

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 2402/90
TAXNOS

199

DATE OF DECISION

<u>Shri M.L. Gupta</u>	Petitioner
<u>Shri S.K. Sawhney,</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri Shyam Moorjani</u>	Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. J.P. Sharma, Member (J)

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


 (I.K. RASGOTRA)
 MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA 2402/90

DATE OF DECISION: 23/3/1991

SHRI M.L. GUPTA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENTS

CORAM

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT SHRI S.K. SAWHNEY, COUNSEL

FOR THE RESPONDENTS SHRI SHYAM MOORJANI, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER(A))

Shri M.L. Gupta, Parcel Clerk, Northern Railway
has filed this application against the following orders:-

- i. No.Vig/367/84/Coml.I/98-A dated 10.12.1985,
imposing on him the penalty of withholding of
increments, raising his pay from Rs.416/to
Rs.428/- in the grade of Rs.330-560 due on
1.12.1986 for a period of three years with
cumulative effect;
- ii. No.Vig/367/84/Comml.I98-A dated 30.1.1986 the
appellate order reducing W.I.P from three years
to W.I.P. one year; and
- iii. No.Vig/367/84/Coml.I/98-A dated 6.8.1986, the
revisionary order passed by the Divisional Railway
Manager, enhancing the penalty of withholding of
increments from one year to two years with the effect of
postponing future increments w.e.f. 1.12.1986.

2. Shri S.K. Sawhney, the learned counsel for the applicant submitted that the Enquiry Officer in his findings and conclusions had stated that the : -

"charge, as levelled against the charged officer has not been proved but he is held responsible for keeping the balance amount of Rs.531/- of M/s. Aggarwal Metals with him against the rules which he should have returned to the party along with the RRS." (page 18 of the paper book).

The learned counsel, therefore, submitted that the penalty has been imposed on the applicant for a charge which was not the subject matter of the enquiry.

At this stage, Shri Shyam Moorjani, the learned counsel for the respondents submitted that the case is barred by limitation and that issue of limitation may be decided before merits of the case are discussed. The learned counsel for the respondents submitted that the punishment was initially imposed on the applicant vide order dated 30.1.1986, reducing the penalty to withholding of increments for one year with cumulative effect. The revisionary authority further amended the penalty vide order dated 6.8.1986 enhancing the penalty to withholding of increments for two years, postponing the future increments w.e.f. 1.12.1986. The final order was passed on 6.8.1986 under the Statutory Rules, while the application has been filed on 19th November, 1990. The learned counsel submitted that the O.A. is clearly barred by limitation under Section 20 of the Administrative Tribunals Act, 1985. He further submitted that even if his subsequent appeal filed before the Chief Commercial Superintendent, Northern Railway rejected vide

order dated 3.2.1987 is taken as the starting point for limitation, the O.A. is not maintainable. Admittedly, the applicant has filed another petition on 23.5.1989 to the President under Rule 31 of Railway Servants (Discipline & Appeal) rules, 1968 but the petition under this has to be submitted in accordance with the instructions contained in Appendix II to the Indian Railway Establishment Code Vol.I (5th Edition).

The learned counsel submitted that Rule 5 in Appendix II deals with Method of Submissions of the Petitions and lays down that:-

"5. Method of submission of petitions--

(1) Every petition shall be submitted to the prescribed authority through the head of the office or department to which the petitioner belongs or belonged, and shall be accompanied by a letter requesting the prescribed authority to transmit it to the President."

Rule 6 in Appendix-II prescribes the circumstances in which the petition may be withheld. In this connection he drew our special attention to Sub-Rule 6 (2) and Sub-Rule 6 (9) which are relevant to the present case:-

"(2) the petition is a representation against an order communicated to the petitioner more than six months before the submission of the petition, and no satisfactory explanation of the delay is given; or
(9) The petition is a representation against an order--

(a) from which the petitioner has already exercised, or has failed to exercise, a right of appeal available under the rules or orders or the contract regulating his conditions of service;

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(b) passed by a competent authority in the exercise of appellate or revisional powers conferred by any rule, order or contract regarding his conditions of service; or"

The learned counsel submitted that first the petitioner has filed the petition addressed to the President without an accompanying letter requesting the prescribed authority to transmit it to the President. Secondly, the same has been filed after the prescribed period of six months from the date of the order communicated to him. Further he has not furnished any satisfactory explanation for the delay in filing the petition. Again the petition is a representation against an order from which the petitioner has already exercised the right of appeal available to him under the Rules. In these circumstances the petition of the applicant addressed to the President cannot be considered as the starting point for limitation. The period of limitation starts from the date the cause of action arose viz. the date when the revisionary authority passed the final order on 6.8.1986. Concluding, the learned counsel submitted that the petition is, therefore, hopelessly time barred and deserves to be dismissed without going into the merits of the case.

4. The learned counsel for the applicant cited the following judicial pronouncements, which are examined hereunder, to controvert that the Suit was time barred.

i) **State of M.P. v. Syed Qamarali 1967 (1) SLR SC 228.**

The case relates to a suit for recovery of pay, filed 7 years after dismissal and the claim for the said pay and allowances was made for three years immediately preceding the date of institution of the suit. Hon'ble Supreme Court held that the suit was not barred by

limitation. The case is distinguishable, as the facts and circumstances are completely different from the case before us.

ii) **P.L. Shah v. UOI & Anr. 1989 (2) SLJ SC 49**

This case relates to payment of subsistence allowance and the Hon'ble Supreme Court had held that non-payment of subsistence allowance gives a cause of action every month and, therefore, the applicant could be provided relief relating to the period preceding three years.

iii) **P. Sangeetha Rao v. UOI 1990 (1) ATJ 120.**

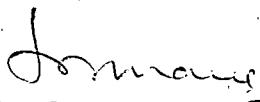
In this case the issues before the Tribunal were whether the applicant can agitate his claim in 1987 for inclusion in the Select List of 1975 and whether consequent to such inclusion in the said list the consequential benefits by way of payment of salary and allowances etc. could be claimed. While rejecting the claim for inclusion of the applicant's name in the Select List of 1975 and consequential benefits, the Tribunal observed that while the Tribunal had taken a consistent view that cause of action which arose before 1.11.1982, would be not within the purview of the Tribunal. Exception could be made only when there is a recurring cause of action e.g. payment of salary or pension.

The facts and circumstances of all three cases are distinguishable from the case before us.

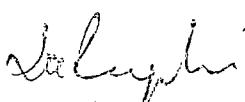
5. We have heard the learned counsel of both the parties and considered the rival contentions on the aspect of limitation. The penalty of withholding of increments was imposed on the applicant vide order dated 10.12.1985 and his appeal was rejected by the appellate

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authority, simultaneously modifying the penalty imposed on 30.1.1986. The revisionary order was passed by the competent authority on 6.8.1986. Thus the case of the applicant was dealt with in accordance with the provisions of Railway Servants (Discipline & Appeal) Rules, 1968 including the provisions relating to appeal and the revision provided in the said rules. The financial loss caused by a penalty imposed after following the due process of law cannot become a plea for sustaining the cause of action on the ground of sufferance of recurring financial loss. The recurring nature of financial loss as a measure of penalty after having followed the due process of law does not fall in the same category, as non-payment of salary or denial of pension or subsistence allowance. The plea of recurring financial loss cannot save limitation. The provisions made under Rule 31 of the Railway Servants (Discipline & Appeal) Rules, 1968 are also not applicable in the case and keeping in view Rule 9 (a) of the instructions contained in Appendix II to the Indian Railway Establishment Code Vol. I, the representation made under Rule 31 of Railway Servants (Discipline & Appeal) Rules, 1968 cannot be accepted as giving a fresh lease of life to the cause of action. We are, therefore, of the view that the OA is barred by limitation and the same is accordingly dismissed with no order as to costs.


(J.P. SHARMA)

MEMBER(J)


(I.K. RASGOTRA)

22/3/91
MEMBER(A)