

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

M.P. No.3632/91 in

O.A. No.2741/91

04.02.1993

10

Shri Shyam Kishore Pathak

...Applicant

Vs.

General Manager, Northern Railway...Respondents
and Another

CORAM :

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

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri S.K.Bisaria

For the Respondents

...None

1. Whether Reporters of local papers may be
allowed to see the Judgment?

2. To be referred to the Reporter or not?

J.P. Sharma
(J.P. SHARMA)
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

M.P. No.3632/91 in
O.A. No.2741/91

04.02.1993

Shri Shyam Kishore Pathak ...Applicant

Vs.

General Manager, Northern Railway...Respondents
and Another

CORAM :

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

For the Applicant ...Shri S.K. Bisaria

For the Respondents ...None

JUDGMENT

(Delivered by Hon'ble Shri J.P. Sharma, Member (J))

The applicant was appointed as Khallasi on daily basis w.e.f. 23.3.1980 in the Northern Railway under the Chief Electrical Engineer (Construction) and he was placed as a Khallasi w.e.f. 23.9.1980 in the grade of Rs.196-232. The applicant worked in that capacity upto 24.9.1983, but the applicant was arrested in a criminal case on 11.9.1983. His grievance is that he was not allowed to join his duty w.e.f. 12.9.1983 and on 24.9.1983, he was orally informed that he has been discharged from service on account of the pending criminal case. The applicant after his acquittal finally by the order of the learned Magistrate dt.20.12.1988, made a representation on 20.1.1989 to the Deputy Chief Electrical Engineer, Northern Railway that he may be put back on duty, but to no effect and hence the present application

...2...

6

under Section 19 in which the applicant has prayed for the grant of the following reliefs :-

"That the order of oral discharge from service of the applicant as Khallasi be quashed, applicant be instated back in service as Khallasi with all consequential benefits till the date of joining, or may pass any other order or orders as may deem fit and proper."

We have heard the learned counsel for the applicant on the point of admission and limitation. In this OA, the applicant has prayed for the grant of the relief that the order of oral discharge from service of the applicant as Khallasi be quashed and the applicant be reinstated as Khallasi with all consequential benefits till the date of joining. Firstly, the applicant has not filed any document to show that he was discharged from the Railway service on account of the criminal case. According to his own allegation, he was not allowed to join the duty as Khallasi w.e.f. 12.9.1983. In fact the cause of action in case of the applicant arose from that date. When the applicant has already worked from 1980 as alleged by him and he was working in a regular pay scale of Rs.196-232 even on the alleged date of discharge, then he should have assailed that order within the limitation in the competent court. The applicant has not done so. Even considering the case of the acquittal of the applicant by the criminal court by the order of the learned Magistrate dt.20.12.1988, the present application is barred by limitation as it has been filed on 30.10.1991. Though the

...3...

applicant has made a belated application, yet from the date of the representation also which the applicant made for the first time in January, 1989, the present application is barred by time being beyond one and a half years of the period which is prescribed under Section 21(1) of the Administrative Tribunals Act, 1985. The second representation by the applicant through the lawyer cannot extend the period of limitation and it has been specifically held in the case of S.S.Rathore Vs. State of MP, reported in AIR 1990 SC p-10. Thus from the own allegations of the applicant, the present application is hopelessly barred by time.

Even though the applicant has moved MP 3632/91 for condonation of delay, the applicant has not given cogent or sufficient reason to assail his oral discharge from service w.e.f. September, 1983. The averment of the applicant in the application that he orally approached the respondents to reinstate him in service is not substantiated at all. There is no explanation even in this application as to why the applicant has not come within time even after the judgement of the acquittal passed in the criminal case in his favour by the order dt.20.12.1988. What is averred in this application is that the applicant could not move this Hon'ble Court earlier and there was no mala fide on the part of the applicant, but there is no explanation of the delay. What is stated is that the delay caused in filing the OA is inadvertent, bona fide and unintentional. But what prevented

...4...

↓
c



the applicant in approaching civil court or the Tribunal without delay has not been mentioned. The applicant claims the relief for reinstatement since September, 1983.

We have considered the argument of the learned counsel at length, but he could not convince as to how the applicant was prevented from approaching the competent forum earlier after his oral discharge from service after September, 1983 or subsequently after his acquittal by the criminal court in December, 1988. Since there is no explanation of delay which is more than 8 years, so the petition for condonation of delay is rejected on that account.

In view of the above facts and circumstances, the present application is hopelessly barred by time and as such, is dismissed at the admission stage itself leaving the parties to bear their own costs.

For name.

(J.P. SHIRMA) 4.2.93
MEMBER (J)

4/2/93
(P.C. JAIN)
MEMBER (A)