

27.11.01

Hon. Mr. Justice RRK Trivedi, VC
Hon. Maj Gen KK Srivastava, AM

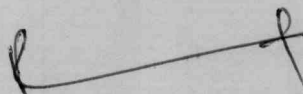
Heard Sri KN Kathiyar learned counsel for the applicant and Sri G.P. Agarwal, learned counsel for the respondents.

2. Sri GP Agarwal has raised preliminary objection that this OA is time barred and cannot be entertained. On 22.09.94 the bench has^{ed} passed following order :-

"Heard, Sri K.N. Kathiyar on admission. The applicant's case is that he was given a minor penalty withholding of increment and his pay on promotion was fixed prospectively after the penalty and not retrospectively from the date, the juniors were promoted. The applicant, however has not filed a copy of the order of penalty. Also this application is time barred as it was filed on 09.9.94 and there is no application for condonation of delay. Counsel for the applicant has requested for time to file copy of the order of penalty as well as application for condonation of delay. Adjourned. List this case for admission on 24.10.94."

3. On 24.10.94, learned counsel for the applicant again prayed for further time to file application for condonation of delay as well as for the copy of the order of penalty. Order dated 24.10.94 is reproduced below :-

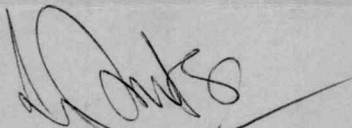
"Sri K.N. Katiyar for the applicant. He prays for further time to file the application for condonation of delay as well as the copy of the order of the penalty. It is seen from the order sheet dated 22.9.1994, the counsel was given time for the above purpose. Further time of three weeks is given. If the above application for condonation of delay and the copy of the penalty is not filed by the date, the application is liable to be dismissed. List this case on 28.11.1994 for admission hearing."

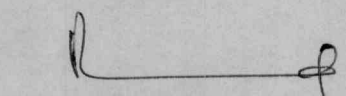


4. On 28.11.94 counsel for the applicant was granted as last opportunity to file application for condonation of delay. However, it is clear that application for condonation of delay was not filed by the applicant. He also failed to file copy of the order of penalty, ^{inadvertently} ~~inadvertently~~. Ignoring the aforesaid three orders i.e of 22.4.94, 24.10.94, 28.11.94 and also ignoring the fact that application was time barred the case was admitted for hearing on 7.12.94. On perusal of order sheet dated 7.12.94, it is clear that the ^{earlier} ~~orders~~ ^{orders} passed by the benches were not placed and the court was not made aware ^{that} ~~that~~ the case was time barred.

5. Sri GP Agarwal again raised the question of limitation and submitted that the application is liable to be dismissed on the ground of limitation and also for want of prosecution, ^{As} ~~As~~ the order of this Tribunal has not complied with and the order of penalty was not filed. Sri KN Kathiyar on the other hand submitted that the order of penalty is neither available to the applicant nor to the respondents and it cannot be filed now. Learned counsel for the applicant is also not been able to give dates on which he filed any application seeking condonation of delay in filing OA. The OA is clearly time barred. The order dated 30.8.1993 has been challenged and the OA has been filed on 9.9.94 i.e. after the period of one year prescribed under section 21 of the AT Act, 1985.

6. In the aforesaid circumstances we have no option ^{or} ~~but~~ to dismiss the OA as time barred and also for want of prosecution. The OA is dismissed ~~as~~ time barred. Nocost.


Member-A


Vice-Chairman