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Central Administrative Tribunal
Principal Bench

O.A. 2637/93
with
M.A. 3654/93

New Delhi this the 27th day of July, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Rajender Singh,
S/o Shri Ramji Lal,
Ex. Approved Candidate/Loco Cleaner,
Western Railway,
under Loco Foreman,
Gangapur City.

.... Applicant.

By Advocate Shri B.S. Maine.

Versus

Union of India through

1. The General Manager,
Western Railway,
Church Gate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Kota.
3. The Senior Divisional Mechanical Engineer,
Western Railway,
Kota.

.... Respondents.

By Advocate Mrs. B. Sunita Rao.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who was working as Khalasi with the respondents is aggrieved by the order passed by the respondents dated 15.11.1991 removing him from service with immediate effect.

2. The applicant has filed MA 3654/93 praying for condonation of delay in filing this application. O.A. has been filed on 6.12.1993. The applicant has submitted that after the communication of the impugned order dated

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15.11.1991 to him, he has submitted an appeal in December, 1991 (A-6) in which it is noticed that the actual date has not been given. According to him, since no reply was received from the appellate authority even after waiting for about six months, he submitted a Review petition to the General Manager, Western Railway, Bombay on 29.6.1992 (A-7) in which he had made a complaint about the non-decision of his appeal. Learned counsel for the applicant has contended that even the Review petition has not been disposed of by the revisional authority, hence the applicant has been forced to file this O.A. after having waited for sufficient time. In this application, the applicant has also stated that he being a poor man could not rush to the court without waiting for the orders of the competent authority and exhausting the remedies under law. For these reasons, he has prayed that the delay in filing the application may be condoned and the matter may be decided on merits. Although no separate reply has been given to the M.A. by the respondents, they have taken a preliminary objection on the ground that the application is barred by limitation which has also been reiterated by their learned counsel, Mrs. Sunita Rao.

3. On the merits of the case, the learned counsel for the applicant has taken a number of grounds. Firstly, he has submitted that the memorandum of charges was incomplete, neither the list of documents nor the list of witnesses were served on the applicant. He has submitted that no enclosures as stated in the Annexure to the charge memo have been given and he, therefore, submits that the charge-sheet is illegal.

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4. Another ground taken by the applicant is that the Inquiry Officer has held that the charges against the applicant have been proved by relying on certain documents i.e. the statement of PWI/NR/Shikohabad dated 1.2.1991 and Senior DME-KIT letter dated 10.2.1988 that the service card produced by the applicant was bogus as he has not served anywhere in Railways previously. He has submitted that without calling these officers as witnesses, the Inquiry Officer could not have relied upon these documents. He has also contended that the Inquiry Officer has started the inquiry by examining the charged official as the first witness, which he states is illegal. However, since another ground taken by the applicant himself is that no other witness has been called in the inquiry, this ground does not have any force. He has submitted that the Inquiry Officer has shifted the onus of proof on the applicant which again is wrong. He has drawn our attention to the findings of the Inquiry Officer's report dated 18.5.1998 in which he has stated that there is an inherent lacuna in the charge-sheet wherein the verification report of the PWI-NR/Shikohabad dated 15.2.1988 has not been listed nor the PWI has been cited as a witness to support his statement dated 1.2.1991. Learned counsel has submitted that after having stated that there is an inherent lacuna, no reasons have been given as to why the disciplinary authority has differed from the findings. However, the Inquiry Officer has stated that it is evident that the charges levelled against the applicant have been proved as testified by PWI-NR-Shikohabad's letter dated 1.2.1991 and Sr. DME's letter dated 10.2.1988 that the service card produced by the applicant was bogus. The learned counsel has relied on a number of judgements ~~and~~

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~~Supreme Court~~ in Joseph Suleman Vs. Union of India & Ors. (SLJ (1999) (1) 239), Arvind Kumar Vs. Union of India (SLJ 1998(1) CAT 536), B.C. Chaturvedi Vs. Union of India & Ors. (JT 1995 (8) SC 65), P.S. Gopala Pillai Vs. Union of India and Ors. (SLJ 1993 (1) CAT 171), Shanker Singh Vs. Union of India through General Manager & Ors. (SLJ 1998(1) CAT 443), Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & others (ATJ 1999(2) 208), Umesh Rai Vs. Union of India & Ors. (ATJ 1999(2) 86) and Punjab National Bank & Ors. Vs. Shri Kunj Behari Misra and other connected case (ATJ 1998 (3) SC 537).

5. The respondents in their reply have taken a preliminary objection that the O.A. is barred by limitation. They have also submitted that they have neither received a copy of the appeal nor the Revision petition said to have been submitted by the applicant in December, 1991 and 29.6.1992, respectively. Mrs. Sunita Rao, learned counsel has submitted that in the circumstances, the application is barred by limitation and M.A. 3654/93 for condonation of delay does not also give sufficient reasons to allow it, as the applicant has only relied on these two petitions.

6. On merits, learned counsel has submitted that there has been no lacuna in the inquiry held against the applicant, on the ground that he has submitted bogus certificate of prior service with the respondents. She has stated that the memorandum dated 5.10.1988 was served upon the delinquent employee and the only relied upon document, that is false casual labour service card on which

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delinquent employee obtained the service fraudulently was clearly mentioned in the list of documents enclosed. She has also submitted that the Inquiry Officer himself had specifically mentioned in the findings that the applicant was supplied with original copies of labour service card and report of PWI/NR-Shikohabad and was also shown his original service card and LTI register of CWS/AEB, that is, all the relied upon documents were made available to him. They have submitted that no witnesses have been cited in the charge memo as the same was based on official documents i.e. the original casual labour service card, LHTI and AEB Registers and letter of PWI/NR-Shikohabad which the applicant had been shown.

Mrs. Sunita Rao, learned counsel, has fairly submitted that the Inquiry Officer has himself stated in his report that there is an inherent lacuna in the charge-sheet that while the verification report dated 15.2.1988 has not been listed but since the relied upon documents have been produced and shown to the applicant, there is no infirmity in the inquiry proceedings. She has drawn our attention to the portion of the Inquiry Officer's report in which he has stated that "in addition. the LHTI register of CWS/AEB as demanded by the accused was also shown to him. His name appears at S. No. 15 of Page No. 49 of the Register. He has also been given a copy of PWI NR/Shikohabad letter No. E/3/CL dated 1.2.1991". In the circumstances. learned counsel has submitted that the relied upon documents, though not listed originally in the charge memo, have been given/

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shown to the applicant on which the Inquiry Officer had rightly concluded that the charge was proved that the service card was bogus. Learned counsel has, therefore, submitted that as the principles of natural justice have been fully complied with and the applicant was fraudulently trying to get employment with the respondents by producing a bogus service card, the Tribunal should not interfere in the matter.

7. The applicant has filed rejoinder, more or less reiterating the facts given in the application and we have also heard Shri Maine, learned counsel, in reply.

8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. In this case, the penalty order of removing the applicant from service was passed on 15.11.1991.

According to the applicant, he had filed an appeal against this order sometime in December 1991, to which he had not received any reply. The contention of the learned counsel for the applicant is that because after waiting for a reasonable period of six months he had filed a Review petition to the General Manager, Western Railway on 29.6.1992, which was also not replied to by the respondents, therefore, the O.A. filed on 6.12.1993 is within the period of limitation. This argument is not tenable. Under section 21(1)(b) of the Administrative Tribunals Act, 1985, when the applicant had not received reply to the appeal said to have been filed by him, he could have filed the application before the Tribunal within 18 months which he has failed to do. Rule 25(2) of the Railway Service (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the 1968 Rules') provides as follows:

"(2) No proceeding for revision shall be commenced until

(i) the expiry of the period of limitation for an appeal, or

(ii) the disposal of the appeal, where any such appeal has been preferred;

Provided that xxxx"(^{not relevant})

In this case, the applicant has stated that he had filed an appeal, which, however, the respondents have denied having received. Having regard to the provisions of Rule 25(2)iii) of the 1968 Rules, since according to the applicant, he had filed an appeal to the respondents he could not have proceeded to file a Revision petition until after the disposal of the same. In any case, the applicant has not stated that he had sent even a single reminder to the respondents to dispose of the appeal at any stage. The cause of action has arisen on 15.11.1991 when the removal order was passed. In the circumstances, we are unable to agree with the contentions of Shri B.S. Maine, learned counsel, that this application is within the period of limitation because the applicant had filed a Revision petition on 29.6.1992 and thereafter filed this O.A. within six months. In other words, merely filing the Revision petition on 29.6.1992, when according to the applicant's own admission the appeal filed earlier by him was still pending, cannot have the effect of extending the period of limitation as provided under Section 21 of the Administrative Tribunals Act. 1985. In this case, it is also relevant to note that the respondents have not only submitted that the application is barred by limitation but during the course of hearing Mrs. Sunita Rao, learned counsel, has also categorically stated that

neither the appeal nor the Revision petition which the applicant states he has submitted have been received by the competent authorities.

10. In the rejoinder, the applicant has merely denied the submissions made by the respondents regarding limitation and he has also not enclosed any documents to show that the appeal and Revision petitions have been received by the respondents. The copy of the appeal said to have been sent by the applicant to the respondents in December, 1991 (Annexure A-6) does not also give the date or bear any signatures of the person receiving it. In the facts and circumstances of the case, the contention of the learned counsel for the applicant that MA 3654/93 has been filed as a matter of abundant caution as there is in fact no delay in filing the O.A. after the Revision petition was filed is untenable in law having regard to the provisions of Rule 25(2) of the 1968 Rules read with Section 21 of the A.T. Act. Apart from this, we find the other ground taken by the applicant in the M.A. that as he is a poor person he could not rush to the court without waiting for the orders of the competent authority is not a sufficient ground to condone about seven months delay. The Supreme Court in **R.C. Samanta Vs. Union of India & Ors.** (JT 1993(3) SC 418) has held that delay deprives the person of the remedy available in law that a person who has lost his remedy by lapse of time loses his right as well. (See also **State of Punjab Vs. Gurdev Singh** (1991 (17) ATC 287) and **State of Karnataka and Ors. Vs. S.M. Kotrayya and Ors.** (1996 SCC (L&S) 1488).
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11. The O.A. suffers from laches and delay and is clearly barred by limitation and is liable to be dismissed on this ground alone. We also find no good ground to allow the prayer for condonation of delay and accordingly MA 3654/93 is rejected.

12. Apart from the ground of limitation, we also find no merit in the O.A. justifying any interference in the matter. From the records of the departmental inquiry held against the applicant, it is seen that the charge against the applicant was that he had produced a casual labour card issued by PWI/NR-Shikohabad to CWS/AEB with the intention to get employment in Railways who had engaged him as casual labour on 7.6.1984. It is stated that on verification, the said card was found to be false. It is also clear from the documents on record that the respondents have given a reasonable opportunity to the applicant to put forward his case. The contention of the learned counsel for the applicant that because no witnesses were called, the proceedings are vitiated is not warranted in the facts of the case. Similarly, as there were no other witnesses, the Inquiry Officer had examined the charged official first which cannot be faulted. The relied upon documents i.e. the letter from PWI-NR-Shikohabad dated 1.2.1991, had been given to him and he had also been shown the relevant LHTI register, as submitted by the learned counsel for the respondents. In the circumstances, we do not find any procedural infirmity in the conduct of the inquiry which can be stated to have caused any prejudice to the applicant which calls for quashing of the impugned orders. (See observations of the Supreme Court in **State Bank of Patiala & Ors. Vs. S.K. Sharma** (JT 1996(3) SC 722).

The judgement of the Supreme Court in **Union of India & Ors. Vs. M. Bhaskaran** (1996(1) SC SLJ-1) is also relevant to the facts in this case. In this case, the Court has held:

"The short question involved in these three appellants is as to whether the respondent workmen who had obtained employment in Railway service run by appellant-Union of India, on the basis of bogus and forged casual labour service cards could be continued in Railway service once such fraud was detected by the Railway authorities.....The removal orders could not have been faulted by the Tribunal as they were the result of the sharp and fraudulent practice on the part of the respondents. Learned counsel for the respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time of fraudulent practice would not get any sanctity. The appellate authorities having come to know about the fraud of the respondent in obtaining employment as casual labourers, started departmental proceedings years back in 1987 and these proceedings have dragged on for number of years. Earlier removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand fresh removal orders were passed.....Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principle of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted".

(Emphasis added)

13. In the present case, as already mentioned above, on perusal of the relevant documents on record, we are unable to come to the conclusion that the applicant has not been given reasonable opportunity to defend his case or there has been any violation of ^{the} principles of natural justice which warrants any interference in the matter.

We have also seen the other judgements relied upon by the learned counsel for the applicant, but in the light of the Supreme Court's judgements, referred to above, we do not find that those judgements are applicable or assist the applicant in the facts of the present case.

12. For the reasons given above, this application fails both on the grounds of limitation as well as on merits. The O.A. is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)

Member(J)


(V. Ramakrishnan)
27/7/1990
Vice Chairman(A)

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