

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 624 of 93
TAX NO.

DATE OF DECISION 20.09.99

S.B. Bhatiya

Petitioner

Mr. M.S. Trivedi

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. P. C. Kanna : Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *M*
2. To be referred to the Reporter or not ? *M*
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *M*

Shri. S.B. Bhatiya,
Ex. L.D.C.,
ESIC Corporation,
Ahmedabad.

= Applicant =

(Advocate : Mr. M.S. Trivedi)

Versus

1. Union of India through
The Chairman, Standing Committee,
ESI, Corporation and Additional
Secretary, Government of India,
Ministry of Labour & Rehabilitation,
Department of Labour,
New Delhi.
2. Director General,
E.S.I. Corporation,
E.S.I. Building, Kotla Road,
New Delhi.
3. Regional Director,
E.S.I. Corporation,
Gujarat Regional Office,
Ashram Road, Ahmedabad.
4. Dy. Regional Director,
(Vigilance)
E.S.I. Corporation,
Ahmedabad.

= Respondents =

(Advocate : Mrs. P. Safaya)

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ORAL ORDER
O.A 624 of 93

Date : 20.09.99

Per Hon'ble Shri. V. Ramakrishnan : Vice Chairman.

We have heard Mrs. Safaya for the respondents and have gone through the materials on record.

2. The applicant an employee of the E.S.I.C. has prayed for quashing and setting aside the order dated 23.07.93 as at Annexure A-6 which does not entertain his second appeal addressed to the Chairman, Standing Committee, E.S.I.C.
3. This is the second round of litigation. The applicant had earlier approached the Tribunal in O.A 407 of 90. There he had challenged the orders of the Disciplinary authority confirmed by the Appellate authority which had removed him from service. The Tribunal went into various issues and held that the matter was time-barred. We may reproduce para-4 of the Tribunal's order dated 20.03.91 :-

“ 4. Regarding the original application, the order of the appellate authority is dated 31.08.1987. The Misc. Application for condonation of delay No. 345 of 90 mentions in para 3 that due to his various difficulties involving his mental and physical and financial problems the applicant did not even prefer second appeal after the appellate order. It is stated by Mr. R.V. Deshmukh that the second appeal is required to be preferred according to Rule within 60 days of the appellate order. As second appeal provision exists in the statutory rule and is not availed of, entertaining the condonation application will tantamount to condoning the delay in filing the

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statutory second appeal and without filing of such an appeal to entertain original application filed in this Tribunal. This is not to be ordinarily done in view of the provisions of Section 20 (1) of the Act. To not file second appeal though provided for in the rules to be filed within sixty days of the appellate order and then to file original application in this Tribunal on 04.09.1990, after over three years of the appellate order and pray for condonation of delay is to pray for condonation of a double default. We see no acceptable explanation for the double default. In view of the above, M.A. for condonation of delay is also liable to be rejected and we hereby reject the same. In view of this application for condonation of delay rejected, the original application cannot survive. The same is also rejected."

The O.A was accordingly dismissed. The applicant approached the Hon'ble Supreme Court by way of an S.L.P. which was also dismissed by the Supreme Court by its order dated 12.12.91. A copy of this order is at Annexure A-4. Subsequently, the applicant has filed a representation dated 19.03.92 addressed to the Chairman, Standing Committee by way of the second appeal as at Annexure A-5 which was rejected by the impugned order dated 29.07.93 on the ground that it cannot be placed before the Chairman, Standing Committee after a delay of 5 $\frac{1}{2}$ years.

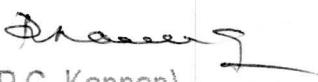
4. Mrs. Safaya brings out that as per the relevant regulations, the second appeal can be entertained if it is preferred within a period of 45 days from the date on which the copy of the order appealed against is delivered to the appellant. She refers in this connection to the para-4 of our earlier order dated 20.03.1991. This matter has in fact been gone into by the Tribunal where the Tribunal has stated that the second appeal is required to be preferred according to Rule within 60 days of the appellate order but according to Mrs. Safaya, this period has been amended to 45 days. In the present case, the applicant has filed the second appeal after a delay of 5 $\frac{1}{2}$ years

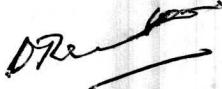


but without giving any ~~conscious~~ ^{convincing} reason for the delay which would warrant entertaining the second appeal in ~~relation to~~ ^{relation to} the provisions of regulation which requires the second appeal to be filed within 45 days whereas the same has been delayed by over 5 years

She further contends that as the matter has already been gone into by the Tribunal, and the O.A was dismissed, the present O.A is not maintainable.

5. We find force in the submission of Mrs. Safaya and we do not find any reason to interfere with the impugned order dated 29.07.97 as at Annexure A-6. The O.A. is devoid of any merit and is dismissed. No costs.


(P.C. Kannan)
Member (J)


(V. Ramakrishnan)
Vice Chairman

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