

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD.

Original Application No.555 of 2003.

Allahabad this the 08th day of July 2004.

Hon'ble Mrs. Meera Chhibber, J.M.
Hon'ble Mr. S.C. Chaube, A.M.

Pradeep Dyosn, S/o Mr. G. Dyosn, R/o Village
& P.O. Basarapatpur, District Gorakhpur (Senior
Khalasi, Ticket No.114, Diesel Depot, Izzat Nagar,
North Eastern Railway).

.....Applicant.

(By Advocate : Sri S.N. Shukla)

Versus.

1. Union of India through the General Manager
North Eastern Railway, Gorakhpur.
2. The General Manager, North Eastern Railway,
Gorakhpur.
3. The Senior Divisional Technical Engineer/Diesel,
North Eastern Railway, Izzat Nagar.
4. The District Controller of Stores/Diesel,
North Eastern Railway, Izzat Nagar.

.....Respondents.

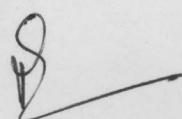
(By Advocate : Sri S.K. Anwar)

O_R_D_E_R

(By Hon'ble Mrs. Meera Chhibber, J.M)

By this O.A. applicant has sought the following
relief(s):

- (i) The Tribunal be pleased to quash the order
of removal dated 10.09.1999; the appellate
order dated 11.04.2000; the revisional order
dated 22/26.12.2000 and the final order on the
mercy appeal dated 08.10.2001 (Annexures-1,2,3
and 4 to the First Compilation)
- (ii) The Tribunal may further be pleased to direct
the respondents to allow the applicant to
join the duty and for the payment of salary to
him through out from the date of removal from
service till date.
- (iii) To award cost the petition to the applicant."



2. Applicant was served with a chargesheet dated 16.10.1998 (Annexure 6) on the allegation that applicant had proceeded on 3 days leave from 20.07.1998 to 22.07.1998. He was due to report back on 23.07.1998 but he remained absent unauthorisedly without any intimation inspite of registered letter dated 11.09.1998 sent to him to report for duty (Pg.30)

3. Enquiry Officer gave his report, after examining the witnesses, holding the charge as proved. Thereafter the District Controller of Stores sent a letter dated 22.03.1999 alongwith enquiry report to the applicant calling upon him to reply the same.

4. Ultimately the District Controller of Stores passed the order of removal on 10.09.1999 (Pg.14). Being aggrieved he filed an appeal to the Senior Divisional Engineer/Diesel, North Eastern Railway, Izzatnagar. The same was, however, rejected by a cryptic order on 11.04.2000 by the Varishtha Mandal Karmik Engineer (Pg.18). Being aggrieved he filed representation to the Chief Controller of Stores, N.E.R. Gorakhpur on 31.05.2000 which was decided by the Varishtha Mandal Yantrik Engineer (Diesel) on 22/26.12.2000 informing the applicant that punishment awarded calls for no interference (Pg.20). Applicant then filed mercy appeal on 23.05.2001 to Senior Divisional Mechanical Engineer but that was also rejected on 04.10.2001/08.10.2001 (Pg.29).

5. Applicant has challenged all these orders on the following grounds.

- (1) He had submitted appeal and revision to higher authorities but the same decided by lower authority, therefore, the orders passed by lower authority are not sustainable in law.
- (2) Department was prejudiced against him that is why kept on giving him chargesheet one after another during the pendency of this chargesheet.
- (3) Punishment given is too excessive. He is a poor



man, therefore, it may be quashed and set aside.

- (4) Neither Enquiry Officer nor disciplinary authority gave the proposed punishment in their letter, therefore, it was no show cause of notice in the eyes of law.
- (5) Once he was allowed to join after he was declared fit by Railway Doctor the charge itself got vitiated and there was no need to hold the enquiry.
- (6) He was not given proper opportunity for putting his defence.
- (7) There was leave in his credit, therefore, the period from 23.07.1998 to 05.11.1998 shall have been treated as medical leave.

6. Respondents on the other hand have taken preliminary objection to the maintainability of O.A. itself on the ground that it is barred by limitation, therefore, is liable to be dismissed on this ground alone. O.A. was filed on 28.04.03 whereas the last order was passed on 08.10.01.

7. On merits they have submitted that applicant was absent unauthorisedly since 23.07.1998. He was given a notice to 'join which was not replied by him. He was issued charge-sheet and even this was not replied by him. Enquiry Officer gave him full opportunity but here also he did not engage any defence assistant inspite of opportunity having been given so Enquiry Officer gave his report holding him guilty. Disciplinary Authority gave him show cause notice but even this was not replied too. The Disciplinary Authority imposed the punishment of removal. He preferred appeal to the Senior Divisional Mechanical Engineer (Diesal) on 26.10.1999 which was dismissed. He then filed revision before Chief Controller (Stores) on 09.06.2000. It was decided by competent authority viz Divisional Railway Manager, Izzatnagar vide order dated 04.12.2000. He then filed mercy petition which too was rejected.

8. It is submitted here that the applicant was taken back on duty after issuance of fitness certificate by



Railway Doctor and thereafter he was punished in accordance with law in pursuance of the charge-sheet issued against him for unauthorised absent. They have further explained that the enquiry against the applicant was held following the due procedure and strictly in accordance with law. They have further explained that registered letter dated 16.02.1999 was written by the respondents to the applicant in connection with the appointment of Defence Assistant which was received back with an endorsement to the effect that the employee was not available. On 15.03.1999 during the enquiry proceedings the applicant agreed to conduct the enquiry for himself. They have further explained that the Railway Doctor has not verified the medical certificate issued by the private Doctor but the Railway Doctor had declared the applicant fit to take back him on duty. They have further explained that at every stage the available evidence was fully considered by competent authority. The appeal, Revision and also mercy appeal filed by the applicant were fully considered with proper application of mind and were decided only after due consideration of every aspect including argument/objection raised by the applicant therein. They have further explained ~~that it is submitted~~ that the Disciplinary proceeding dated 15.03.1999 were conducted with the consent of applicant. It is false to allege that the applicant was subjected with duress the allegations is without any basis. They have thus prayed that the O.A. may be dismissed.

9. We have heard both the counsel and perused the pleadings as well. The period of limitation as prescribed under section 21 of the A.T. Act 1985 is one year from the date of cause of action and the cause of action has to be counted from the day statutory appeal or revision is decided as held by Hon'ble Supreme Court in the case of S.S. Rathore reported in A.I.R 1990 S.C. page 10. It was further held by Hon'ble Supreme Court that repeated unsuccessful representation not provided by law do not extend the period of limitation.

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It was clarified that repeated representations and memorials to the President etc. do not extend limitation. Since respondents have taken a preliminary objection to the maintainability of O.A. on the ground of limitation,

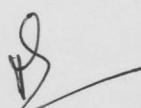
Applicant has to first cross that hurdle. Admittedly statute provides only for an appeal and revision against the penalty order. In this case, appeal was decided on 11.04.2000 and revision was rejected on 22/26.12.2000, therefore, according to the Supreme Court judgment cause of action would start from this date because there is no provision for mercy petition under the rules, therefore, in normal course applicant should have filed the O.A. by 26.12.2001 whereas O.A. was filed only on 28.04.2003. Even if a lenient view is taken and the order passed on mercy petition is taken as cause of action then also the O.A. should have been filed by 08.10.2002 because mercy petition was also rejected on 08.10.2001, therefore, the O.A. is definitely barred by limitation. Applicant has filed Misc. Application for seeking condonation of delay on the ground that after his mercy petition was rejected, he filed representation to the G.M. (Stores) on 18.12.1991 followed by reminder dated 21.03.2002. He was thus pursuing the remedy. Since he is illiterate and does not know law, delay may be condoned.

10. We have already referred to the judgment of Hon'ble Supreme Court in the case of S.S. Rathore wherein it is clearly held as under:-

"repeated unsuccessful representation not provided by law do not extend the period of limitation. It was clarified that repeated representations and memorials to the President etc. do not extend limitation".

11. Moreover ignorance of law is no excuse, is the settled law. Applicant has not given convincing reasons to justify even the condonation of delay. Merely because he kept on giving representations one after another even after the mercy petition was rejected, there is no justification to condone the delay.

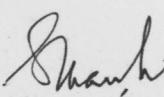
Even



Even otherwise also perusal of the counter shows that applicant had not been defending his case properly right from the begining in as much as he did not give reply to the registered letter calling upon him to join the duties, to the chargesheet and show cause notice also which shows he has not been diligent in defending his case. In these circumstances, we are not inclined to accept his contention, therefore, Misc. Application for condonation of delay is rejected.

12. Since Misc. Application for condonation of delay is rejected the O.A. has automatically to be rejected being barred by limitation. At his juncture it would be relevant to quote the judgment of Hon'ble Supreme Court in the case of 1995 Supple. (3) S.C.C. 231, Secretary to Government of India Vs. Shivram H Gaikwad wherein Tribunal's order to reinstate the respondents with full back wages was set aside on the ground that Tribunal had not considered the question of limitation. The respondents therein had been dismissed on 7.10.1986 and O.A. was filed on 14.09.1990. The same view was reiterated in 2003 S.C.C. (L&S) 878.

13. In view of the law laid down by Hon'ble Supreme Court, this O.A. is dismissed as barred by limitation.


Member-A.


Member-J.

Shukla/-