

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 165 OF 1993
Cuttack, this the 11th day of August 1999

Balajinath Padhi Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 8.99

11-8-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Balajinath Padhi, aged 55 years, son of late B.Padhi, Aska Road, PO/PS-Parlakhemundi, District-Ganjam, Orissa, Ex-Clerk, Choudhurybazar Sub Post Office, Cuttack

..... Applicant

Advocates for applicant - M/s B.Senapaty
P.K.Panda.

Vrs.

1. Union of India, represented by the Chief Post Master General, Orissa, Bhubaneswar, District-Puri.
2. The Director of Postal Services, Orissa, Bhubaneswar, District-Puri.
3. The Senior Superintendent of Post Offices, Cuttack City Division, PO-Cuttack-1, P.S-Cantonment, Town and District-Cuttack. Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R
G.NARASIMHAM, MEMBER(JUDICIAL)

Applicant Balajinath Padhi who was a Clerk in Choudhury Bazar Post Office, in this application filed on 22.3.1993, seeks to quash the order of his removal passed by the Disciplinary Authority (respondent No.3) on 7.10.1980 and the appellate order dated 6.8.1983 of Respondent No.2. The proceeding was initiated in memo dated 15.2.1980 for his unauthorised absence from 31.5.1978 till that date. The main ground urged is that till service of the penalty order dated 7.10.1980, the applicant was not aware of the proceeding and the punishment was imposed without notice to him and consequently without affording

him reasonable opportunity to defend himself.

2. The Department in their counter while objecting to the maintainability of the Application on the ground of limitation due to the unexplained ^{and} inordinate delay of ten years, also plead that notices repeatedly sent by registered post to the address furnished by the applicant returned undelivered with endorsement "no such addressee or left". Hence ex parte enquiry was made. Thus there was no illegality in conducting the enquiry.

3. We heard Shri B.Senapati for the applicant and Shri A.K.Bose for the Department. Also perused the record.

4. Sri Senapati, the learned counsel contended that the entire proceeding stands vitiated due to non-service of notice either in person or at least through newspaper publication and placed decisions in support of his contention. However, we feel this point of law on merits deserves consideration only after the applicant can cross the hurdle of limitation.

Admittedly the appeal was disposed of on 6.8.1983 and this application was filed ten years later in 1993 when the ^{period} ~~petitioner~~ of limitation prescribed under Section 21, A.T.Act is only one year. No petition for condonation of delay even has been filed. Even if filed, it is doubtful whether delay could have been condoned because a larger Bench of the Hon'ble Supreme Court in paragraph 16 of Chandra Kumar's judgment (AIR 1997 SC 1125) while discussing various provisions of the A.T.Act clearly observed that service Tribunals are not vested with the power to condone delay.

There is also no clearcut explanation even in the pleadings for this delay barring a vague recital that

after the appeal was dismissed, his wife sent representation to the Post Master General of Orissa, Prime Minister of India and Minister of State for Communications.

The date when he received the dismissal order in Appeal or dates of these representations are conspicuously absent in the pleadings. At least Annexure-4 dated 19.10.1988, a letter addressed to his wife from the office of the Prime Minister gives an indication that representation if any must have been despatched prior to 19.10.1988. Yet five years thereafter this application was filed. Moreover legal position is settled by the Constitution Bench in Rathor's case (AIR 1990 SC 10) that repeated representations will not save limitation. Still it cannot be overlooked that representations were not sent by the applicant himself.

Sri Senapati, the learned counsel however submitted that in the matter of condonation of delay, Courts have taken a lenient and liberal view. We are aware that this view has been expressed by the Hon'ble Apex Court in some cases. But question is whether such liberal view can be taken in the absence of a prayer for condonation of delay and that too under the provisions of the A.T.Act because of the observation of the Larger Bench in Chandra Kumar's case (supra). This apart in a service matter the Hon'ble Apex Court in P.K.Ramachandran v. State of Kerala in AIR 1998 SC 2276 held that law of limitation has to be applied with all its rigours prescribed by the statute and Courts have no power to extend ^{the} period of limitation on equitable grounds. Again in U.O.I v. Kisorilal reported in AIR 1999 SC 517, it was held in a service matter that delay of ^{ten} ~~two~~ years defeats equity.

We have therefore no hesitation to hold that this application is hopelessly barred by limitation and it is not necessary for us to decide the case on merits.

5. The application is dismissed. No costs.

(SOMNATH SOM)

VICE-CHAIRMAN

Somnath Som
11.8.99-

11-8-99
(G.NARASIMHAM)

MEMBER (JUDICIAL)