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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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Regn. No. CA 533 of 1987

Date of decision: 18.7.91

Chander Bhan

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Applicant

Vs.

Union of India & Others

Respondents.

PRESENT

Shri S.K. Gupta, counsel for the applicant.

None for the respondents.

CORAM

Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).

Hon'ble Shri A.B. Gorthi, Member (A).

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

By this application filed U/s 19 of the Administrative
Tribunals Act of 1985, the applicant prays for the relief;

1) the order dated 12.6.85 be quashed and the applicant be re-
instated in service with consequential benefits.

2. The applicant was appointed as Trains Clerk in the year
1976 and then was promoted as Senior Trains Clerk. He was posted
at Patiala Railway Station. According to the O.A. the applicant
proceeded on casual leave and remained absent for more than two
years. Consequently a departmental enquiry against him was proposed
to be held. According to Annexure 'A' by which the penalty was
imposed, the allegation was that the applicant was found guilty
for remaining absent from duty and the penalty imposed was of removal
from service w.e.f. 18.11.82. This order was passed on 12.6.85.
The applicant preferred an appeal on 12.7.85, which was finally
disposed of on 28.8.85. According to Annexure 'D', the appeal was

Annexure

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rejected. The applicant filed his O.A., before this Tribunal on 13.4.87. The applicant filed a Miscellaneous Petition for the condonation of delay and inter-alia prayed therein that the delay of about eight months in filing the O.A. be condoned and an affidavit was also filed with the application. Section 21 of the Act mandates that the Tribunal shall not admit an application, if the O.A. has not been filed within the period of limitation. However, sub-section 3 of section 21 provides that if sufficient cause is shown to the satisfaction of the Tribunal, then the delay in filing the O.A. can be condoned. The onus of proving the sufficient cause lies heavily upon the shoulders of the applicant. It is settled principle of law that whenever a remedy is being sought on the petition filed beyond limitation, then the applicant has to explain each day's delay. On perusal of this application for condonation of delay there appears to be complete absence of the facts which may indicate that the intentions of the applicant was bonafide, that this fact precluded the applicant from approaching the Tribunal within the period of limitation. In such a situation it cannot be said that there is sufficient cause present for condoning the delay in filing this O.A. The learned counsel for the applicant, Sh.S.K.Gupta placed reliance upon the case of Collector Land Acquisition Anantnag (A.I.R. 1987, Supreme Court, page 1353). It has been held in this case that substantial justice and not the technical considerations should be the touch stone on which the sufficient cause should be judged. Undoubtedly a litigant never stands benefitted where he files application beyond the period of limitation. But negligence on the part of the applicant has to be considered only when sufficient cause is present. In this case Supreme Court has expressed the view that justice oriented approach should be kept in view while evaluating the grounds of sufficient cause for condoning the delay. Undoubtedly these

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guidelines are golden, yet if sufficient cause is not at all present then the condonation cannot be considered. Learned counsel also relied upon the case of Ram Lal Thakur (1990(2) C.A.T. 132) and Bankim Chowdhary and Others (1991(1) C.A.T. page 362). Keeping in view the principles laid down in these decisions, we are clearly of the view that the period of eight months' delay is a long period and in the absence of any sufficient cause of reason, it cannot be condoned.

3. Second contention of Sh.S.K.Gupta is that as the O.A. was admitted by the Tribunal on 22.4.87, the provision of the limitation provided U/s 21 of the Act becomes redundant and once the order of the admission has been passed the point of limitation cannot be looked into again. Without ~~expressing~~ ^{PRN} any opinion upon this contention, we therefore, proceed to examine the case on merits. When the departmental enquiry was held it is apparent from annexure 'A', the applicant failed to submit any defence before the enquiry Officer. In the return the respondents have contended that the applicant has been removed from service after following due process of law and disciplinary proceedings were conducted in accordance with law. Non participation of delinquent from the departmental enquiry does not confer any advantage upon him. When a second notice, by registered post, was sent to him on 12.2.85, in this letter the applicant was directed to participate in the enquiry on 4.3.1985 at 10.00 A.M. But as the applicant did not join the enquiry, the enquiry proceeded ex-parte. The enquiry therefore cannot be said to be against the provisions of law. However, Annexure 'D', the order passed by the appellate authority disclosed that the appellate authority has not passed a speaking order. The appellate order passed by the appellate authority, Annexure 'D', disclosed that the applicant was absent from duty from 18.11.82 i.e. for more than two years. Neither the facts have been narrated in this order nor the grounds of rejection

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have been enumerated . In such a situation the appellate order passed by the appellate authority cannot be sustained.

4. Though this O.A. has been filed beyond the period of limitation, we sustain the arguments of Sh.S.K.Gupta that the O.A. was admitted by this Tribunal. We have therefore, considered the case on merits and allow this O.A. partly. We therefore, set aside Annexure 'D', the appellate order passed by the appellate authority and direct to re-hear the appeal, after giving an opportunity to the applicant of being heard, with regard to his defence. The appellate authority shall thereafter pass a reasonable order. Consequently this O.A. is partly allowed. The appellate authority is directed to reconsider the appeal on merits and shall hear the applicant on 23.9.91, when the applicant shall himself be present before the appellate authority, and shall pass a reasonable order. A copy of this order be sent to the appellate authority. The parties are directed to bear their own costs.


(A.B.GORTHI)
MEMBER(A)


(RAM PAL SINGH)
VICE CHAIRMAN (J)