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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 907/1986.

DATE OF DECISION: 24.5.1990.

Shri Dasarath Prasad Applicant.
Shri B.S. Mainee Counsel for the Applicant.
V/s.
Union of India Respondents.
Shri Jagjit Singh Counsel for the Respondents.

COURT: Hon'ble Mr. B.S. Sekhon, Vice Chairman (J).
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? *No*.
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*.

See
(P.C. JAIN)
MEMBER (A)

B.S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN.

24-5-90

(8)

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CORAM: Hon'ble Mr. B. S. Sekhon, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

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

JUDGEMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Superintendent, Claims Branch, Northern Railway, New Delhi, has assailed order No. 724-E/2849/E. iii/ Acme, dated 10-23rd March, 1981 (Annexure 'G') whereby the penalty of 'Censure' was imposed upon him, and communication dated 31.3.1981 (Annexure 'H') whereby he was informed that his period of unauthorised absence from 7.9.76 to 1.5.80 has been treated as leave without pay and will not be counted for increments. He has prayed for the following reliefs: -

- (i) The sick period from 3.9.76 to 31.3.1980 may be treated as commuted leave or leave due on medical ground;
- (ii) the denied benefits of annual increments during the period of sickness be allowed with retrospective effect;
- (iii) promotion as Head Clerk (grade Rs.425-700) with effect from 9.9.80 i.e., from the date his junior Shri Des Raj was given such promotion and refixation of his pay accordingly;
- (iv) release of sanctioned payment of Rs.35/- as special pay per month with effect from 26.4.80 to 31.10.80;

Clerk.

(v) release of salary for 25 days from 1.4.80 to 25.4.80 i.e., the period during which he was not issued Fitness Certificate by the Railway Medical authorities; and

(vi) a direction to Railway Administration (G.M., Northern Railway) to restore all the benefits which the applicant would have been entitled to had he not been dragged to face disciplinary proceedings and to determine and compute the amount of money due to him.

The learned counsel for the applicant stated at the bar that he presses for reliefs only at (i) and (iii) above.

2. The relevant facts, in brief, are as below: -

The applicant was appointed as a Clerk in the Railways on 30.5.1949. He was transferred to Northern Railway with effect from 11.3.1953 and promoted as U.D.C. in the scale of Rs.80-220 with effect from 26.6.59. He was appointed to officiate as Head Clerk with effect from 1.10.1980 and as Assistant Superintendent with effect from 21.12.1984. Orders for his promotion as Superintendent with effect from 1.4.1986 were also issued. He went to his home town after getting three days' casual leave for 3rd, 4th and 6th September, 1976 (5th being Sunday), but did not report for duty with effect from 7th September, 1976. He continued to send applications for further leave with Medical Certificates from private Medical Practitioners. He reported for duty on 31.3.1980. He was referred to Railway medical authorities, who declared him fit for being put back on duty with effect from 26.4.1980.

3. For his alleged unauthorised absence from 7.9.1976, an inquiry was initiated under the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant participated in the inquiry. The Inquiry Officer gave his findings to the effect that the charge of absence from 7.9.1976 from duty unauthorisedly was not substantiated (Annexure 'F'). The Disciplinary Authority,

vide his order dated 10-23rd March, 1981 (Annexure 'G') for the reasons mentioned therein decided to impose, and in fact imposed, the penalty of 'Censure' upon the applicant. The applicant has assailed this order. The Appellate Authority set aside the punishment of 'Censure' vide communication dated 21.8.1981 (Annexure 'K').

4. We have perused the material on record and have also heard the learned counsel for the parties. In view of the statement of the learned counsel for the applicant at the bar in regard to the reliefs, we propose to deal only with the contentions relevant thereto.

5. The applicant has impugned the order dated 10-23rd March, 1981 passed by the Disciplinary Authority imposing the penalty of censure. He has also impugned the order dated 31.3.1981 by which the period of unauthorised absence was treated as 'leave without pay' and the period was not to count for increments. The cause of action thus arose on the above two dates, but the application had been filed in October, 1986. Respondents have, therefore, contended that the application is hopelessly time-barred and is not maintainable under section 21 of the Administrative Tribunals Act, 1985. The applicant had moved M.P. 304/1986 for amendment in the application, which was allowed vide order dated 29.10.86. In the Original application, the applicant had stated that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. In the Amended Application, he reiterated the above averment and stated as a clarification that the last representation was made through the Union in January, 1980 and a final order on it was passed only on 17/18.3.1986. He further stated that the delay of 4 years and 6 months was caused in availing of all the (c) (i).

(1)

possible remedies available to him under relevant rules as to redressal of grievances as was required under sub-section 2(a) of Section 20 and that it was not on account of any degree of negligence on his part before filing the application. No orders were, however, passed on the question of limitation, but the Amended Application was admitted. It was argued by the learned counsel for the applicant that once the application is admitted, the bar of limitation cannot be raised. He cited the judgements in the case of COLLECTOR, LAND ACQUISITION, ANANTNAG Vs. KATIJI, AIR 1987 SC 1353 and in RA-52/88, T.A. 612/86, S-662/84 (UNION OF INDIA Vs. SHRI KARAM CHAND GAUHA (SLJ 1989 (3)(CAT) p. 353). These cases are not relevant as these are for condonation of delay and not on the point of limitation. Moreover, there is no prayer even in the Amended Application for condonation of delay.

6. In the case before us, the cause of action accrued prior to 1.11.1982 i.e., prior to three years of the constitution of this Tribunal. In the case of V.K. MEHRA Vs. THE SECRETARY, MINISTRY OF INFORMATION & BROADCASTING (A.T.R. 1986 C.A.T. 203), it was held that the Tribunal has no powers to entertain a grievance arising prior to 1.11.1982, or to condone delay in such a case. The contention of the applicant that he made his last representation through the Union in January, 1986 and that a final order on it was passed by the competent authority only on 17/18.3.1986 cannot be accepted. In the meeting of Permanent Negotiating Machinery between Additional Chief Personnel Officer and Utriya Mazdoor Union (Railway HQ) held on 17/18.3.1986, an item on 'Unnecessary harassment and injustice' meted out to the applicant was on the agenda. The Personnel Branch stated in that meeting that "APO (HQ) has advised that the case is subjudice". This, by no stretch of imagination, can be said to be a reply to the representation. In any case, repeated representations do not extend the period of limitation (Gian Singh Mann
(1e).

Vs. High Court of Punjab & Haryana and Others - 1980(4) SCC 266; Ajay Shankar Vs. U.O.I. & Others - I (1989) ATLT (CAT) 640). The question of limitation under Section 21 of the Administrative Tribunals Act, 1985 also came up before a Seven-Judge Bench of the Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (1989(3) JUDGEMENT TODAY p. 530). Keeping in view the law laid down by the Supreme Court in that case, there is no scope for either treating this application as having been filed within limitation or for considering a prayer (which was orally made by the learned counsel for the applicant at the time of final hearing of the case) for condonation of delay.

7. In view of the above discussion, we do not consider it necessary to go into the merits of rival contentions of the parties on the reliefs prayed for and hold that the application is not maintainable as it is barred by limitation in accordance with the provisions of Section 21 of the Administrative Tribunals Act, 1985. The application is accordingly disposed of as being not maintainable. Parties to bear their own costs.

24/5/1990
(P.C. JAIN)
MEMBER(A)

B. S. SEKHON
(B.S. SEKHON)
VICE CHAIRMAN

24.5.1990. 24/5/90