

Reserved

CENTRA ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 277 of 2007

Allahabad this the 22 day of July 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Suresh Chandra Srivastava Son of Late Raj Narain
Srivastava, Resident of 274-A/K Chachar Nala, Daryabad,
Allahabad.

Applicant

By Advocate: Mr. Amrendra Kr. Srivastava

Vs.

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Jabalpur Division, Jabalpur.
3. Senior Divisional Operating Manager, West Central Railway, Jabalpur Division, Jabalpur.
4. Senior Divisional Personnel Officer, West Central Railway, Jabalpur Division, Jabalpur.

Respondents

By Advocate: Mr. Prashant Mathur

O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Instant O.A. has been instituted for the
following relief (s): -

"8.1 Pass an order or direction quashing the order dated 06.02.2007 as Annexure No. 1 and of Removal from service w.e.f. 31.01.1971, the said order is not given to the applicant till today being ultra-vires and violative of principles of natural justice;

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8.2 Direct the respondents to decide the periods of not getting duties by the respondents as per rule with continuity of service till the date of retirement, with all consequential benefits of seniority and emoluments of retiral benefits after the date of retirement;

8.3 issue any other suitable writ, order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

8.4 award the costs of the application in favour of the applicant."

2. The facts of the case in nut shell are as follows: -

It has been alleged by the applicant that he joined the railway service as Loader man with effect from 01.06.1960, and after completion of prescribed training and test, he was confirmed on 27.07.1963. It is stated that work of the applicant had been most satisfactory to the wishes of superiors. The applicant was given token/ticket No. 2402 as Loader man. The applicant was not feeling good, in this regard the Card along with medical attendance Identity Card is filed as annexure-3. The applicant was having treatment up to 01.01.1971, and after improvement of his health went to Railway Hospital on 02.01.1971 for obtaining the fitness certificate from the Railway Doctor for the period from 02.01.1971 to 12.02.1971, and issued M-15-B. In the

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meantime applicant was removed from service on 31.01.1971 without any rhyme or reason. No explanation was called from the applicant and also no opportunity was afforded ^{to} him to defend [↑] himself, which action of the respondents is against the principle of natural justice. The applicant requested to the Divisional Railway Manager on 18.02.1971 and a written application was also submitted, and a copy was sent to the General Manager, Central Railway, Bombay but, no information has been received as yet. Several letters and reminders were sent but to no avail. The only reply was given by the respondents that the service record of the applicant is not available and hence no action can be taken in this regard. The applicant was also Member of Railway Employee's Consumers Co-operative Society Ltd., Jabalpur, and it was indicated in the certificate that the applicant was loading man at Loco Shed under the command of Senior Divisional Operating Manager, Jabalpur Division. The applicant never received any letter from the respondents regarding removal from service. No departmental enquiry was ever initiated; no reason was told to him for removal from

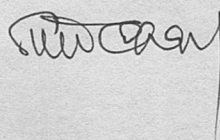
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service. The respondents have got no proof regarding confirming the issue of charge sheet to the applicant, and it has been alleged by the respondents that the matter is very old, and no record is available hence it cannot be considered. It is alleged that the respondents have not cared about the future prospects of the applicant and other family members of the applicant hence the O.A.

3. The respondents have contested the case, filed the Counter Reply and denied from the allegations made in the O.A. It has also been alleged that the order dated 06.02.2007 was passed in pursuance of direction issued by the Tribunal in the O.A. No. 1045 of 2006, and the order passed on the representation of the applicant is self explanatory based on the averments made by the applicant in the O.A. and the legal notice sent under Section 80 C.P.C., and the representation was rejected. On dated 11.01.1982 while deciding the representation of the applicant, submitted to the Hon'ble Railway Minister, it was specifically alleged that claim of the applicant has been made after considerable delay of almost 35 years, and it

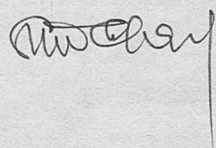
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is not tenable. As per allegation of the applicant, he was removed from service on 31.07.1971 hence cause of action, if any, accrued to the applicant was on 31.01.1971. Again on 03.12.1981 the applicant was advised that in the absence of the record, request of the applicant cannot be considered. The matter must be brought before the Tribunal within a period of one year, and in view of the Judgment of the Hon'ble Supreme Court the matter exceeding three years of the enactment of the Central Administrative Tribunal are not cognizable by the Tribunal, and such application against an order made before three years immediately preceding the date of setting up the Central Administrative Tribunal is time barred, and the Tribunal cannot condone the delay in such cases. In the present O.A., application has been moved after considerable period, and in view of law laid down by the Hon'ble Supreme Court, the present O.A. is not maintainable. Vide letter dated 03.12.1981 and subsequently on 11.01.1982 the applicant was informed that nothing can be done as it is barred by limitation, and no document is available. It is claimed that the O.A. is



barred by limitation hence liable to be dismissed. Against the order dated 31.01.1971, the applicant preferred no appeal before the competent authority. It is settled principle of law that successive and repeated representations will not give any fresh cause of action, and delay itself deprive the person concerned to avail the remedy available in law. It is alleged that in spite of the fact that he was apprised in the year 1981 and 1982, no action was initiated by him for legal remedy. Moreover, the post on which he allegedly worked, is no more existing. According to own allegation of the applicant he was removed from service due to unauthorized absence. From the documents of the applicant it is evident that he was aware regarding the order of removal dated 31.01.1971 but nothing has been done by the applicant, and the O.A. is liable to be dismissed.

4. We have heard Mr. Amrendra Kumar Srivastava, Advocate for the applicant and Mr. Prashant Mathur, Advocate for the respondents and perused the entire facts of the case.

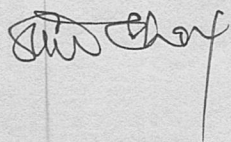


5. It has been alleged by the applicant that he joined the railway service as Loader man with effect from 01.06.1960, and after completion of prescribed training and test, he was confirmed on 27.07.1963. The applicant had been undergoing treatment up to 01.01.1971, and after recovery he went to Railway Doctors for obtaining the fitness certificate. But in the meantime, the applicant was removed from service by order dated 31.01.1971. Learned counsel for the applicant argued that no disciplinary enquiry was initiated against the applicant due to which he was removed from service. No opportunity was provided to him of hearing, and all of a sudden he was removed. On behalf of the respondents, it has been alleged that no document is available regarding services of the applicant. The facts alleged by the applicant are self-explanatory, and in detail the reasons have been mentioned in the order-annexure-1 passed on the representation of the applicant. We have perused the order-annexure-1, and it is evident from the order that in the earlier O.A. No. 1045 of 2006 the applicant admitted that he remained absent w.e.f. 06.07.1970 to 12.02.1971 but in the

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meantime he was removed from service w.e.f. 31.01.1971, and this fact is sufficient to infer that due to continuous absence applicant was removed from service. Nothing has been alleged by the applicant that he was absent due to certain valid reason.

6. The main contention of learned counsel for the respondents is that the O.A. is highly time barred, and in the year 2006 the O.A. was instituted almost after about 35 years. The cause of action for filing the Suit or Writ Petition before the Hon'ble High Court accrued from 31.01.1971, as per existing law at that time. A civil suit could have been filed within a period of three years from the date of accrual of cause of action, excluding six months period for deciding the representation. But even within three years of removal, no civil suit was filed by the applicant. It has also not been alleged by the applicant that after the order of removal dated 31.01.1971, he filed a representation or he preferred a departmental appeal. Considering the circumstances of the case, the applicant cannot plead ignorance from the order of removal. It



is an admitted fact of the applicant that he was removed from service on 31.01.1971. If the order of removal was not communicated to the applicant or not served on him, then also as he was not permitted to resume his duty, and he was informed in the month of February 1971 that he has been removed, then he was entitled to avail the departmental remedies, and in case no grievance was redressed by the respondents within a specified period then he was free to file a Civil Suit for declaration and setting aside the order of removal dated 31.01.1971. It is the main contention of learned counsel for the applicant that no order of removal was communicated to him, and he also insisted that considering the facts of the case, and having into account the relief claimed by him there is perpetual cause of action accrued to the applicant. It is stated by the applicant that he has also claimed the pension and due to this reason it is recurring and perpetual cause of action hence it is wrong to allege that the O.A. is barred by limitation.

7. It has been alleged by the applicant that he was removed from service vide order dated

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31.01.1971. It is a fact that no pension is admissible to a person who has been removed from service due to certain reasons. It appears that even nothing was paid to the applicant after 31.01.1971 then how the pension could be paid to him. Hence this statement of the applicant appears not justified. Cause of action accrued to the applicant from 31.01.1971 when he was removed from service, and the Central Administrative Tribunal came into existence in the year 1985. Earlier whatever legal remedy was available for challenging his order of removal, ought to have been availed by the applicant, and the remedy available to the ~~was~~ applicant ^{was} of filing a Civil Suit before the competent Civil Court or a Writ Petition could have also been filed but the same remedies had not been availed by him. Even in the year 1981 and 1982, the applicant was advised that no record regarding services of the applicant is available in the office, and the same has been destroyed in view of rules hence nothing can be done, and even after this order nothing was done by the applicant. It is evident from annexure-5, document filed by the applicant, that the respondents-Railway informed him that

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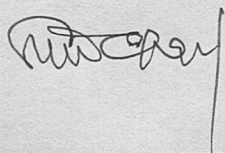
according to his own letter dated 21.08.1981 he was removed from service on dated 31.01.1971 and after expiry of period of ~~three~~^{ten} years record is not available hence his case cannot be considered, and this reply was given by the respondents on 11.01.1982 but even after receipt of this letter, nothing was done by the applicant regarding this matter. All of a sudden in the year 2006, the applicant filed an O.A. challenging the order of removal. However, the O.A. was disposed of at the admission stage by giving direction to the respondents to decide the representation of the applicant by a reasoned and speaking order and annexure-1 is the order passed by the respondents on the representation of the applicant. Firstly it will be material to state specifically that no cause of action will accrue from the date when the order was passed on the representation of the applicant on dated 06.02.2007. It will not give rise to a fresh cause of action, and it is settled principle of law. Learned counsel for the applicant cited a Judgment reported in 2000 (1) Administrative Total Judgments page 123 E. Veera Raju Vs. Presiding Officer, Labour Court and another.

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In this Judgment it has been held that as no opportunity of hearing has been provided, nor any enquiry was conducted and the proper procedure was not followed hence the impugned order of termination from service, was quashed. But this Judgment is not of any help to the applicant because the applicant was removed from service in the year 1971 and no document relating to his service is available to the respondents hence the respondents are not in a position to state whether any opportunity of hearing was provided to the applicant or not, or whether the proper enquiry was conducted or not. It is a case of removal from 31.01.1971. Learned counsel for the applicant also cited a Judgment of the CAT, Allahabad Bench in O.A. No. 497 of 1995 Bishwambhar Nath Mishra vs. Union of India and others. We have also perused this Judgment and it is also of no help to the applicant. The order passed by the Hon'ble High Court in Civil Misc. Writ Petition No. 6926 of 2000/1 Union of India and others vs. Bishwambhar Nath Mishra has also been filed but this Judgment is also not of any help to the applicant.

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8. Learned counsel for the respondents argued that this O.A. is highly belated and this Tribunal got no jurisdiction to entertain the O.A. and grant any relief to the applicant because the cause of action accrued in favour of the applicant on 31.01.1971 much earlier to the enactment of the Administrative Tribunals Act, 1985. He also cited a case reported in (1987) 3 A.T.C. 602 V.S. *Raghavan Vs. Secretary to the Ministry of Defence, New Delhi and others* and Division Bench of the Central Administrative Tribunal, Madras Bench. The Central Administrative Tribunal, Madras Bench decided that cause of action accrued long before three years before commencement of the Administrative Tribunals Act hence O.A. is barred by limitation in view of Section 21 of the Act, and that representation made seven years after accrual of cause of action, and if time has been consumed in disposal of such representation then the period cannot be excluded. Learned counsel also cited a Judgment reported in (1987) 3 Administrative Tribunals Cases 427. It has also been decided by the CAT, Calcutta Bench that if the cause of action accrued in favour of the applicant



before three years immediately preceding the date of setting up of the Tribunal then the O.A. is barred by limitation, and it cannot be entertained and the delay cannot be condoned. Reliance has also been placed by learned counsel for the respondents on the Judgment of the Hon'ble Apex Court reported in (1989) 11 Administrative Tribunals Cases 913 S.S. Rathore Vs. State of Madhya Pradesh. The Hon'ble Apex Court held as under: -

"It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation."

Hence in view of the Judgment of the Hon'ble Supreme Court as well as the Central Administrative Tribunal, Madras and Calcutta Bench if a cause of action accrued in favour of the applicant earlier to three years preceding from enforcement of the Administrative Tribunals Act, 1985, the limitation cannot be condoned and the Tribunal has got no jurisdiction. If any time has been consumed in making representations etc. then that cannot be

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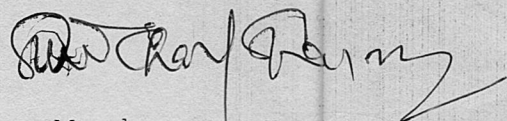
excluded. Under these circumstances, we are of the opinion that the O.A. is highly time barred, cause of action accrued in favour of the applicant on 31.01.1971, and nothing has been done by the applicant till 2006 when he filed the O.A.

9. For the reasons mentioned above, we are of the opinion that the O.A. is highly time barred and in view of the Judgment of Hon'ble Supreme Court, and Central Administrative Tribunal, Madras and Calcutta Bench, matter cannot be entertained now. The cause of action accrued in favour of the applicant on 31.01.1971, and the present O.A. was filed in the year 2006 after more than 35 years. Even after enactment of the Administrative Tribunals Act, O.A. is highly time barred and is liable to be dismissed.

10. O.A. is dismissed. No order as to cost.



Member - A



Member - J