

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
P.M. CIRCUIT BENCH, NEW DELHI

C.A. NO.1153/90

DATE OF DECISION 17.10.1991

SHRI GIAN CHAND

...APPLICANT

VS.

UNION OF INDIA & C.R.S.

...RESPONDENTS

CO-PRES

SHRI L.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI K.C. MITTAL

FOR THE RESPONDENTS

...SHRI P.S. LALENDRU

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, erstwhile employee of Northern Railways filed this application under Section 19 of the Central Administrative Tribunals Act, 1985 on 24.5.1990 being aggrieved by non disposal of his appeal preferred on 30.3.1981 to the Sr. Divisional Electrical Engineer (Sr. D.E.E.) against the order of removal dt. 21.11.1980. Subsequently, the applicant filed the amended C.A. in the month of May, 1991. In the amended C.A. the applicant assailed the order dt. 13.7.1981 dismissing the appeal of the applicant which was allegedly communicated to him in the month of April, 1991.

2. By way of relief, the applicant has claimed that the inquiry proceedings as well as the impugned order of removal may be quashed and the respondents be directed to reinstate the applicant with all benefits for the said period. Further it is also prayed in the amended OA that the impugned order dt. 13.7.1981, whereby the appeal of the applicant was stated to have been dismissed by Sr.D.E.E., may be quashed.

3. The facts of the case as stated by the applicant in the application are that the applicant was appointed as 'Khalasi' in the Railways on 9.7.1976. The applicant was ordered to work as Chowkider on 6.11.1979 because he could not subscribe to the wishes of Shri Inderjeet Sharma, A.T.F.C., Northern Railway who was doing private business of Peerless Finance and Investment Co. Ltd. He was falsely implicated in a theft case and was suspended. A departmental inquiry was initiated against him. The inquiry Officer was appointed and he held the applicant guilty on the charges framed against him. By the order dt. 21.11.1980, the disciplinary authority A.D.E. imposed a penalty under Rule 6(vii) to (ix) of Railways Servants (D.A.G.M.A.) Rules, 1968 of removal of service. The applicant preferred an appeal against the order of removal to Sr.D.E.E. in March, 1981, but the applicant was not intimated the result of the

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aforesaid appeal and only learnt about the disposal of the appeal in the month of April, 1991 when the said order dated 13.7.1981 passed in the appeal was filed before Hon'ble Tribunal alongwith the reply to the C.R. That the impugned orders of the respondents are against the principle of natural justice and are in violation of Articles-14 and 16 of the Constitution of India. It is stated by the applicant that the Inquiry Officer has not relied upon the material on record and gave the findings on the extraneous considerations.

4. The respondents contested the application and took the preliminary objection that the present application is highly belated and barred by limitation. The respondents stated that no appeal of the applicant dt. 30.3.91 was received by them. However, appeal dt. 28.1.1981 against order dt. 21.11.1980 was received which was disposed of by the order dt. 13.7.1981. The applicant thereafter did not prefer any revision against the order of the Appellate Authority. Applicant did not file any such revision. The respondents also contested the application on merit. It is stated that earlier too, during the applicant's duty as Chowkidar, one aluminium ladder was found missing and chargesheet

dt. 7.11.1979, was served on him and the penalty of withholding increment for two years was awarded to the applicant vide order dt. 4.1.1980. There was subsequently another misconduct by him and Shri Inderjeet Sharma was appointed Enquiry Officer. The Disciplinary Authority on 27.11.1980 passed the order of removal from service.

5. The respondents deny the allegations made against Shri Inderjeet Sharma, Inquiry Officer. It is also stated in the reply that the applicant in his representation addressed to the Secretary, Ministry of Labour, which was received in the Ministry on 5.8.1980, has admitted having received the appellate order dt. 13.7.1981, whereby the appeal of the applicant was dismissed. The allegation made by the applicant in the application that he learnt of the dismissal of the appeal only when the reply of the O.A. was filed by the respondents in the Tribunal, is wrong and incorrect. The respondents also deny that they were pre-determined to penalize the applicant as alleged by him in the application. It is, therefore, prayed that the application be dismissed as barred of time as well as there is no merit in the application.

6. We have heard the learned counsel of both the

parties at length and have gone through the record of the case. The preliminary objection raised by the respondents that the present application is barred by time is not without substance. Section 21 of the Administrative Tribunals Act, 1985 specifically lays down that the Tribunal shall not admit an application 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.

7. The applicant in the unamended application in fact took the stand that though he had preferred an appeal against the order dated 21.11.1980, but the order passed on the appeal was not communicated to him. In the amended application, the applicant has taken the stand that long after the reply was filed by the respondents to the U.A. in the month of April, 1991 that the applicant learnt that his appeal was disposed of on 13.7.1981.

This fact is, however, falsified from the document filed by the respondents (Annexure R-III) which is a representation by the applicant addressed to the Secretary, Government of India, Ministry of Labour bearing the stamp of receipt by Ministry of Labour dated 5-3-1981.

In this representation the applicant has stated"--- was removed from service on 21-11-1980 and my appeal against this punishment was rejected on 13-7-1981".

This fact has not been denied by the learned counsel of the applicant during course of arguments nor has he said anything in the rejoinder to the counter of the respondents. This order has been passed in appeal much before 1-11-1982. The applicant has not filed any such proceedings challenging the appellate order dated 13-7-1981. The appellate order got merged in the order of Disciplinary authority dated 21-11-1980.

The present application has been filed by the applicant on May 24, 1990. In Sukumar Day versus Union of India reported in (1987) 3 ATC P.427 CAT Cal. it has been held that an application against an order made before three years immediately preceding the date of setting up to the C.A.T. is time barred. The C.A.T. can not even

condone the delay in such cases. The Hon'ble Supreme Court in Dr. S. S. Rathore vs. State of M.P. AIR 1990 SC P.10 has clearly laid down the law that the limitation Act, 1963 will not govern the limitation in the procedure to be adopted in deciding the application before the Tribunal in view of the specific permissions made in Sections 20 and 21 in the C.A.T., 1985. The present application is, therefore, hopelessly time barred and is, therefore, rejected. In the circumstances the parties shall bear their own costs.

J. P. Sharma
(J.P. SHARMA) U.X.S.
MEMBER (J)

S. K. Ray
(I.K. RASGOTRA) 1/29/1
MEMBER (A)