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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX XXXXXXXX XXXX~~

O.A. No. 276
~~XXXXXX~~

1988

DATE OF DECISION 12.4.1991

Shri Bharat Pannalal Parikh Petitioner

Shri M.M. Desai Advocate for the Petitioner(s)

Versus

Divisional Railway Manager, Western Railway. Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

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Shri Bharat Pannalal Parikh
11, Gurukrupa Society,
Opp. Jalaram Temple,
Karelibag, Baroda.

: Applicant

(Advocate: Mr. G. I. Desai
for Mr. M. M. Desai)

Versus

1. Divisional Railway Manager,
Western Railway,
Division Office at Pratapn-
agar, Baroda.
 2. Divisional Electrical Engineer,
Traction Rolling Stock,
Electric Loco Shed,
Baroda.

: Respondents

(Advocate: Mr. N. S. Shevde)

JUDGMENT

O.A./276/88

Date 12/4/91

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member

1. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the order dated 4.4.1984 passed by Divisional Electrical Engineer/Traction Rolling Stock/Electric Loco Shed, Baroda i.e. Respondent No.2 be quashed and set aside and the respondents be directed to reinstate the applicant in service w.e.f. 4.4.1984 with all consequential benefits.

2. The main hurdle in the way of the applicant is the limitation period. The applicant who was serving as Electric Fitter Grade III initially and then promoted to Electric Fitter Grade II had to face departmental inquiry against him on 10.10.1983 that after the departmental inquiry was over, he was removed from service as a result of that inquiry by the impugned order dated 4.4.1984 produced at Annexure A/2. The applicant has mentioned in his application that he preferred DAR appeal against the said order dated 4.4.1984 passed by respondent No.2 on 8.5.1984 to Senior DEE/TRS/ ELS, BRCI which was rejected by senior DEC by his order dated 25.5.1984 produced at

Annexure A/5. The applicant further preferred an appeal to the DRM/Western Railway on 9th November, 1984 which was rejected by D.R.M./BRCI on 24.6.1986, that thereafter the applicant further preferred the appeal to CEE (Traction to Locos) Churchgate, Western Railway and the General Manager, Western Railway on 8th August, 1986 but according to the applicant his appeal is not decided. According to him, the order of punishment passed against him is bad in law.

3. The learned advocate for the respondents submitted that the disciplinary authority had imposed penalty of removal of the applicant from service by order dated 4.4.1984, that the appeal filed against the order of the applicant was rejected by Sr.DEE(TRS), Baroda on 25.5.1984. These facts are not in dispute at all, but the learned advocate for the respondents submitted that there is no provision for further appeal which was made by the applicant by his application dated 9th November, 1984 but it was treated as revision and considered by as such Divisional Railway Manager, Baroda and the same was rejected and the decision was conveyed to the applicant on 24.6.1986 which the applicant has produced at Annexure A/6. The learned advocate for the respondents submitted that there is no provision for further appeal or revision after the order was passed by the Divisional Railway Manager, Baroda treating the applicant's mercy appeal as revision and therefore the further appeal dated 8th August, 1986 filed by the applicant could not be considered, to save period of limitation.

4. The learned advocate for the respondents submitted that as the appeal preferred by the applicant on 9th November, 1984 which was treated as a revision by Divisional Railway Manager, Baroda was rejected on 24.6.1986 the applicant ^{re} ~~ought~~ to have been filed under Section 21 of the Administrative Tribunals Act, 1985 within one year from the date of that order. It is not in dispute that the applicant has received this order dated 24.6.1986 produced at Annexure A/6. The learned

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advocate for the applicant has not been able to explain the delay in filing this application as late as on 29.2.1988. The applicant in the application has also not averred anything explaining about the delay in filing this application from 24.6.1986 to 29.2.1988 except that the applicant in para 5 of the application stated that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. If the applicant had made averments in the application about delay in filing this application and if he had made out sufficient cause for condonation of delay by making necessary averments in the application, this Tribunal could have considered the sufficiency of delay in making this application. However, as observed above, neither the application discloses any ground for delay in making this application nor the learned advocate was able to show us to why there was delay in making this application, the present application is barred under Section 21 of the Administrative Tribunals Act, 1985 having been filed much after the expiry of one year from the date of 24.6.1986. The application is dismissed as barred by limitation. It may be noted here that though the application is filed against the impugned order dated 4.4.1984, the said order would merge in the final order dated 24.6.1986. Therefore, the cause of action to file this application under Section 19 of the Administrative Tribunals Act, 1985 arose from 24.6.1986 and not from 4.4.1984. However, in view of the above position of law, the application shall stand dismissed. No orders as to costs. The application is disposed of.

R.C.Bhatt
(R.C.Bhatt)
Judicial Member

M.M.Singh
(M.M.Singh)
Administrative Member