

CENTRAL ADMINISTRATIVE TRIBUNAL, ALI HABAD BENCH
ALLAHABAD.

T.A.No. 70 of 1986.

Kashi RamApplicant.

Versus

Union of India & othersRespondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

This is a transferred application under
section 29 of the Administrative Tribunal Act.

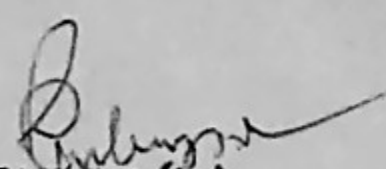
2. The applicant filed a suit in the Court of
Munsif, Roorkee, Distt. Saharanpur in the year 1982
praying that a declaration be granted in his favour
that the order dated 31.10.75 dismissing the applicant
is illegal and void and the applicant shall be deemed
to be continuing in service and he is entitled for
the salary and allowance from the date of his suspension
upto this date. It appears that the applicant, who was
appointed in 1960 to work as a Cook in the respondents'
Company, was charge-sheeted and thereafter he was
removed from service. The applicant filed an appeal
against the same and the appellate Authority found
that his contention was correct and accordingly the
order was quashed and a denovo enquiry was ordered and
in the result of denovo-enquiry, the applicant was
again dismissed from service. Against this dismissal
order, the applicant himself did not file any appeal
but it appears that the District Trade Officer vide
letter dated 27.11.75 filed a representation/appeal
against the dismissal order which was passed on 31st.
October, 1975 i.e. within few days of passing the order
before the Secretary, Ministry of Defence, pointing out

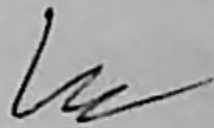
that the enquiry against the applicant was illegal and he was wrongly dismissed from service. The copies of the same were also sent to the Officer Commanding, EME, Roorkee and Director, EME, New Delhi. As the said representation was referred to the Director, EME, according to the respondents, the competent authority was not the person to whom the said representation was sent for forwarding the same to the Director.

The appellate authority was the Director of Electrical & Mechanical Engineer which is said to be competent authority. The applicant thereafter filed a suit in the Court of Munsif. It was not a case of unauthorised absence. Further, the enquiry was the sham-enquiry where the applicant was not allowed to adduce evidence to defend himself. He was also not allowed to adduce ~~the~~ defence of his choice and the two witnesses who, according to him, were the important witnesses, were also not called by the authority. In the result, his defence was seriously prejudiced. The Court of Munsif came to the conclusion that there was no such evidence but he dismissed the suit on the ground that the suit was barred by time in view of the fact that the order was passed in the year 1975 and the suit was filed in the year 1982 while it should have been filed within a period of three years. The Munsif also held that there was no appeal, consequently, the question of limitation does not arise. It may be that the applicant, who was only a Cook, took the aid of Union and the union did act on the communication to the Secretary of the Department. The union also sent a copy of representation/appeal to the Director. The Secretary forwarded the said representation to the concerned authority as such it could have been treated as an appeal

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and it appears that instead of giving prominence to the substance, prominence to the form was given. If it was treated as an appeal, the suit could not have been dismissed on the ground that it was barred by time. It should have been disposed of on merit. Accordingly, this application is allowed and the competent authority is directed to hear and decide the said representation as an appeal after giving personal hearing to the applicant and taking into consideration the pleas raised by him. In case, the appellate authority comes to the conclusion that the appeal should be allowed and the applicant should be reinstated in service, the same may be granted. In case, it comes to the conclusion that no principle of natural justice is violated and the order was legal and correct, this appeal which has been filed against the judgment and decree, passed by the learned Munsif, shall be deemed to have been dismissed. No order as to costs.


MEMBER (A)


VICE CHAIRMAN.

DATED: NOVEMBER 13, 1992

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