

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application no.
Transfer Application no.

1005/1989

Date of Decision 23.12.96

Hari Nath Singh Petitioner

Sri B. P. Singh Advocate for the
Petitioner

V E R S U S

Union of India & others Respondents.

Sri A. V. Srivastava Advocate for the
Respondents.

C O R A M

Hon'ble Mr. R. K. Senena JM

Hon'ble Mr. D. S. Bawya AM

1. Whether Reporters of local papers may be allowed to see the judgement ? *
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordship wish to see the fair copy of the judgement ? ✓
4. Whether to be circulated to all Bench ? *

SIGNATURE

PIYUSH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 23rd day of December 1996.

Original application No. 1005 of 1989.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Hari Nath Singh, a/a 42 years,
S/o Sri Bajrang Bahadur Singh,
R/o Achalpur, Post Office-Qadipur,
Pratapgarh.

..... Applicant.

C/A Sri B.P. Singh

Versus

1. Union of India through Divisional
Railway Manager, Allahabad.
2. Divisional Personal Officer,
Allahabad.
3. Senior Divisional Electrical
Engineer, Allahabad.

..... Respondents.

C/R Sri A.V. Srivastava

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed praying for
the following reliefs:-

- (i) To quash order dated 24.8.81 imposing
punishment of removal from service by
the disciplinary authority and order
dated 6.4.88 of the appellate authority
rejecting the appeal.
- (ii) To reinstate the applicant to his original
post with all the consequential benefits
as if orders dated 24.8.81 and 6.4.88 had
not been passed.

2. The applicant was posted as temporary Electrical Fitter on 27.7.70 at Kanpur under Senior Divisional Electrical Engineer, Allahabad Division, Northern Railway. During May 79, he developed mental trouble and could not attend office. He informed of sickness to his Controlling Officer. Thereafter he sent another intimation dated 15.7.79. During this said period of absence, the applicant was issued a chargesheet dated 16.11.79. The applicant could not receive the chargesheet and was not in a position to give any reply. His father vide letter dated 6.2.80 informed Assistant Electrical Engineer that due to mental illness, his son is not able to join duty. After being declared fit, he reported for duty on 4.9.81. However, he was told that vide order dated 24.8.81, he had been already imposed punishment of removal from service. After lot of efforts, he got the copy of the inquiry report and order of punishment on 7.9.81, when he came to know that ex-parte inquiry was conducted. The applicant filed appeal on 2.10.81 addressed to respondent No. 3. However he did not get any decision on the same. After waiting, he reminded on 30.6.85 and 16.3.88, he received a reply dated 6.4.88, stating that since the removal order was sent by registered post on 7.10.81, how the appeal could be filed on 2.10.81. It is also stated that appeal dated 2.10.81 had not been received. Only one letter dated 5.7.85 had been received which was after the time allowed for appeal and hence time barred. Thereafter he sent a review appeal dated 16.12.88 to respondent No. 1 explaining that he had obtained the order of removal on 7.9.81 and therefore could file appeal on 2.10.81. However he did not get any reply. Being aggrieved, this application has been filed on 17.11.89.

3. The applicant has advanced the following grounds

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in support of his prayer for reliefs:-

- (i) The applicant was mentally sick and was regularly informing his office for granting leave and instead of sanctioning leave, chargesheet was issued.
- (ii) Copy of the chargesheet was not served on the applicant. Instead of waiting for the applicant to become fit for service, the respondents rushed through for completing ex-parte inquiry.
- (iii) Respondent No. 3 was not the competent authority to impose the punishment as the applicant was appointed by respondent No. 2.
- (iv) The disciplinary authority has passed non speaking order without application of mind.
- (v) The appeal ~~was~~ filed on 2.10.81 was not considered.

4. The respondents have filed the counter reply. The respondents have opposed the application as being highly time-barred as prescribed under Section 21 of the Administrative Tribunals Act 1985. The cause of action arose in 1981, ^{beyond} ~~since then~~ three years before the setting up of Tribunal and thus beyond the jurisdiction of Tribunal. As regards the merits, it is submitted that the chargesheet was sent by registered post at his home and local address. One of the registered letter containing chargesheet was received by his father. His father informed that his son ~~was~~ sick and the father was asked to send the medical certificates but the same were never sent. The dates for the inquiry were advised through registered post but applicant did not attend, and ex-parte inquiry had to be conducted. It is also submitted that punishment order is passed by the Divisional Electrical, ^{Engineer} a senior scale officer who is empowered as competent authority as per rules. Efforts were made to serve the punishment order at his home address through Special Manager but of no avail

and thereafter the letter was sent by registered post on 1.10.87. Appeal dated 2.10.81 said to have been submitted was not received in the office. It is also stated that representations dated 8.5.88 and 16.12.88 had been also not received. In view of the foregoing facts, the respondents submit that applicant is not legally entitled for any reliefs claimed for and the application deserved to be dismissed.

5. The applicant had filed rejoinder reply opposing the averments in the counter reply and reiterating the contentions made in the application.

6. We have heard the learned counsel for the parties. We have also gone through the material placed on record and given careful thought to the pleadings made during the hearing.

7. We will first consider the question of limitation and maintainability raised by the respondents. The order of punishment is dated 24.8.81. It is admitted by the applicant that he received the copy of inquiry report and the order of punishment on 7.9.81. The cause of action thus arose on 7.9.81 even if the date of receipt of the order is taken as a reference. The present application has been filed on 17.11.89. The applicant has also impugned the order dated 8.4.88. The applicant has averred that the application is filed within the limitation period prescribed in Section 21 of Administrative Tribunals Act 1985. The applicant seems to have made his averment on the plea that the limitation provisions will be reckoned from 8.4.88 when he got the last reply. We have gone through the letter dated 8.4.88 and find that this letter

does not deal with the appeal said to have been submitted by the applicant. The contents of the letter only detail the factual position with regard to status of the disciplinary proceedings. This is not an order disposing of appeal on merits. We are therefore of the view that this letter cannot be taken as disposing of the appeal of the applicant and ^{for}reckoning the cause of action.

8. As stated earlier the applicant has averred that he submitted an appeal on 2.10.81. The respondents have denied the receipt of this appeal contending that how such an appeal could be submitted on 2.10.81 when the punishment letter was sent by registered post on 1.10.81. Without going into the merit of the rival contentions on this issue, granting that the application submitted an appeal on 2.10.81, it is obvious that the applicant thereafter kept quiet till 1985 when he sent a reminder dated 30.6.85. Thereafter he again did not pursue the matter and represented only on 16.3.88. This time he got a reply dated 8.4.88. Even after receipt of this reply, the applicant has filed the present application after a period of more than 1 1/2 years. The applicant has not made any averments as to why he kept waiting for the disposal of the appeal for such a long time. If the applicant had not received any reply to his appeal, he could have certainly agitated the matter for seeking legal remedy. The applicant ^{he find} has not shown any diligence in pursuing his case for disposal of appeal. Law does not expect an aggrieved person to keep quiet for several years and then approach for reliefs. In view of this fact, we are unable to persuade ourselves to accept the contention of the applicant. We accordingly conclude that the application is highly time barred by

limitation under Section 21 of Administrative Tribunals Act 1985.

9. Apart from being barred by time limitation, the application is also not maintainable. With our findings, ~~the~~ ^{the} cause of action arising in 1981 is beyond the period of three years of the constitution of the Tribunal, as per the provisions of Section 21 (2) (a). Therefore the matter agitated is not within the jurisdiction of the Tribunal and therefore application is not maintainable on this account.

10. In the result of the above deliberations, the application is barred by limitation as well as not maintainable under Section 21 of the Administrative Tribunals Act 1985. It deserves to be dismissed and is accordingly dismissed. There shall be no order as to costs.

S. K. Singh
Member - A

S. K. Singh
Member - J

Arvind.