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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn No. OA 2453 of 1990

Date of decision: 18.3.91

Kuldeep Singh Applicant

Vs.

Union of India & Others Respondents.

PRESENT:

Shri B.S. Mainee, counsel for the applicant.

Shri S.N. Sikka, counsel for the respondents.

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Hon^{ble} Justice Shri Ram Pal Singh, Vice-Chairman (J).

Hon^{ble} Shri P.C. Jain, Member (A).

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

J U D G M E N T

By this application U/s 19 of the Central Administrative Tribunal Act, 1985 (hereinafter called Act), the applicant has challenged the order of the respondents by which the penalty of reduction in his pay by one stage was imposed, for a period of one year, for committing misconduct and failure to maintain absolute integrity and devotion to duty in contravention of provisions of Rule 3 (1)(i)(ii) of the Railway Service (Conduct) Rules of 1966.

2. The applicant was appointed as Chargeman of Railway Electrification, South Eastern Railway, Calcutta on 4.9.59. He was subsequently promoted as Gazetted Officer in Group 'C' (Class II) in 1975. He was further promoted as Dy. Project Manager in the Senior scale in the year 1979. Ultimately he was appointed as Senior Electrical Engineer (Construction) Northern Railway, Minto Bridge from 13.1.81. While working at Mathura, he was posted as Senior Stores Officer with effect

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from 23.11.82. On 8.9.86 the applicant was charged as mentioned in annexure A 1. These charges relate to the period while he was working as Senior Stores Officer. The applicant denied the charges and replied effectively to that. During departmental enquiry the applicant filed his defence written brief on 27.10.87. Thereafter the enquiry Officer submitted his report to the Ministry of Railways and the herein above noted penalty was imposed. The applicant preferred an appeal on 15.4.89 which is marked as annexure A 6. According to the applicant the appeal is still pending adjudication and no action has been taken thereupon. According to the applicant, he submitted his representation also to the Secretary Railway Board on 8.9.89, but that representation has not yet been decided. According to him as a result of the penalty imposed with regard to the reduction of his pay had adversely affected his pension and hence, this petition.

3. The applicant also filed MP 70/91 for condoning the delay in filing this petition beyond the period of limitation. According to him the penalty was imposed on 28.2.89, and he preferred an appeal on 15.4.89. The period of limitation provided U/s 21 of the Act for filing an application U/s 19 of the Act, is one year from the date of the passing of the impugned order of punishment. The period of one year expired on 28.2.90. But as his appeal was filed on 15.4.89, this application U/s 19 of the Act should have been filed on or about 15.10.89 i.e. after lapse of six months. This application was filed by the applicant on 22.11.90. The application

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appears to have been filed after the period of limitation expired, hence it is barred by limitation.

4. The stand taken by the respondents is that, as the application has been filed beyond the period of limitation, the same should be dismissed. We shall therefore confine ourselves only to the point of limitation. The question to be decided is whether sufficient cause has been shown by the applicant and whether the delay deserves to be condoned in accordance with the principles of law or not. The first stand of the applicant is that the cause of action is perpetual and hence the application has been filed within the period of limitation prescribed. The other stand taken by the applicant is that after filing the appeal and representations he has been sending reminders to the respondents, but the appeal or representation was not decided by them. According to him assurances were being given constantly by the respondents that his appeal shall be decided very soon. Hence, he was waiting for that time. Further stand taken by the applicant in his MP is that, he has not been keeping good health and has been waiting for the decision of the respondents. The particulars with regard to his health, in not preferring application within the period of limitation, do not elaborate as to what was the ailment from which he was suffering which prevented him from availing the remedy within the period of limitation. What type of treatment for his ailment the applicant was getting, has also not been described in this application. In para 2 of his affidavit filed in support of his application for Condonation of delay, the applicant has stated that he had not been keeping good health and could not think of undergoing rigours of court proceedings till the final decision was given on the appeal of applicant and

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as such had been reminding the respondents to dispose of his appeal and representation. He further averred in para 3 that the delay in filing the application was not intentional and was beyond the control of the deponent. None of these statements of the applicant contain any particular which may enable us to assess whether the cause shown by the applicant comes within the orbit of sufficient cause for condoning the delay, or not. The period of limitation prescribed U/s 21 of the Act provides sufficient time to any delinquent to challenge the impugned order before this Tribunal. Sub-section 3 of section 21 of the Act prescribed that the applicant had to satisfy the Tribunal with regard to the sufficient cause and it is only then the Tribunal has to adjudicate whether sufficient cause for condoning the delay has been shown or not. It is settled that in dealing with the question of condoning the delay, the parties seeking relief has to satisfy the court that he had sufficient cause for not making the application within the prescribed time and that explanation has to cover the whole period of delay. It is also settled that period of limitation is not revived by making repeated departmental representation. The running of the limitation cannot be stopped, because the law with regard to limitation is very clear that unless sufficient cause is shown to the satisfaction of the Tribunal, the delay in filing the application cannot be condoned. Undoubtedly this Tribunal has discretion, but that discretion has to be exercised judicially on the facts and circumstances of each case. Undoubtedly that discretion had to be exercised for advancing the cause of substantial justice yet it does not absolve the applicant from the heavy burden of showing sufficient cause.

5. A mere unsupported plea of sickness is not a

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sufficient cause for condoning the delay. It has to be seen whether the effect of sickness was such that it prevented the applicant from filing the application within the period of limitation. The law of limitation demands diligence in seeking the remedy. This command of law has to be strictly adhered to. Lack of diligence on the part of a party will automatically deprive him from availing the justice. The lapse of time always creates right to the other party and that is why it is incumbent upon the Tribunal to enforce the law of limitation strictly according to the principles of justice. A litigant who is not vigilant about his rights must explain everyday's delay in order to avail himself the remedy from the Tribunal. The applicant's failure to satisfy the court that he has sufficient cause for not making the application within the period of limitation will deprive him of getting any remedy. Each and everyday's delay must be explained (A.I.R. 1977 Supreme Court 2221).

6. We shall have to conclude, in the light of the above discussion that this application filed U/s 19 of the Act has been filed beyond the period of limitation and the applicant has failed to bring out sufficient cause for condoning this delay. Consequently this application has to be dismissed.

7. Before parting we may point out that the appeal of the applicant is still pending before the appellate authority and the applicant, if so advised can avail a fresh period of limitation from the date of decision on his appeal. And then he can again seek justice from this Tribunal. On

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enquiry from the counsel of the respondents, he contended that the appeal is still lying with the respondents for adjudication only because this application has been filed before the Tribunal. Nothing shall prevent the respondents from deciding the appeal of the applicant after the dismissal of this application. Parties are directed to bear their own costs.

18/3/1991
(P.C. JAIN)
MEMBER (A)

18.3.91
(RAM PAL SINGH)
VICE CHAIRMAN (J)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

R.A. NO. 116/1991 in
O.A. NO. 2463/1990

DECIDED ON : 20.8.91

KULDIP SINGH

... REVIEW APPLICANT

-VERSUS-

UNION OF INDIA & ORS.

... RESPONDENTS

O R D E R

Hon'ble Shri P. C. Jain, Member (A) :

The applicant in OA-2463/90 has filed this review application under section 22 of the Administrative Tribunals Act, 1985 against the judgment delivered on 18.3.1991.

2. The Registry has raised a doubt as to whether this review application is within limitation or not. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 lays down that the petition for review has to be filed within thirty days from the date of receipt of a copy of the order of which the review is sought. The review applicant has contended that a copy of the aforesaid judgment was received by him on 29.3.1991. This R.A. was filed on 30.4.1991. The date of receipt of a copy of the judgment is to be excluded for computing limitation and as such, the review application is within limitation.

3. The main grounds for seeking review are that an error apparent on the face of the judgment has crept in the judgment because the authorities for condonation of delay cited on behalf of the applicant in the O.A. have not been considered, and that no order has been passed directing the respondents to decide the appeal within a fixed period as

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had been prayed for by the respondents in their reply to the O.A. We have carefully considered these contentions and are of the view that these are not tenable. In view of the seven-Judge judgment of the Supreme Court in the case of S. S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) on the point of limitation, it was not necessary to discuss in the judgment the authorities cited by the applicant. The contention of the applicant in the O.A. that his cause of action therein was a recurring and continuing one, has already been dealt with in the judgment sought to be reviewed. The contention of the review applicant that the Tribunal should have given a direction to the respondents to decide his appeal against the impugned order of punishment within a fixed time also has no force partly because this aspect of the matter has been dealt with in para 7 of the judgment and partly because if the OA was held to be barred by limitation, the Tribunal did not have jurisdiction to give any directions.

4. In view of the foregoing, we see no merit in this review application, which is accordingly rejected by circulation.

(P. C. JAIN)
MEMBER (A)

29/8/91
20.8.91