

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Original Application Number. 885 OF 2007.

ALLAHABAD this the 09th day of *January, 2012*.

HON'BLE MR. JUSTICE SHIV CHARAN SHARMA, MEMBER (J).
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)

Mrs. Ummatun Nisa, W/o Late Hasrat Ali, R/o Village- Pathra, Post Office-
Mughalsarai, District- Varanasi.

.....Applicant.

VER S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Mechanical Engineer, The General Manager, Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager, Northern Railway, Lucknow.
4. Senior Divisional Mechanical Engineer/Diesel, Northern Railway, Mughalsarai, at present Lucknow.

.....Respondents

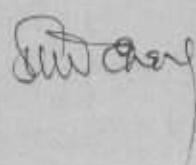
Advocate for the applicant: Sri Mustaqeem

Advocate for the Respondents : Sri Ravi Ranjan

ORDER

(Delivered by Hon'ble Mr. Justice S.C. Sharma, J.M.)

Instant original application has been instituted in order to challenge the order dated 24.12.1988 passed by the respondent No. 4. Further prayer has also been made for direction to the respondents to reinstate the applicant in service with effect from the date of removal order dated 24.12.1988 and to pay his entire salary and consequential benefits. Further prayer has been made to direct the respondents to conduct the departmental enquiry in terms of mandatory provision, which is provided under Rule 9 of Railway Servants (Discipline and



Appeal) Rules 1968. Prayer has also been made for direction to the respondents to decide the pending appeal of the applicant expeditiously.

2. At the time of hearing at the out set Sri Ravi Ranjan, Advocate for the respondents raised a preliminary objection regarding limitation and argued that the O.A is highly belated. In this connection learned counsel for the applicant attracted our attention towards order dated 19.11.2008. Following order was passed by the Tribunal on M.A No. 1831/2007: -

"M.A No. 1831/07: This application is supported by means of affidavit of applicant. Cause shown sufficient. Respondents have already put in appearance. Delay in filing original application, if any, condoned. O.A is to be treated to have been filed within time subject to the objection being raised by respondents at the time of hearing."

3. From perusal of the order it is evident that although it was commented by the Tribunal that sufficient cause has been shown in delay condonation application but liberty has been given to the respondents to raise objection on limitation at the time of hearing. Under these circumstances learned counsel for the respondents has got right to raise the objection on limitation and it cannot be said that the matter of condonation of delay stands decided finally vide order dated 19.11.2008. We ~~are~~ disagree with the arguments of learned counsel for the applicant that the order dated 19.11.2008 acquired finality. In the present case although the liberty has been given to the respondents to raise the point of limitation at the time of hearing but even then this liberty was ~~not~~ given by the ~~final~~ Tribunal the respondents have every right to agitate the matter by way of counter. If the O.A is barred by limitation then no body can be restrained to raise

R.W.Daswani

these points. We ~~are~~ disagree with the arguments of the counsel for the applicant that vide order dated 19.11.2008 the matter of delay has been decided finally and the respondents' Advocate has a right to re-agitate the point of limitation and we are bound to decide the point of limitation prior to proceed ^{ing} with the final hearing so that time may not be wasted unnecessarily.

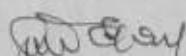
4. It has been argued by the learned counsel for the respondents that the O.A is highly belated and narrated certain dates, which are relevant for disposal of matter of limitation. Applicant's Advocate also argued that the applicant was placed under suspension vide order dated 03.10.1988. The applicant was put under suspension on the ground that he ~~was~~ remained in ~~police~~ custody for more than 48 hours in a criminal case. Learned counsel for the applicant further argued that the applicant was dismissed from service on 24.12.1988. Thereafter the applicant preferred an appeal before the competent authority and the appeal was dismissed on 28.08.1989 and thereafter revision was filed by the applicant on 18.12.1989. Learned counsel for the respondents has also not disputed these dates. Under these circumstances as the present O.A was filed in the year 2007 whereas the order of the appellate authority was passed on 28.08.1989 and even the revision was filed on 18.12.1989. Thus the O.A is barred by limitation by more than 17 years. On the face of it, it is evident that the O.A is highly time barred.

5. Learned counsel for the applicant argued that the delay has properly been explained in the Affidavit. When the applicant was placed under suspension on 03.10.1988 a reply was submitted by the applicant that co-accused of criminal case were not suspended whereas they also remained in ~~police~~ custody for more than 48 hours. The revision was filed on 18.12.1989, which ~~was~~ remained

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pending before the competent authority with no order. In this connection the applicant filed O.A No. 532/2006, which was decided on 11.05.2007. The point of limitation was not decided by the Tribunal though the said O.A was highly time barred. From perusal of the order, it is evident that the O.A was withdrawn by the applicant and it was dismissed as withdrawn with liberty to file fresh O.A. But the same facts were alleged in the earlier O.A that certain persons involved in the criminal case were not suspended whereas, the applicant has been suspended and dismissed from service. Still the revision is pending before the respondents and it has not been decided. But it has been provided in Section 20 of Administrative Tribunals Act 1985 that in case an appeal or revision is not decided within a period of six months then the O.A can be entertained. In the instant case, if the revision was not decided within six months from 18.12.1989, the applicant had liberty to file O.A in order to challenge the order of dismissal but the O.A was not filed by the applicant upto the year 2006 ie. After about 16 long years.

6. It has vehemently been argued by the learned counsel for the applicant that after conviction in criminal case, the applicant and others filed Criminal Appeal before Hon'ble High Court and Hon'ble High Court suspended the order of conviction but we failed to understand that what benefit learned counsel for the applicant wants to take by agitating suspension of conviction. Suspension of conviction does not ~~go~~ to make any difference if in the criminal appeal, the order of conviction is suspended. Moreover, even after the order of Hon'ble High Court, no O.A was filed within limitation. It is evident that the order of Hon'ble High Court was passed subsequent to the order of dismissal. The dismissal order was passed on 24.12.1988 whereas the Hon'ble High Court has passed the order in the year 12.01.1989. One judgment has been produced by the learned counsel



for the applicant reported in 2008 (5) ESC 3329 (ALL) – Brahma Dev Vs. Life Insurance Corporation of India and others , but in our opinion the order of dismissal ^{shall} ~~will~~ not stand vitiate, if the order of conviction was suspended by the Hon'ble High court.

7. From circumstances and the facts of the case, it is established case that there is inordinate delay in filing the instant O.A. In this connection judgment of Hon'ble Supreme Court reported in J.T 2011(3) SC 254 – Union of India and Ors. Vs. A. Durairaj ^{is} as relevant. In para 13 Hon'ble Apex Court has held as under:-

"It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed , any belated challenge would be liable to be dismissed on the ground of delay and laches.".

8. There is another judgment of Hon'ble Supreme Court reported in A.I.S.L.J –2011 (1) 64 – State of West Bengal Vs. Subhas Kumar Chatterjee and Ors. The relevant portion of the judgment is reproduced: -

Subhas Chatterjee

"This court on more than one occasion decried such practices adopted by the Tribunals directing applications filed before them to be treated representations before the executive authorities for their decision on merits. It is for the Tribunals that are empowered to examine service disputes on merits. Such delegation of power apart from being illegal and unconstitutional amounts to avoidance of constitutional duties and functions to decide such disputes which are exclusively entrusted to them by law. In pursuance of the power conferred upon it by Clause (1) of Article 323-A of the Constitution, Parliament enacted Administrative Tribunals Act 1985. The statement of Objects and reasons of the Act , indicates that it was being enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India. Chapter III deals with the jurisdiction , powers and authority of the Central Administrative Tribunals, the State Administrative Tribunals and the Joint Administrative Tribunals respectively. The Tribunals under the Act possess jurisdiction and powers of every other Court in the country except the jurisdiction of the Supreme Court, in respect of all service related matters. The Administrative Tribunals are conferred with the jurisdiction to hear matters where even the virus of statutory provisions are in question. Their function, however, in this regard is only supplementary inasmuch as such decisions are subject to scrutiny of the High Courts. Such is the extent of awesome powers and jurisdiction conferred upon the Tribunals. It is their (CAT) bounden duty to adjudicate the matters coming before them but not delegate its jurisdiction to extra constitutional authorities. Such practice is fraught with undesirable consequences destroying the very purpose and scheme under which they are created and constituted to adjudicate disputes in specified areas. We hope and trust that the Tribunals in the country henceforth will not repeat such practice of sending the original applications filed before them to the Executive Authorities for their disposal.".

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9. Under these settled proposition of law if a matter is stale one then it must be curbed at the time of admission. As learned counsel for the applicant argued that one O.A was also filed by the applicant earlier in the year 2006 but that O.A was also highly belated and same ~~was~~ ^{not} ought to have been entertained by the Tribunal. Nothing was decided in that O.A by the Tribunal. That O.A was dismissed as withdrawn by the applicant with liberty to file a fresh O.A. However, in view of the judgment of Apex Court (Supra) that O.A ought have been dismissed out-rightly on the ground of delay and laches and this O.A is also liable to be dismissed on the same ground.

10. For the reasons mentioned above, the O.A is highly belated and in view of the settled proposition of law laid down by the Apex Court it is a stale matter and hence the application for condonation of delay is dismissed and it is held that the O.A is highly belated, therefore, the O.A is dismissed as time barred. No costs.

Shah

MEMBER- A.

Anand Ray

MEMBER- J.

/Anand/