

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 499 1988.

~~EX-ANNO~~

DATE OF DECISION 01.09.1988

Mr. Jethalal C. Thakkar Petitioner

Party-in-person Advocate for the Petitioner(s)

Versus

Collector of Central Excise & Ors Respondent

Mr. J.D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi .. .. Vice Chairman

The Hon'ble Mr. P. M. Joshi .. .. Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Ys*
2. To be referred to the Reporter or not ? *Ys*
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*

Mr. Jethalal Chatrabhuj Thakkar,  
Luhar Chowk,  
Kandvi- Kachchh.  
(Party-in-person)

.. Applicant

Versus

1. Collectorate of Central Excise,  
Race Course Road, Baroda.
2. Secretary,  
Central Board of Customs and  
Central Excise, New Delhi.
3. Secretary,  
Govt. of India,  
Finance Ministry,  
Department of Revenue,  
New Delhi.

(Advocate-Mr. J.D. Ajmera) .. Respondents.

C.A./499/88

O R A L - O R D E R

01.09.1988.

Per : Hon'ble Mr. P.M. Joshi .. Judicial Member

In this application, the petitioner Shri J.C. Thakkar has filed the application under section 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the order of removal dt. 20.3.1970 passed by the Collector, Central Excise and he has prayed that the said order be quashed and set aside on the ground inter alia that he has not been afforded a reasonable opportunity to defend himself.

We have heard the petitioner party-in-person legal who is now a practitioner. According to him, even though the order was passed in the year 1970, he had not received a certified true copy and even the impugned order was not served upon him, with the result he could file the appeal only in the year 1978 and even thereafter when the appeal was rejected in order to exhaust the remedy, he filed a memorial to the President in the

(u)

year 1987. It is therefore, strenuously urged by the petitioner that when the memorial has been rejected on 23.3.1988, his application is within the period of limitation and in admitting the application, he should be given an opportunity to pursue his case on merits.

3. The respondents have opposed the admission of this application by filing a preliminary objection. It is contended by Mr. J.D. Ajmera, the learned counsel appearing for the respondents, that the facts of the receipt of the order of removal by his wife and that he had preferred an appeal which was also rejected in the year 1978 (5th June, 1978) are clearly admitted in the petition. Despite this, when the petitioner has passed the time, he cannot be allowed to say that even though he preferred a Memorial after nearly a decade, he is saved by the provisions contained under section 20 or 21 of the Administrative Tribunals Act, 1985.

4. It is pertinent to note that the impugned order has been passed on 20.3.1970 on the basis of the petitioner's conviction for the offences punishable under sections 467, 468 and 420 r.w.s. 511 of I.P.C. and the present application is filed on 27.6.1988 i.e. nearly after 18 years. The fact that the petitioner filed an appeal against the impugned order after 8 years is also not in dispute.

5. During the course of his arguments, the petitioner conceded that even after dismissal of the appeal, he had filed a dozen applications for redressal of his grievance. The fact that the memorial was replied by the authorities that does not save the limitation. Once the period of limitation has started to run against him, subsequent

representations made by him does not save the limitation. It is obvious that he must exhaust the departmental remedy within a reasonable time and that too within the time prescribed under the rules. But <sup>by</sup> ~~no~~ stretch of imagination, in the instant case, the time of 10 years taken in filing the memorial to the President, is reasonable one.

6. The petitioner has relied upon section 20 (3) of the Administrative Tribunals Act, 1985 for supporting his contention that he had the option to submit a memorial and such a memorial to the President is comprised within the remedies as referred to in that section. Admittedly, he has submitted memorial to the President after several years of the order of punishment. Sub section 3 of section 20 allows only such a memorial which is elected to be submitted by the applicant which is comprised within the remedies as are covered by sub sections 1 and 2 of that section. If the applicant elects to submit memorial, such a memorial can be remedy if it is sought within the time limit prescribed in sub-sections 1 and 2 of the Act. Any memorial submitted thereafter while it might receive~~d~~ consideration of the authority to which it might be submitted cannot be regarded as a remedy for supporting any contention regarding the rights of the petitioner for seeking it.

7. In Dr. (Mrs.) Kshama Kapoor v/s. Union of India (1988(1) S.L.J. C.A.T., Bangalore, page 548), this point has been thoroughly examined and it has been held that in the matters in which the cause

is 3 years prior to the establishment of Tribunal, the case is time barred and the application is not maintainable. In such matters, the Tribunal has even no jurisdiction to entertain the application. We are therefore, not required to examine the merits of the grievance of the petitioner in this case as the final decision has been reached before 1.11.1982. We, accordingly, dismiss the application, at the stage of admission.

  
( P M Joshi )  
Judicial Member

  
( P H Trivedi )  
Vice Chairman

\*Mogera