

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 28th day of April, 98.

O.A. No. 1002/92

HON. MR. D.S. BAWEJA, MEMBER(A)

HON. MR. J.P. SHARMA, MEMBER(J)

Prabhu Lal Sharma son of Sri Ram Prasad R/o
51/10 C/13/3, behind Raj Vidya Mandir, West Arjun Nagar
Keria, District Agra Cantt.

Petitioner.

By Advocate Shri A.V. Srivastava.

versus

1. Union of India through its Director Indian Post
and Telegraph Depttment, New Delhi.
2. Director General Post & Telegraph Department,
New Delhi.
3. Divisional Engineer Phones(Admn.) Agra.
4. District Manager Telephones, District Agra.

Respondents.

By Advocate S/Shri Satish Chaturvedi and N.B. Singh.

O R D E R (RESERVED)

HON. MR. J.P. SHARMA, MEMBER(J)

The applicant has filed this O.A. requesting that the respondents be directed to reinstate him to the post of Telephone Office Assistant and pay the arrears of salary quashing the order dated 28.2.85. passed by respondent No. 3 (Annexure-1).

2. The applicant's case is that he was appointed as Telephone Office Assistant on 19.12.83 in pay scale of Rs 260-480 in the office of respondent No. 4. His services were terminated with effect from 28.2.85 on the ground that he had obtained employment on the basis of forged marks sheet of High School and Intermediate. The aforeaid case was also investigated by the Vigilance Department and a criminal case under sections 420, 467, 468 and 471 was registered against the applicant on 22.7.85 and a charge

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sheet was submitted against him in the court of IInd A.C.J.M. Agra on which a case No. 1488/87 State vs. Prabhulal Sharma was registered. Ultimately, the applicant was acquitted vide order dated 30.9.88 (Annexure-2). Against the order of acquittal, the respondent No.1 preferred a revision in the Hon. High Court of Allahabad but the management informed the Secretary to the Govt. of India, Ministry of Labour on 16.9.88 that there is no possibility of any amicable settlement between the parties. The applicant was also ready to refer the dispute for arbitration but the management was not inclined to do so. The applicant, thereafter preferred a revision before the Presiding Officer, Labour court (Central) Kanpur vide case No. I.D./135/90 but the management informed the court that the aforesaid reference is beyond the scope and jurisdiction of the Labour court and is maintainable before the Central Administrative Tribunal. Copy of the application submitted in this connection for the Telecom District Manager has been filed and marked as Annexure -3. The Central Govt Industrial Tribunal held that "the reference made by the Ministry of Labour Government of India, New Delhi is incompetent as the case of Shri Prabhu Lal Sharma is not covered by the provisions of Industrial Disputes Act, 1947." as the applicant was not a workman within the meaning of section 2(s) of I.D. Act, 1947. Thereafter, the applicant has approached this Tribunal. It is contended by the applicant that his services have been illegally terminated by the respondent No. 3 on the basis of false criminal case. It is further contended that the respondents have violated the provisions of Article 311(2) of the Constitution of India.

3. The respondents, in the counter have stated that at the time of recruitment, the applicant submitted his High School Marks Sheet issued by the Principal Hublal Inter College Agra for High School examination held in 1977 and High School certificate issued by U.P. Board. He also

submitted Intermediate Marks sheet alleged to have been issued from Gandhi Smarak Kisan Inter College, Kirawli Agra. The High School marks sheet and the certificate were verified from the Principal, Hublal Inter College, Agra and marksheet of Intermediate was verified from the Principal, Gandhi Smarak Inter College, Kirawali, Agra. The Principal Hublal Inter College, Agra stated that the candidate of roll No. 455718 (applicant's roll number) has not appeared in the High School Examination held in 1976/1977 from the school centre and the certificate appears to be forged. The copy of the certificate submitted by the applicant and the receipt from the Principal have been filed and marked as Annexures-CA-1 and CA-2 respectively. It has been stated that the applicant was selected on the basis of marks obtained in the High School Examination. It is further submitted that the scrutiny of the marks sheet and certificate submitted by the applicant was also made by the Assistant Engineer Vigilance who came to the conclusion that the applicant did not appear in the High School and the certificate by him is forged one. Instead of confronting that he has not obtained appointment by paying fraud and his certificates were forged, the applicant did not attend the office and absconded and as such registered letter was also sent to him but the said letter was returned undelivered with postal remarks that the receiver has gone outside and it is not known when he will come back. Photocopies of the endorsement as well as registered letter and registration receipts have been marked and filed as Annexures-CA-5 and CA-7. It has been further stated that the applicant was absconding without any information and neither he

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cared to receive the registered letter nor gave information. When he was found absent from duty, the impugned order dated 28.2.85 was issued through which he has been dismissed. It has been admitted that the applicant was acquitted for want of evidence in the criminal case which was filed against him but criminal revision is stated to have been pending against the order of acquittal before the High Court.

4. The applicant has filed rejoinder in which he has denied that he did not appear in the examination and submitted bogus marks sheet and certificate. It was also denied that he submitted any marks sheet issued by the Huddal Inter College, Agra and asserted that he submitted marks sheet from Gandhi Smarak Inter College, Agra. It was also denied that he absconded from service or refused to receive the registered letter.

5. It may be stated that by order dated 15-5-97 the Tribunal directed the respondents to produce the file of disciplinary proceedings on the next date. It was provided that in case the relevant file is not made available appropriate presumption as provided in law shall follow. In the order dated 16.7.97 it is provided that for the best reasons known to the respondents, the file of disciplinary proceedings has not been produced and in the event of these circumstances, adverse inference shall be drawn.

6. Heard the learned counsel for the applicant and the respondents.

7. First of all we take up the point of limitation. The applicant was dismissed from service vide order dated 28-2-85 and the present OA has been filed on 21-7-92. The learned counsel for the applicant submitted

that the applicant has been seeking the remedy before the Central Govt. Industrial Tribunal and when the above Tribunal held that the matter is not within the jurisdiction of the said Tribunal, the OA was filed. He has also contended that the impugned order which has been passed is in violation of Article 311(2) of the Constitution of India and Rule 19 of the C.C.S. (CCA) Rules, being void order the prayer of the applicant for setting aside the above order cannot be refused on the ground of limitation. In support of his argument he has cited the case of Chiru Mohan Vs. Union of India through General Manager, Western Railway and others decided by the Full Bench, Ahmedabad reported in A.I. Full Bench Judgements 1991-1993 Page 282. The order of dismissal from service was passed against the applicant on 28-2-85. The matter was referred to the C.G.I.F. in the year 1990. There is no explanation as to why the order of dismissal was not challenged from the date of passing of the order till the date of reference to the above Tribunal in the year 1990 vice notification dated 15-5-90. In the case cited by the learned counsel for the applicant the question which was referred to the Full Bench was "as to whether the application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) impugning a void order is also governed by the period of limitation prescribed by Section 21 of the Act. The Full Bench, answering the reference in positive clearly held that an application impugning a void order under Section 19 of the Act is also governed by the period of limitation prescribed by Section 21 of the Act". We fail to understand as to how the above authority helps the

applicant. Even if it is taken for granted that the applicant was pursuing the remedy before the C.G.I.T. on wrong advice of the counse, there is no explanation for not challenging the impugned order before the reference was made to the above Tribunal. The applicant could have challenged the impugned order within a period of one year. He did not do so. Obviously, the OA is barred by limitation.

8. It may also be stated that the applicant did not avail of the alternative remedy by filing an appeal against the order of dismissal. It appears that he has been waiting for the result of the criminal case and on having been acquitted he took up the matter to the Industrial Tribunal under reference.

9. It is not necessary to go into merits of the case, since on the ground of limitation as also for the reason that the applicant has approached this Tribunal without availing alternative remedy provided, the OA is fit to be dismissed and the same is hereby dismissed.

10. No order as to costs.

L. Sharm
Member (J)

S. Naray
Member (A)