

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~

~~O.A.No.~~ M.A.No. 761 OF 1988
~~F.A.No.~~ IN
O.A. Stamp No. 676/1988.

DATE OF DECISION 20.6.1989

SHRI KARSANBHAI KHODABHAI Petitioner

MR. V.H. DIXIT Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s

MR. N.S. SHEVDE 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? *Yes*
2. To be referred to the Reporter or not? *Yes*
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 Karsanbhai Khodabhai,
Hindu, Adult, Retired,
Residing at C/o. Jethabhai
Narsinbhai,
155, Gomtipur Rly. Quarters,
Gomtipur, Ahmedabad.

..... Petitioner.

(Advocate: Mr. V.H. Dixit)

Versus.

1. Union of India,
Summons to be served through
General Manager,
Western Railway,
Churchgate, Bombay.

2. The Divisional Railway Manager,
Western Railway,
Baroda Division,
Baroda.

..... Respondents.

(Advocate: Mr. N.S. Shevde)

O R D E R

M.A.No. 761 OF 1986

IN

O.A.Stamp No. 676 OF 1988.

Date: 20.6.1989.

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

The applicant, Shri Karsanbhai Khodabhai, who was working as Fitter Khalasi (Class IV employee) at Kankaria in Baroda Division of Western Railway, has filed this application on 29.9.1988, seeking condonation of delay in filing the application under section 19 of the Administrative Tribunals Act, 1985; for the redressal of his grievance against the order dated 13.4.1983 passed by C.M.E. CCG confirming the order dated 7.3.80 imposing a penalty of removal from service. According to the petitioner, he was not paid his Provident Fund after removal from service and due to some family circumstances, he was so mentally disturbed that he could not approach the Court for redressal of

his grievance, but when similarly situated employee Shri Jagdishchandra Bhagwandas who had moved the Court, the Tribunal passed an order in his favour and having come to know about it, he made immediate representations under his registered letter dated 8th August, 1988. But as his grievance has been rejected by the authority, he has been constrained to file this application.

2. The Respondents-Railway Administration in response to the notice served upon them, have filed their objections dated 27.1.1989. According to them, a sum of Rs. 6282 payable to the applicant on the count of Provident Fund is lying in close account as he had refused to execute the settlement calls. It is submitted that the judgment rendered by the Tribunal in T.A.No. 640/86 in the case of Jagdishchandra is not applicable in his case and the petitioner has been replied accordingly by the competent authority under letter No. E/308/5/3/1154 dated 30.8.88. It is further submitted that there is no sufficient cause shown by the applicant for condoning the delay, as alleged.

3. When the matter came up for hearing neither the applicant nor his Advocate was present, however we have heard Mr. N.S. Shevde, the learned counsel for the respondents and we have proceeded to decide the application on merits on the basis of the materials placed on record.

4. It is now well settled that if the grievance in respect of which an application is made, had arisen before three years prior to 1.11.85 the Tribunal has no jurisdiction to condone the delay

under section 21 of the Administrative Tribunals Act (hereinafter referred to as "the Act"). It is true, the order imposing the penalty of removal from service has been passed in the case of the applicant, on 7.3.80. However he preferred an appeal on 23.4.80 but the same came to be rejected vide order dated 5.7.80. Being aggrieved against the said order the applicant filed Review Application to CME-CCG on 22.11.82 and the same was also rejected. The decision in this regard was communicated to the petitioner by DRM-BRC under it's letter dated 13.4.83. Thus, the cause for grievance accrued to the petitioner from the date of that order i.e., the grievance in respect of which the application is made by the present applicant, had arisen during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under 'the Act'. Accordingly the case of the applicant comes within the purview of Sub-section 3 of Section 21 of 'the Act' which is in 'pari materia' with Section 5, Limitation Act, 1963. Accordingly, if the filing of an application has been delayed due to honest mistake, the delay may in the discretion of the Tribunal be excused under this provision. It is true, negligence as such can hardly amount to sufficient cause, and judicial discretion should be used considering all circumstances. On the one hand, the opposite party gets a vested right by expiry of limitation and on the other, Courts are given a discretion to condone delay for advancing substantial justice; hence the provision is liberally construed except when negligence or malafide or

inaction is shown. (see Sandhya Rani Sarkar V/s. Sudha Rani, A.I.R. 1978 S.C. 537).

5. It is pertinent to note that the present applicant Shri Karsan Khoda and one Jagdishchandra Bhagwandas (both Railway employees) were found at Kanaria Railway Yard at about 3-45 P.M. on 12.2.77 carrying three gunny bags containing nearly 25 'kilos' of Steam Coal. Both of them were tried and convicted under section 3 of the Railway Property (unlawful possession) Act, 1966 by order dated 25.7.77 passed by the Metropolitan Magistrate (2nd Court) in Criminal Case No. 780/77 and each of them were sentenced to suffer R.I. for one month and pay a fine of Rs. 100/- in default, to suffer further R.I. for one month which was reduced to imprisonment till the rising of the Court and a fine of Rs.100/- inflicted on each of them was enhanced to a fine of Rs. 250/-, in default, R.I. for 15 days by the judgment dated 9.1.78 rendered by Ahmedabad City Session Judge in Criminal Revision Application No. 151/77.

6. Both the aforesaid employees (i.e. including the applicant) were removed from the service on the basis of the aforesaid order of conviction as in the opinion of the Disciplinary Authority, the conduct which led to their conviction was such as to render their further retention in public service undesirable. It is significant to note that Mr. Jagdishchandra Bhagwandas, a co-accused of the applicant, in Criminal Case No. 718/77 challenged the validity of the order of removal by filing a Regular Civil Suit No. 238/84 which was renumbered on transfer, as T.A.No. 640/86 and the same was

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allowed by our order dated 11.5.88, wherein the directions were passed in the following terms.

The petitioner be deemed to be continued in service until his date of retirement in August, 1983 and his continuity of service be protected for the pensionary benefit and all other benefits be calculated on that basis and paid to him within six months from the date of this order. In these circumstances, there is no order regarding backwages. In the circumstances of this case the loss of backwages is a sufficient punishment and is deemed to have substituted the order of removal from service passed by the disciplinary authority and confirmed by the appeal by the appellate authority. No order as to costs.

Mr. V.H. Dixit, the learned counsel for the petitioner, later on, had produced a certified true copy of the order dated 24.1.89 passed by the Bench of this Tribunal in O.A.No. 155/86.

7. It is borne out from the materials placed on record that the petitioner being aggrieved by the orders of removal from service dated 7.3.80 had preferred two appeals before the authorities, however unfortunately, both the appeals came to be rejected. Thus, it can not be said that the petitioner was guilty of inaction on his part. It is true, that after the last order was passed on 13.3.83, he could not approach the Civil Court as was done by his co-accused Jagdishchandra who was similarly situated and has been benefited by order passed in his favour in T.A.No. 640/86. It is true, there is a delay in filing the application, however in view of the circumstances stated by the applicant in his application, we find that this is a fit case in which the discretion needs to be exercised by the Tribunal to condone the delay for advancing substantial justice. In our opinion it will be too harsh on the applicant if


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he were denied the opportunity to have his case adjudicated on merits.

8. In this view of the matter, we allow the application and condone the delay in filing the application. The application under O.A. Stamp No. 676/88, filed by the applicant on 29.9.88, be registered and numbered accordingly. Registry directed to place the said application for admission.

M.A. No. 761/88 stands disposed of with the directions indicated above. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN