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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1073/1991. DATE OF DECISION: 10-5-1991.

Rajan Sardha APPLICANT.

V/s.

Union of India & Ors. RESPONDENTS.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri V.P. Sharma, counsel for the applicant.

(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks quashing of the Memorandum dated May, 1986 (Annexure A/6), by which he was served with a Statement of articles of charges as also a statement of imputation of misconduct in support of each article of charge; Enquiry Report dated 23.4.1987 submitted by the Enquiry Officer in connection with the above Memorandum of charges (Annexure A/7); the punishment order dated 1.6.1987 (Annexure A-1), by which he was removed from service; and order dated 14.9.1987 passed on his appeal against the punishment order (Annexure A-2). He has also prayed that the applicant be deemed in continuous service as if the impugned order of removal had not been passed at all, with all the consequential relief such as back wages.

2. When the O.A. came up for admission, we heard the learned counsel for the applicant, particularly on the point of limitation.

3. In para 3 of the O.A., the applicant has stated that he is filing the application along with the Miscellaneous Petition for condonation of delay on the grounds which were beyond his control. In M.P. No. 1372/91,

which is for condonation of delay, it is stated that he was to file the O.A. upto 8.3.89 but could not do so as he was in financial distress. It is further stated that his father died after a long sickness on 2.11.90 and the family of the applicant was facing "the meal problem and question of filing his redressal under Section 19 of the Tribunal does not arise at all". It is further stated that he could not file the application through Free Legal Aid Committee as such facilities are not available in the C.A.T. cases. The delay is said to be not intentional and his case is stated to be on strong legal footing on merit. In sum, the delay in filing the O.A. is attributable to unavoidable circumstances, poverty and long sickness of his father. He also cited the following two cases: -

(1) M/s. Shiv Shanker Dal Mills etc.
v. State of Haryana and Others etc.
(AIR 1980 SC 1037).

(2) Collector, Land Acquisition, Anantnag and Anr.
v. Mst. Katiji and others.
(AIR 1987 SC 1353).

It may also be stated here that the learned counsel for the applicant fairly conceded at the bar that the O.A. was barred by limitation, but the delay should be condoned as prayed for in the petition for that purpose, and which has been supported by an affidavit (O.A. was filed on 30.4.1991 but the affidavit in support of the petition for condonation of delay was filed only on 3.5.1991).

4. We have given a very careful consideration to the contentions of the applicant and the submissions made by his learned counsel before us.

5. Admittedly, the Memorandum of charge was issued in May, 1986 and the relief in connection with the quashing of the same is clearly hopelessly time-barred and there is nothing in the M.P. with regard to delay with respect to this impugned document. Similarly, the report of the

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Enquiry Officer is dated 23.4.1987 and was received by the applicant at least before 15.7.1987, as the same is referred to in his appeal dated 15.7.1987 (Annexure A-3). A copy of the Inquiry Report was sent to him along with order dated 1.6.1987. The M.P. for condonation of delay does not throw any light on the delay in this regard also, and the prayer in / is thus clearly hopelessly barred by limitation. Again, though the applicant has stated that he was not communicated any order of the appellate authority, yet Annexure A-2 shows that the order on his appeal was communicated to him vide letter dated 14.9.87 and the same was duly received by him on 6.10.1987. He again appealed against that order. The date of his appeal has not been indicated in the application, but the copy of the same is shown to be dated 1988. This appeal appears to have been considered as a Review and orders thereon were passed by the Reviewing Authority and communicated to him vide communication dated 9.3.1988 (Annexure A-5). Thus, the O.A. should have been filed within one year of the order dated 9.3.88, but it has been filed with a delay of more than two years.

6. Admittedly, the Tribunal has power to condone delay with reference to limitation prescribed in sub-sections (1) and (2) of Section 21 of the Administrative Tribunals Act, 1985, but the applicant has to satisfy the Tribunal that there was sufficient cause for not making the application within the prescribed period. The general requirement is that each day's delay has to be explained. Even if this requirement is not considered in extreme technical sense, the applicant is duty bound to show sufficient, valid and specific reasons with reference to the overall time involved due to each reason. The ground

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of financial distress is too vague to be given any weight. Similarly, though we are not aware of the correct position in regard to the type of cases in which Free Legal Aid Committee renders free legal advice, yet we have come across cases which have been filed in the Tribunal through this mechanism. The father of the applicant is stated to have died on 2.11.90, but the applicant in the O.A. is seeking relief in respect of orders passed in May, 1986, April, 1987, June, 1987, September, 1987 and March, 1988. No evidence in regard to the prolonged sickness of his father has been filed. There is also nothing to show that the applicant alone was responsible for the care of his sick father, or either there was no other earning member in the family or there was no other source of income. We are, therefore, of the view that the M.P. for condonation of delay does not disclose any sufficient cause to enable us to exercise the powers vested in the Tribunal to condone the delay.

7. In Collector, Land Acquisition, Anantnag's case (*supra*), a two-Judge Bench of the Hon'ble Supreme Court did emphasise the desirability of adopting a liberal approach in the matter of limitation. It may, however, be stated that in that case, the delay was only of four days and was on the part of the official respondents (appellants in the civil appeal) and their Lordships emphasised that simply because the delay was on the part of the State authorities, it was no ground for rejecting the prayer for condonation of delay. In the case of M/s. Shiv Shanker Dal Mills etc. (*supra*), a two-Judge Bench of the Hon'ble Supreme Court went into the question of nature and extent of writ jurisdiction and powers to pass equitable orders. In the case before us, we have to be guided by the provisions of Section 21 of the Act *ibid*, which

stipulates that a Tribunal shall not admit an application unless it is filed within the limitation prescribed therein. In view of this specific provision, these proceedings are not comparable as such with the proceedings in the nature of writ petition where no specific limitation is prescribed. The Tribunal also does not have any inherent powers. Moreover, Section 21 of the Act *ibid* was considered by a seven-Judge Bench of the Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh (AIR 1990 SC 10) and relevant observations of the Supreme Court in that case are reproduced below: -

"21. It is appropriate to notice the provision regarding limitation under S:21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

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8. In view of our findings on the merits of M.P. for condonation of delay, the provisions of Section 21 of the Act, and the law laid down by the Hon'ble Supreme Court in S.S. Rathore's case (supra), we hold that the O.A. is not maintainable as the same is barred by limitation and is rejected as such.

C. Jain (15/5/1991)
(P.C. JAIN)
Member (A)

Ram Pal Singh
(RAM PAL SINGH)
Vice-Chairman (J)