

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 997/1987.
T.A. No.

199

DATE OF DECISION 31.12.1990.

Shri Mahinder Singh

Petitioner

Shri Malik B.D. Thareja

Advocate for the Petitioner(s)

Versus

U.O.I.

Respondent

Shri B.K. Agarwal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? /
2. To be referred to the Reporter or not ? /
3. Whether their Lordships wish to see the fair copy of the Judgement ? /
4. Whether it needs to be circulated to other Benches of the Tribunal ? /

(AMITAV BANERJI)
CHAIRMAN
31.12.1990.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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REGN. NO. O.A. NO. 997/87.

DATE OF DECISION: 31.12.1990.

Shri Mahinder Singh.

..... Applicant.

Versus

Union of India.

..... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant.

.... Shri Malik B.D. Thareja
Counsel.

For the Respondents.

.... Shri B.K. Agarwal,
Counsel.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice Amitav Banerji,
Chairman)

This Application has been filed on 20.7.1987 by the applicant who has been removed from service in 1986 after a disciplinary proceeding. His appeal was also dismissed. In June, 1986, he made an application to the D.R.M. for a fresh appointment. This was rejected. Treating this to be a second appeal, he claims that the O.A. filed on 20.7.1987 is within limitation. The reliefs claimed in O.A. are not only against the order rejecting his application for fresh appointment, but also take up about the order of his removal from service.

The principal question in this O.A. is one of maintainability; firstly, on the ground of limitation; and secondly, on the question whether it is open to the applicant to come up to this Tribunal against an order rejecting his application for being given a fresh appointment in the Railways.

We have heard Shri Malik B.D. Thareja, learned counsel for the applicant and perused the Application. We have also heard Shri B.K. Agarwal, learned counsel for the Respondents, and have also gone through the written statement and the annexures.

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The following facts are not in dispute:

The applicant was employed in the Railways under Carriage Foreman as Safaiwala. An entry was made by his superiors on which a proceeding was initiated. The applicant appeared in the enquiry. Subsequently, an order of his removal from service dated 5.1.1978 was passed. He stated that this was during the period of emergency and the charge was that he was carrying a bag of cinder which his superiors were also doing. He also stated that subsequently he filed an appeal against the said order on 27.1.1978. The applicant has, however, not revealed that the above appeal was rejected on 25.5.1978 by the Railways. The applicant stated that he had filed an appeal on 27.1.1978 requesting the order of his dismissal from service to be withdrawn. The appeal was rejected by the D.R.M. on 30.7.1981. These facts are also not correct. The applicant has not filed a copy of the said application/ ^{dated 6.6.1986} but it has been filed by the respondents and is marked as Annexure R-2. This clearly states that 'I have been removed from service resulting that my family has been placed at the verge of starvation. Sir, I may be given new appointment if ^{it} cannot be reinstated so to fill the belly of my children'. There is a note at the bottom of this letter which says 'Removed from service in January 1978 and submitted many appeals till date'. It will thus be seen that this was not an appeal against his removal from service. It was a prayer for ^{being} /given him a new appointment. He has, however, filed a copy of the letter written on behalf of the D.R.M. dated 30.7.1986, which reads as follows:

"With reference to your appeal dated 6.6.1986, you are hereby informed that the competent authority has considered your appeal and rejected"

It means that the appeal of the applicant dated 6.6.1986 was considered by the competent authority and he was informed that the competent authority had considered his

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appeal and rejected.

The application dated 6.6.1986, as seen above, is only an application for fresh appointment and not for considering reinstatement. Limitation is sought to be counted from the date of this order which in our opinion is not correct for he had made "many appeals till date". The law on the point is well settled by the Supreme Court in the case of S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10) where their Lordships has laid down that repeated representations or appeals would not extend the period of limitation. Only appeal and representation provided by the statute is to be taken into consideration for calculating limitation. Learned counsel for the applicant argued that he had made several representations but that were not replied to. Even then he had not to wait indefinitely for eight years. He could have sought relief from a judicial forum.// Learned counsel Shri Thareja further argued that a second appeal is provided for the Class IV employees in the Railways. He has cited a circular dated 6.2.1973 which contain circular No. 52-E/O/26-E(D&A), dated 6.2.1973 and Railway Board's letter No. E(D&A)71/RG6-60, dated 24.1.1973. However, it is significant to note that neither the memo of the second appeal nor the date of second appeal has been filed nor there is anything to show whether it was decided or not. Nothing was said as to when the second appeal was decided. Learned counsel, however, argued that the date of 30.7.1986 was the date of disposal of the second appeal, which is not correct for it refers to the letter dated 6.6.1986 and not to any second appeal.

We are, therefore, of the view that the applicant cannot get any advantage for extension of the period of limitation for filing the present Application. The cause


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of action arose in 1986 when his appeal to the Railway authorities was rejected. It is well settled that the cause of action arising before 1.11.1982 is not within the jurisdiction of the Tribunal except where the cause of action is a continuing one.

The removal from service was a one time cause of action and one could take advantage of the first appellate order as well as the second appellate order. But there was no material on the record to show as to when the second appeal was decided. Secondly, the applicant has not been able to substantiate his case that the second appeal was decided in 1986.

On the second point, it may be mentioned that while his application dated 6.6.1986 was for a fresh appointment his grievance is against the order rejecting his above prayer. He has not been able to show any provision of Rule or Law whereby he has ^{been given} right to be appointed in the Railway service. Unless he has a legal right, it is not possible to give any direction in this regard. We are of the view that since there is no material on the record to grant the first relief as prayed for, the same has to be rejected. In the result, therefore, the applicant has not been able to make out any case at all for interference. The C.A. accordingly fails and is dismissed but there will be no order as to costs.


(I.K. RASGOTRA)
MEMBER(A)

 31.12.90
(AMITAV BANERJI)
CHAIRMAN