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Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 37 of 1995

this the 15th day of February 2002.

HON'BLE MR. RAFIQ UDDIN, MEMBER(J)
HON'BLE MR. C.S. CHADHA, MEMBER(A)

Doodh Nath, aged about 50 years, S/o late Hardwar, R/o Village & P.O. Sirse, District Allahabad working as Sr. Cashier under Asstt. Chief Cashier/Northern Railway/ Allahabad with posting in sub-pay Office, Tundla, presently under suspension.

Applicant.

By Advocate : Sri A. Rajendra.

Versus.

1. Union of India through Chief Cashier (JA)/Northern Railway/ Headquarters Office, New Delhi.
2. Asstt. Chief Cashier/Northern Railway/Allahabad.
3. Sr. Divisional Accounts Officer/Northern Railway/ Allahabad.

Respondents.

By Advocate : Sri A.K. Gaur.

O R D E R (ORAL)

RAFIQ UDDIN, MEMBER(J)

The applicant has filed this O.A. seeking directions to the respondents for taking him back on duty and treating these periods as duty for all purposes of service as well as to reckon the same as qualifying period for retirement benefits. The applicant further seeks directions to the respondents for arranging the payment of difference of full pay and allowance etc. as due and subsistence allowance already paid, and to consider the consequential benefits of promotion from the date as became admissible to the applicant as per seniority and also to pay the arrears of pay and allowances on account of promotion.

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2. The case of the applicant is that he was appointed in Group 'C' service in November 64 under the administrative

control of Chief Cashier/Northern Railway, New Delhi. The applicant was promoted as Senior Cashier in the year 1972. The applicant while working as Senior Cashier in Sub-Pay Office, Tundla, Allahabad Division was placed under suspension in November'77 on the issue of false and fabricated charge of mis-appropriation of money. It appears that the applicant was charged by the Criminal Court under section 409 IPC and was acquitted vide judgment and order dated 13.2.92, a copy of which has been annexed as Annexure no. A-2 to the O.A. The applicant has submitted several representations before the respondents after his acquittal from the Criminal Court, but nothing has been done. Hence, he has filed the present O.A.

3. The respondents have denied the claim of the applicant for reinstatement. The case of the respondents is that the present O.A. is barred by limitation. It is further stated that during the course of surprise checking, while the applicant was working as Cashier in Tundla on 27/28.10.77, a shortage of Rs.49825.41/- was deducted. Consequently, FIR was lodged on 2.11.77. After police investigation, a chargesheet under section 409 IPC was filed against the applicant. The applicant was acquitted by the Criminal Court on the basis of benefit of doubt.

4. It is, however, added that the applicant remained unauthorisedly absent from 31.7.72 to 1.11.77 and a major penalty chargesheet dated 8.11.77 was issued and served upon the applicant. A departmental enquiry was conducted by the Enquiry Officer, who vide his report dated 18.9.77 submitted his findings to the disciplinary authority holding the charges against the applicant were proved. The disciplinary authority after considering the enquiry report agreed with the same and vide order dated 3.3.78 imposed the punishment of removal from service on the applicant. The applicant was also asked to file a representation, which he did not file and, therefore, he was removed from service w.e.f. 28.3.78, which was duly

served upon him. The applicant preferred an appeal before the appellate authority on 3.5.78, which was also dismissed vide order dated 16.8.78 and the same was sent to the applicant. The applicant has, however, not challenged these orders till date. It is, therefore, stated that since the applicant had already been removed from service for his unauthorised absence, the order passed in the Criminal Court will not entitle the applicant for his reinstatement/appointment in the railways.

5. We have heard the learned counsel for the parties and have perused the pleadings on record.

6. It may be stated at the outset that the applicant has neither filed a copy of the suspension order, nor the copy of the removal order. The applicant has also not sought the quashing of any orders passed by the departmental authorities. It is no-doubt correct that the applicant was placed under suspension in the year 1977, but he has not filed the copy of the suspension order. The applicant has claimed his reinstatement on the basis of his acquittal from the Criminal Court on 13.2.92. In the Rejoinder affidavit, the applicant denied having been departmentally proceeded against him for alleged un-authorised absence. It is reiterated that the applicant was involved in a criminal case and he was not allowed to join his duty after 1.11.77 and also no order of removal was served upon him, the question of preferring any appeal does not arise.

7. Since the learned counsel for the respondents has failed to produce the original records of the departmental proceedings, we are of the opinion that the present case is to be decided on the basis of pleadings on record.

8. The learned counsel for the respondents has vehemently argued that the case of the applicant is grossly barred by time because the applicant was not allowed to perform his

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duties w.e.f. 1.11.77, while he has approached this Tribunal ^{after} in the year 1995 i.e./ more than 18 years. on this point, the learned counsel for the applicant has brought to our notice the order dated 20.1.95 passed by this Tribunal while admitting this O.A. The relevant part of the order reads as under :

"The cause of action in this case had arisen on the delivery of the judgment acquitting the applicant and thereafter the respondents had informed him on 2.9.92 that the matter is under process. Reckoned from this date, the application prima facie appears to be time barred. However, in view of the peculiar circumstances of the case, I do not consider it appropriate to dismiss this application on the ground of limitation and consider it till to be decided on merit."

9. It is, however, contended by the learned counsel for the respondents that the Division Bench of this Tribunal in the case of All India Postal Employees Union Class III, Tamil Nadu Circle & Others Vs. Union of India & Others (1994) 28 ATC 810) in which it was held that the question of limitation can be considered by the Tribunal even after admission of the application and it is the duty of the Tribunal to consider limitation before granting relief. We also agree with this view of Madras Bench and are of the opinion that the question of limitation at any stage or final hearing of the O.A. can be initiated.

10. It is also worth mentioning that in the present case no application for condonation of delay in filing the present O.A. has been filed. In this context, the learned counsel for the respondents has placed reliance ^{on Rn} the decision in the case of Ramesh Chand Sharma Vs. Udhamp Singh Kamal & Others (2000) SCC (L&S) 53) in which it was held that where no ¹ application for condonation of delay is filed, the Tribunal could not admit the application and dispose it on merits.

11. Now, we find from the order dated 20.1.95 that the cause of action in this case was found to have ~~been~~ arisen on the date of delivery of judgment, acquitting the applicant by the Criminal Court and, therefore, the present O.A. prima-facie was found to be time barred. It was, however,

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observed that since the applicant had represented before the authorities for his reinstatement which had stated that the matter was under process. It was found fit that the case should be decided on merits.

12. It is evident from the case of the applicant that he is seeking his reinstatement in service because he has been acquitted by the Criminal Court in the criminal case in which he was involved. The applicant has, however, failed to establish that he was suspended or removed from service on account of his involvement in the said criminal case. The applicant has neither filed copy of the suspension order, nor the copy of the removal order. The applicant has not even sought quashing of the aforesaid orders. Therefore, the period of reckoning is to be counted from the date he was kept out of job. The applicant was admittedly, out of job since 1.11.77. Even if it is assumed that no departmental enquiry was conducted against him because the respondents have failed to produce any documents in connection with such enquiry, the period of limitation is to be counted from the date he was kept out of job i.e. 1.11.77. Therefore, the O.A. is obviously grossly barred by time having been filed in the year 1995, when the cause of action arose to him in the year 1977. We, therefore, without considering the merit of the case, dismiss the O.A. being barred by time. NO costs.

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MEMBER (A)
GIRISH/-

Ravindra
MEMBER (J)