

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 25th DAY OF November 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No.819 of 2007

(U/s 19, Administrative Tribunal Act, 1985)

Maheshwari Din S/o Sura R/o Village Kiori, Police Station Tikamau,
District Mahoba.

..... **Applicant**

Present for Applicant : **Shri S.S. Sengar, Advocate**
 Shri A. Srivastava, Advocate.

Versus

1. Union of India through General Manager,
 North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway Jhansi,
 District Jhansi.

..... **Respondents**

Present for Respondents : Shri Rajiv Sharma, Advocate

O R D E R

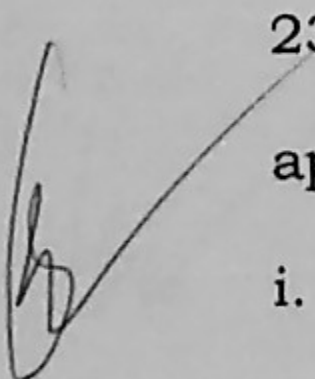
(DELIVERED BY HON'BLE DR. K. B. S. RAJAN, MEMBER-J)

The applicant joined respondents' organization as Gateman in 1961. On 24.12.1977 when he was discharging his functions at crossing Gate No.423B an accident took place allegedly due to negligence of the applicant, which resulted in death of two persons. On alleging of FIR U/s 279, 304 A, 338, 427 I.P.C., he was arrested and later on convicted on 05.5.1979. Twice, on appeal, the matter was remanded back

for retrial and on each time the Trial Court convicted the applicant but finally on 12.1.1983 the applicant was acquitted. Between 24.12.1977 to 12.1.1983 the applicant never reported for duty. It was after his acquittal that he came for the duty for the first time. He was accordingly allowed to join duty in 1983. However, disciplinary proceedings were initiated against him on 24.12.1977 in respect of his negligence of duties.

2. Opportunity was given to the applicant and disciplinary proceedings were conducted against the applicant. The disciplinary authority imposed the punishment reduction to lower pay in the time scale for a period of three years and the period of absence from 24.12.1977 to November, 1983 was treated as dies-non, not to count for qualifying service. Thus, on his superannuation while working out the qualifying service the period from 24.12.1977 to 19.11.1983 had been discounted. The applicant, after 11 years of his retirement and 24 years from the date when the cause of action actually arose has filed this O.A.

3. Earlier the applicant did approach this Tribunal by filing O.A. 1271 of 2006, which was disposed of with a direction to the respondents to decide the representation. It is in response to the aforesaid decision that speaking order was passed on 23.2.2007. It is this order that has been challenged and the applicant has claimed the following reliefs :-

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- i. to quash the impugned order dated 23-2-2007.

ii. to direct the Respondent to take action in case of the applicant and to provide all consequential benefits.

4. In paragraph 3 of the OA the applicant has stated that the application is within time limit as prescribed under section 21 of the Administrative Tribunal Act, 1985. Though, the order impugned is of 2007, the relief claimed dates back to 1983. The very purpose of filing the representation and seeking an order from the Tribunal for a direction to dispose of the representation apparently is to circumvent the limitation as prescribed in section 21 of the Administrative Tribunal Act, 1985, in the case of *C: Jacob v. Director of Geology and Mining*, (2008) 10 SCC 115, at page 123, the Apex has held as under :-

8. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.

9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights

and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". **If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.**

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. **The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.**

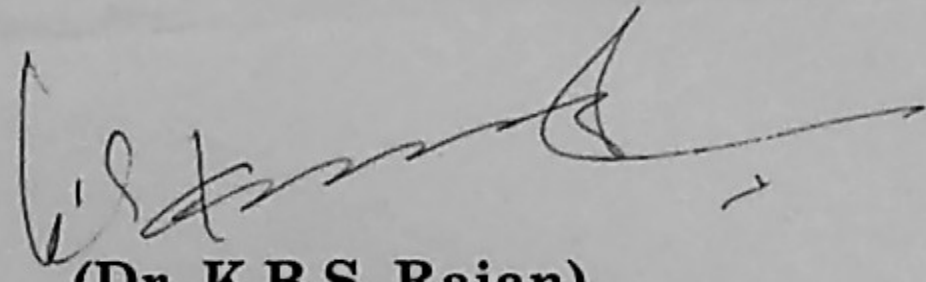
11. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do so may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of "acknowledgement of a jural relationship" to give rise to a fresh cause of action. (emphasis supplied)

5. The above decision of the Apex Court (in particular, the highlighted sentences thereof applies squarely to the instant case. Taking into account the extent of relief

sought, which dates back to 1983, we have to held that the application is hopelessly time-barred. Hence, this O.A. is **dismissed**. No costs.



(D.C. Lakha)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)

Shashi