

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 21st day of December, 2001

Original Application No. 1692 of 1993.

CORAM :-

Hon'ble Mr. Justice R.R.K. Trivedi, V.C

Hon'ble Maj. Gen. K.K. Srivastava, A.M.

A.D.N. Singh

Sr. Parcel Clerk,

N. Railway, Varanasi Cantt. Applicant
(Sri R.C. Shukla)

Versus

1. Union of India represented by
General Manager, N.Railway,
Baroda House, New Delhi.
2. Divisional Commercial Supdt. N.Railway,
Hazratganj, Lucknow.
3. Sr. Divisional Commercial Supdt.,
N.Rly, Hazratganj, Lucknow.
(Sri Prashant Mathur, Advocate)

• Respondents

O R D E R (O_r_a_1)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this OA, filed under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has
challenged the order dated 12-12-1989 by which he was
awarded punishment of withholding increment for a
period of two years without cumulative effect.

2. The facts of the case are that the applicant was
served with a Memo of Charge dated 3-8-1989 with the
allegation that while working as Unloading Clerk on
29-6-1988 and on 01-7-1988, he did not unload the VP
16825 sealed ex NDLS to BSB on 29-6-88 which was arrived
by 158 Up on 29-6-88 at the time of arrival. As a result

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as the packages were over-carried to NDLS. The said V.P again arrived by 158 Up on 01-7-88 but he did not unload the same even on 01-7-88 resulting the packages were again over carried to NDLS. Due to his above negligence the consignment loaded in the V.P. could not be made available for delivery to the parties. In addition the consignment booked under PW Bill No.350340 ex NDLS to Bhadri loaded in the V.P. could not be traced out which resulted into complaint/claim against the administration.

3. The case of the applicant is that he submitted reply to the aforesaid charge on 21-8-1989 through proper channel i.e. through the Chief Parcel Supervisor, Varanasi. In support of his this submission, he has also filed a copy of the letter dated 5-10-1989 addressed to the Chief Commercial Superintendent that the explanation of Sri A.D.N. Singh as desired is being attached herewith two enclosures as indicated in his application for perusal and necessary action please. The averments to this effect have been made in Para 4(a) to the application. The disciplinary authority, however, by order dated 12-12-89 awarded the punishment mentioned above stating that the applicant has not submitted any defence in response to the Memo of Charge served on him. Learned counsel for the applicant has submitted that since defence of the applicant has not been considered the order is illegal and cannot be sustained.

4. Sri Prashant Mathur, learned counsel for the respondents on the other hand submitted that the applicant did not submit any explanation/defence. He has placed reliance on Paras 6 and 7 of the counter affidavit.

5. It has also been submitted that this application is highly time barred and deserves to be rejected on

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the ground of limitation. He has placed reliance in the judgement of Hon'ble Suprme Court in case of Ramesh Chand Sharma Vs. Udhamp Singh Kamal and Others, 2000 SC (L&S) 53.

6. We have considered the submissions of the counsel for the parties. In para 4 of the O.A. the applicant has submitted in detail that he filed his defence on 21-8-1989 through proper channel. A copy of the reply has been filed as Annexure-4. In support of this plea the applicant filed the letter of the Chief Parcel Supervisor dated 5-10-1989 (Annexure-5), who forwarded the defence for consideration to Divisional Commercial Superintendent, N. Railway, Lucknow. The Memo of Charge dated 3-8-1989 has been specifically referred. From perusal of the two documents there remains no doubts that the defence was submitted by the applicant but it has not been considered by respondent no.2 while passing the order dated 12-12-1989 imposing penalty on the applicant. In para 6 of the counter affidavit, which contains reply to para 4 of the O.A., there is not even a mention of the letter of the Chief Parcel Supervisor of 5-10-1989. The defence of the applicant was submitted to respondent no.2 well within time as order was passed on 12-12-1989. Thus, there remains no doubt that for the reason best known to the respondents the reply of the applicant was not considered by respondents and the order of punishment cannot be sustained.

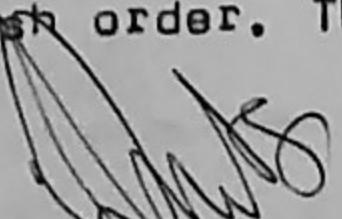
7. Learned counsel for the respondents, however, submitted that the application is time barred. The applicant in his application has stated that he filed appeal and gave reminders on successive dates. The Memo of Appeal has been filed as Annexure-7. One Appeal was submitted to Senior Divisional Commercial Superintendent

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and another appeal was filed before ~~the~~ General Manager, Northern Railway, Baroda House, New Delhi. Both the appeals were kept pending and have not been decided. ^{of} In spite of explanation and reminder given by the applicant in 1992. Finally the applicant filed this OA on 3-11-1993. In para 11 of the counter affidavit averments in para 6 with regard to filing of the appeal have not been denied. Only this much has been said that the applicant has to ^{be} ~~put~~ strict proof of the submissions. The applicant in support of his submission has filed a copy of the Memo of Appeal, which, in our opinion, fully corroborates his contention made in the application. The appeals of the applicant remained pending upto June, 1992 when the reminder was given. This fact, in our opinion, fully explains the delay caused in filing this OA. The judgement of the Hon'ble Supreme Court relied on by the respondents, thus, is not helpful in the facts and circumstances of the present case. Further as we have found that reply submitted by the applicant has not been considered by the disciplinary authority while awarding the penalty and in order to prevent injustice also, it is necessary to condone the delay, if any, in filing this OA. The delay is accordingly condoned.

8. For the reasons stated above, this OA is allowed. The impugned order of punishment dated 12-12-1989 passed by the respondent no.2 is quashed. The applicant shall be entitled to receive the entire amount which has been deducted within six months from the date a copy of this order is filed. The applicant has retired from service in the year 1994. The charge related to the year 1988. In these facts and circumstances, in our opinion, it shall not be in the interest of justice to give liberty to the respondents to pass a fresh order. There shall be no order as to costs.

Dube/

 Member (A)

 Vice Chairman