

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

7

ORIGINAL APPLICATION NO.938 OF 1996
Cuttack this the 21st day of September/2000

Smt. Bakemani Singh & others ... Applicants

-VERSUS-

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 24.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunal or not ?

(Signature)
(SOMNATH SONI)
VICE-CHAIRMAN

(Signature) 21.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.938 OF 1996
Cuttack this the 21st day of September/2000

CORAM:

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

- ...
1. Smt.Bakemani Singh aged 45 years,
widow of Late Routray Singh
Ex-Fireman, Grade-II, Locl Foreman
Office, Bhadrak
 2. Rabindra Singh, aged about 21 years
Son of Late Routray Singh
 3. Kumari Sukantilate Singh, aged 25 years
Daughter of Late Routray Singh
 4. Kumar Chandramani Singh, aged 17 years
daughter of Late Routray Singh,
being minor represented through
mother guardian Smt.Bakemani Singh
(Applicant No.1)

All residing at Village - Dumuria,
PO: Matiali, Via-Sujangarh, PS:Raj-Barhampur
Dist - Balasore

Place of last employment

Late Routray Singh, working as Fireman
Grade (II), Locl Foreman Office,
Bhadrak, S.E.Railway, Bhadrak
PO/PS/Dist - Bhadrak

...

By the Advocates

Applicants

M/s. A.K. Hota
Miss. M.Misra
Mr.N.Kar
Mr.B.Das
Mr.H.K.Pujhari

-VERSUS-

1. Union of India to be noticed through the
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi
2. The Railway Board,
New Delhi
3. General Manager
South Eastern Railways
Garden Reach, Calcutta-43
West Bengal

4. Divisional Mechanical Engineer,
South Eastern Railways,
Khurda Road, At/PO: Jatni
Dist - Khurda
5. The Loco Inspector (Jr.)
South Eastern Railways
Khurda Road, At/PO: Jatni
District - Khurda

...

Respondents

By the Advocates

M/s. D.N. Mishra
S.K. Panda

- - - - -

ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): The four applicants are the legal heirs of Late Routray Singh, who while in service as Fireman, Gr. II in the Loco Foreman Office under the S.E. Railway at Bhadrak was removed from service in a disciplinary proceeding by order dated 25.9.1982 (Annexure-3). This Routray expired on 14.11.1990. In this Application filed on 17.12.1996 for quashing the disciplinary proceedings initiated in the year 1976 under Annexure-1 and punishment order dated 12.5.1982 (Annexure-3) and to treat the deceased husband of applicant No.1 to be in service till his death on 14.11.1990 and to offer appointment to applicant No.2 under compassionate appointment scheme, the case of the applicants is that deceased Routray suffered from a serious illness of Bronchitis from 1973 onwards, and was under medical treatment for long on the suggestion of the Foreman of Bhadrak Loco Office. In spite of his absence on medical grounds, disciplinary proceeding was initiated in December/76 on the ground of unauthorised absence from duty with effect from 21.7.1973. The deceased submitted written statement. But thereafter he had no further information about the proceedings for long time and he entertained an impression that the same was dropped. Subsequently

it could be known that enquiry was conducted behind his back and the deceased was noticed to appear on 17.2.1982 for inquiry and this notice was received on 23.2.1982. He then represented to Respondent No.5 on 26.2.1982 intimating late receipt of notice, but without any further response. Ultimately he was communicated within the impugned order of removal from service. He preferred appeal before the Railway Board (Respondent No.2) within the stipulated period pointing out the irregularities committed in the inquiry, but without any response. Even till the date of filing of this Original Application, the fate of the appeal remained unknown, inspite of representations of applicant No.1 addressed to Respondents on 2.5.1988 and 25.9.1990. It is submitted that removal of the deceased from service was ^{not} justified, according to law inasmuch as the inquiry was conducted ⁱⁿ behind back of the deceased husband of applicant No.1 and that too after a gap of five years from the initiation of the proceedings.

Along with this Original Application a petition for condonation of delay, supported by an affidavit has been filed.

2. Respondents (Department) filed show cause mainly taking the plea that Application is hopelessly barred by limitation and as such is not maintainable; since the relevant proceeding file has been destroyed since long as per the instructions under Establishment Serial No.122/62 dated 31.3.1962 (Annexure-R/6), which mentions preservation of such papers upto a period of 10 years and no papers having been available with them they are not in a position to counter the averments made in the Original Application. However, it could be known from the D & A Register that the deceased had been chargesheeted

for unauthorised absence from duty in the year 1976 and proceeding ultimated ended with the punishment of removal from service in the year 1982.

3. On 15.1.1997, this Original Application after being Registered was put up before the Bench for the first time. On that day without admitting the application notices were ordered to be issued to Respondents to show cause as to why delay should not be condoned and the matter should not be admitted. Thereafter there is no order condoning delay or admitting the application. Hence on ~~16.8.2000~~, we heard both sides at length for final disposal of the Original Application at the stage of admission. We have also taken note of submissions made by Shri A.K.Hota, the learned counsel for the applicants and Shri D.N.Mishra, learned Standing Counsel appearing for the Respondents (Railways).

4. The following two main prayers were made in the Original Application along with ~~two~~ other consequential reliefs.

For quashing the initiation of proceedings and the other is for quashing the impugned punishment order

Admittedly the proceeding was initiated in the year 1976 and the deceased submitted written statement and till finalisation of the proceedings there is nothing on record to show that the deceased had ever objected to the initiation of the proceedings. Hence ^{question for} quashing of proceeding initiated in the year 1976 would not arise in this Application filed in Dec/96.

5. The punishment imposed on the deceased on 25.9.1982, i.e., ^{preceeding} ~~beyond~~ the period/preceeding three years of the commencement of functioning of this Tribunal, i.e. 1.11.1985. Hence under Section 21(2)(a) of the Administrative Tribunals Act, 1985, this Tribunal lacks jurisdiction to entertain this

Application. We may as well quote the relevant provision of Section 21(2) (a) as hereunder :

"21.(2) (a) - Notwithstanding anything contained in Sub-section (1), where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceeding the date on which jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which it relates"

Shri Hota, the learned counsel for the applicants, however, submitted that since the deceased employee had preferred departmental appeal and the said appeal not having been disposed of, the cause of action cannot be said to have arisen ^{prior to} ~~beyond~~ the period of three years immediately preceeding the commencement of functioning of this Tribunal on 1.11.1985. It is not clear from the pleadings on which date such departmental appeal was preferred. Even if any such appeal under the relevant departmental rules had been preferred, a departmental appeal against the order of the disciplinary authority has to be preferred within 45 days of such order to the authority, who under the rules is competent to entertain such appeal. The pleading does not at all reveal that the deceased had preferred any such appeal. On the other hand, in Para-4.7 of the Original Application it has been mentioned that being shocked/aggrieved by the impugned order of punishment the deceased had preferred appeal before the Railway Board (Respondent No.2) within the stipulated period. As per departmental rules, Railway Board is not the appellate authority against the orders of the disciplinary authority, i.e. Divisional Mechanical Engineer (Respondent No.4). Hence even if he sent such an appeal to the Railway Board, it cannot be treated as an appeal under the departmental rules. At best it can be

13

(13)

6

treated as a Memorial addressed to Respondent No.2. Viewed from this angle this Bench lacks jurisdiction to entertain and hear this Application under Section 21(2)(a) of the A.T. Act, 1985.

7. Even assuming this Tribunal has jurisdiction, the fact remains the impugned order of September/82 has been challenged in December/96, i.e. more than 14 years thereafter. Under Section 21(1) of the A.T. Act the normal period of limitation is one year from the date the impugned order has been passed. Even an appeal under Section 20 has been preferred and no final order has been made, and if a period of six months from the date on which such appeal ^{had been} ~~was preferred~~ then, the period of limitation is one year from the date of expiry of such period of six months. Thus it comes to this there is an inordinate delay of at least 13 years in preferring this Original Application. In respect of delay a petition for condonation of delay has been filed urging that the deceased lost his mental balance because of illness and ultimately died on 14.11.1990 without being able to initiate any legal action. He was survived by his widow, one minor son and two minor daughters. The widow being an illiterate and tribal lady could not be able to take timely steps to approach this Tribunal.

8. In the year 1996 when this Application was filed applicant No.1, the widow described herself to be 48 years of age, which would mean that she was about 39 years when her husband passed away. Illiteracy cannot be a ground for condoning delay. This apart it is not the case in the pleading that the deceased was completely bed-ridden till his death. In fact in Para 4.6 of the O.A. it has been averred that after receiving notice to attend inquiry, he went to the Loco Foreman Office

on 24.2.1982. This indicates that at least by the year 1982 when he was removed from service he was able to move here and there. As earlier stated, there is no pleading that he was disable and immobile after receipt of the removal order till his death, there is no medical certificate or any document in support of the pleadings that he lost his mental balance. Hence there was no excuse for the deceased to approach a Court of Law at least prior to his death challenging his removal from service.

9. We are aware of the contentions raised by Shri Hota, the learned counsel for the applicants that there is no delay since applicant No.1, the widow has been making representations now and then. Even if fact of sending representations are believed, all that it would establish from the pleadings, as mentioned in Para-4.9 that such representations were made on 2.5.1988 and 25.9.1990 and thereafter an Advocate Notice was sent on 23.6.1995, followed by mercy petition dated 13.2.1996 to the concerned Ministry. So the last representation, if any, was made on 25.9.1990. Law is well settled that even if repeated representations are made the same would not save limitation. Shri Hota placed reliance on the decision of Guwahati Bench of v.Union of India the C.A.T. in Gangadhar Namsudra reported in 1995(3)S.L.J. (C.A.T.) Page 124, wherein there has been observation that delay in reply to representations condones delay in filing an application. The facts mentioned therein are distinguishable. In that case last representation to the Department was made on 18.12.1990. Thereafter Original Application 153/91 was filed before the Tribunal and on the direction of the Tribunal the Department sent reply to the applicant on 8.1.1992 disposing

of the representations. Thereafter Original Application No.74/93, i.e., application in question was filed. On this background such observation was made by the Tribunal.

10. Further the contention of Shri Hota is that sufficient cause for delay is only a question of fact and is not a question of law. There is no dispute ^{as} to this legal principle, as reiterated by the Full Bench of Gujarat High Court in the case of Municipal Corporation of Ahmedbad v. Voltas Limited reported in 1994(6) S.L.R. Page - 1, on which reliance has been placed by Shri Hota. However, Shri Hota submitted that liberal view has to be taken while deciding the facts mentioned in the petition for condonation of delay, whether there may be sufficient cause or not. The learned counsel for the applicants placed reliance on the Apex Court judgment in State of Bihar v. Kameswar Prasad Singh reported in 2000 AIR SCW 2389. A Division Bench of the Apex Court deciding this case no doubt held that liberal approach has to be made in considering the facts to determine as to whether there is sufficient cause or not in condoning delay, placing reliance on the earlier Division Bench cases of the Apex Court reported in AIR 1987 SC 1353 (Collector, Land Acquisition, Anant Nag v. Mst. Katiji) and AIR 1988 SC 897 (G. Ramagoda Major v. Special Land Acquisition Officer). Even if an extremely liberal view is adopted, we do not find any cause to condone delay, ^{should} ~~even if~~ we have jurisdiction to entertain this Application.

11. Since the point of liberal approach in the matter of condonation of delay has been advanced, we may as well ^{refer to} quote the observations of the Apex Court comprising of three judges in the case of Union of India v. Tata Yodogada Lt. S.L.P (Civil)

No.3772-73/87 decided on 21.9.1988 differing from the two earlier views taken by a Division Bench of the Apex Court, stated above. This decision of three judges has been quoted by Patna High Court in Bihar State Electricity Board v. Baxi S.R.P. Sinha reported in AIR 1999 Patna 203 at Page-14. The Patna High Court held that observations of ~~this~~ in this decision of the Apex Court comprising of three judges has to be followed in preference to the earlier two Division Bench decisions of the Apex Court, quoted above. As would appear from the discussion of the Patna High Court, the later Apex Court decision, following the Privy Council decision in Maqbal Ahmed case reported in AIR 1935 PC 85, and also the earlier Apex Court decision in Bootmal case reported in AIR 1962 SC 1716, wherein it has been held that equitable considerations are out of place and strict grammatical meaning of the words is the only safe guide in interpreting the statute of limitation did not prefer to follow those decision, as quoted in Para-10 of this order. This apart, a Larger Bench of the Apex Court in Chandra Kumar's case reported in AIR 1997 SC 1125, while interpreting the various provisions of Administrative Tribunals Act, at Page-16 observed as follows :

"Chapter-4 (Procedure) comprises Sections 19 to 27. Section 21 specifies strict limitation period and does not vest the Tribunal under the Act with power to condone delay."

This follows the period of limitation prescribed under the A.T. Act cannot be enlarged to condone delay with a liberal or beneficial approach. This is all the more clear in a later decision of the Apex Court reported in P.K. Ramachandran v. State of Kerala reported in AIR 1998 SC 2276, wherein it has been held that Law of Limitation has to be applied with aa its rigour when the statutes so prescribe and the Courts

have no power to extend the period of limitation on equitable grounds, even though the Law of Limitation may harshly affect a particular party.

12. Another point though not raised at the Bar cannot remain out of consideration, i.e., whether the applicants can come under the expression "aggrieved persons" as ~~finds~~ mentioned under Section 19 of the A.T. Act. It is not a case where the deceased during his life time initiated appropriate legal action in a competent Court of Law and passed away thereafter, in which eventuality Right to Sue usually survives to the legal heirs. This application has been filed six years after the death of the husband of applicant No.1, seeking for quashing the punishment order imposed on the deceased in a disciplinary proceedings. The main relief claimed in this application is personal in nature to the deceased and other reliefs are consequential to this main issue. In B. Gajapati Rao v. State of Andhra Pradesh reported in AIR 1964 SC 1645, it was held claims of personal in nature to the deceased are hit by the Maxim 'Actio Personalis Moritur cum Persona' and cannot be pursued by the legal heirs of the deceased. The Full Bench of the C.A.T., Mumbai in Vidhata vs. Union of India reported in (1998) 38 A.T.C. 568 had taken the same view. In that case a Steam Train Driver of the Central Railway, while under suspension was removed from service without any inquiry. After his death application was filed by the legal heirs, i.e., widow and son before C.A.T., Mumbai Bench. The Full Bench ultimately held that the application filed by the legal heirs was not maintainable. Bound as we are by the Full Bench Decision, we have no hesitation to hold that the

present application filed by the legal heirs of the deceased railway employee is not maintainable.

In the result, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

21.2.2007
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//