30.09.1997 (Annexure A-3). Further, his appeal against the said punishment order was also rejected on 03.07.1998 (Annexure A-5). The respondents, vide their letter dated 09.03.1999 (Annexure A-6), have already informed the applicant that there is no provision under the Railway Servants (Discipline and Appeal) Rules, 1968 for making re-appeal. Thus, subsequent representations in the form of mercy appeal would not be a sufficient cause for condoning the delay as the final decision had already been taken by the respondents way back in the year 1997-98.

13. In the matters of **S.S. Rathore vs State of M.P.**, (1989) 4 SCC 582, the Hon'ble Apex Court has held as under:

“20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made,

*though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. **Repeated unsuccessful representations not provided by law are not governed by this principle.***

*22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. **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.***

(emphasis supplied)

14. From the above it is clear that the disciplinary proceedings against the applicant were concluded in the year 1997 and the applicant was awarded punishment in the year 1997 and 1998 respectively, whereas he has approached this Tribunal in the year 2011, i.e. almost after a long delay of almost 13 years after rejection of his appeal. In his application for condonation of delay, the applicant has not been able to show as to why he could not approach this Tribunal within the stipulated time prescribed under the Act. Merely making repeated unsuccessful representations would not be a sufficient cause for condoning the delay as has been held by the Hon'ble Apex Court in the case cited above.

15. Even on merits, the applicant has not been able to produce any material on record to show any irregularity in conducting the departmental enquiry or violation of principles of natural justice. The inquiry was conducted as per the rules and the applicant was given reasonable opportunity to defend his case. Since the applicant decided not to participate in the inquiry proceedings, hence, the Inquiry Officer decided to proceed the inquiry ex-parte and submitted his report to the Disciplinary Authority, wherein charges were found to be proved. The Disciplinary Authority after going through the inquiry report and the material produced before it, had imposed the punishment of reversion upon the applicant. The order of the Appellate Authority is also just and proper while rejecting the appeal of the applicant. Regarding his contention that punishment is excessive as the applicant was originally appointed on the post of Diesel Mechanic and punishment lower to that post cannot be awarded, the respondents have categorically stated that the applicant was initially appointed as temporary Diesel Cleaner and was promoted as Diesel Mechanic on 05.04.1982, a fact which has not been controverted by the applicant in his rejoinder. Thus, imposing the punishment of reversion from the post of Diesel Mechanic to Khalasi cannot said to be extreme shocking conscience of this Tribunal.

16. In view of the above, we find that the Original Application is not only time barred but also deserves to be dismissed on merit. Accordingly, the same is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-