

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

(THIS THE <sup>10</sup> DAY OF <sup>Sept</sup> 2009)

PRESENT:

**HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J**  
**HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A**

**ORIGINAL APPLICATION NO. 1076 OF 2005**  
(U/s, 19 Administrative Tribunal Act. 1985)

Ismail Khan aged about 47 years son of Shri Ibrahim Khan  
resident of behind Divisional Railway Manager's Office, Qr. No. K-  
489, Railway Colony, Jhansi.

.....Applicant

By Advocate: Shri R. K. Nigam

Versus

1. Union of India, through General Manger, North Central  
Railway, Allahabad.
2. Assistant Mechanical Engineer (Cog.) Divisional Railway  
Manager's Office Complex, North Central Railway, Jhansi.  
(Disciplinary Authority)
3. Divisional Mechanical Engineer (O & C), Divisional  
Railway Manager's Office Complex, North Central  
Railway, Jhansi. (Appellate Authority).

..... Respondents

By Advocate: Shri A. Tripathi.

**ORDER**

**(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)**

Heard learned counsel for the parties. Perused the pleadings.  
Preliminary objection raised on behalf of the Respondents regarding  
maintainability of the OA on the ground of alternative remedy by  
filing departmental appeal under statutory Rules.

2. Counsel for the applicant, however, referred to the photocopy of the alleged memo of appeal marked Annexure- IV to the OA (Compilation-II). Said photo copy does not bear the date below endorsement of 'Receipt' nor Stamp nor designation nor legible initials/name of the person allegedly receiving said memo of Appeal. Pleadings in this respect find mention in Para 4.6 and 4.7 of the OA which reads:-

**4.6 That being aggrieved by the order dated 13.8.98, the humble petitioner preferred statutory appeal under Rule 18 of the DAR to the Divisional Mechanical Engineer (Respondent No. 3). The true copy of the appeal dated 20.9.1998 is being filed and marked as Annexure A-IV to the second compilation**

**4.7 That the humble petitioner moved an application in continuation of his earlier appeal to the Respondent No.3 but the appeal has not been decided. The true copy of the application dated 12-11-1999 is being filed and marked as Annexure A-V to the second compilation.**

3. Respondents denied aforesaid averments of the applicant by filing counter reply (dated 19.12.2005) verified by Radha Bhattacharya, DPO in Para 8 and 14 of the counter affidavit (relevant extract) are reproduced:

**8. "..... but the applicant till date has not filed any appeal nor any appeal is received in the office of the respondents, till today, but the applicant by making a false averments in the instant original application that he has submitted an appeal before the respondents on 20-9-1998 and also submitted the reminders is wholly misleading ..."**

**14. "..... It is however, further submitted that there was no appeal preferred by the applicant to the next higher authority i.e. DME/(O&C)/Jhansi under rules 18 and 19 is**

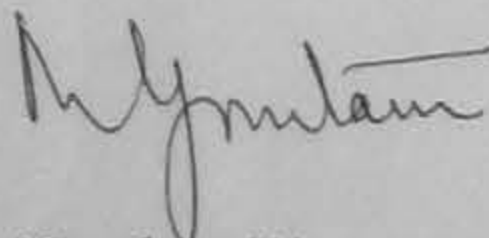


*received in this office through proper channel, after imposing the punishment of removal from service by Disciplinary authority. It is also worth while to mention here that in this connection it is also submitted that a brief reply had already been sent to DRM (P) /Jhansi on 10/10/2000 on asking by him vide letter No. P/PF/Imaill Khan/Kh/C&W dated 25/09/2000 that no appeal/revision appeal is received in this office. It is also relevant to mention here that so there is no question of deciding the appeal by appellate authority DME (O&C)/Jhansi (Respondent no. 3). As such the averment made by the applicant in the instant paragraph is wholly misleading and incorrect .....*"

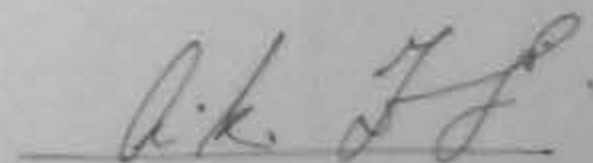
4. In the rejoinder affidavit, the applicant has failed to disclose identity of the person receiving alleged memo of appeal or the date of filing said appeal and therefore, vague pleadings (on such a vital issue) fails to orders does not inspire confidence to be believed.

5. The applicant has filed MA No. 1685/06 annexing therewith another 'memo of appeal' with prayer to direct the Tribunal to decide said appeal allegedly sent by UPC on 20.3.06. The question is whether Tribunal can permit such a course, ignore 'Limitation' prescribed in law and permit the applicant to claim time barred relief. It is definitely not permissible in law.

6. O.A. is time barred and not maintainable. Accordingly, O.A. is dismissed. No costs.



Member (A)



Member (J)