

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 380 OF 1998
Cuttack this the 15th day of September/2000

Aintha ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? ✓

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.9.2000

15.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

a

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 380 OF 1998
Cuttack this the 15th day of September/2000

CORAM:

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

...

Sri Aintha
aged 61 years
S/o. Bairagi
Ex-Gangman of PW-1/ BRAG
At/PO: Sadangoi, P.S. Delanga
District - Puri

...

Applicant

By the Advocates

M/s.M.M. Basu
D.Dey

-VERSUS-

1. Union of India represented by
General Manager, S.E.Railway
Garden Reach, Calcutta
2. Divisional Railway Manager
South Eastern Railway
PO/PS: Jatni, Dist : Khurda
3. Senior Divisional Engineer (C)
South Eastern Railway
PO/PS: Jatni, District - Khurda
4. Assistant Engineer,
South Eastern Railway
Bhubaneswar

...

Respondents

By the Advocates

Ms. S.L. Patnaik
Addl. Standing Counsel
(Railways)

ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, who was serving as a Gangman under Khurda Road Division of S.E.Railways was imposed punishment of removal from service with effect from 18.6.1987 by the disciplinary authority pursuant to major penalty charge-sheet issued on 23.7.1986, because of ^{his} unauthorised absence. ⁱⁿ

2. Facts not in controversy are that on 10.8.1994, the applicant preferred mercy appeal (copy of this appeal not enclosed) and that the appellate authority, rejected the appeal on the ground of delay and this was communicated to the applicant in letter dated 10.8.1994 under Annexure-3. Thereafter the applicant in letter dated 26.3.1997 (Annexure-4) addressed to the Divisional Railway Manager, S.E.Railway, Khurda Road pointed out that the disciplinary enquiry was held exparte and that neither the notice of the disciplinary proceedings nor the result thereof was ever communicated to him; and that the punishment was imposed on him without compliance of Rule-9(6) (12) of the Railway Servants (Disciplinary & Appeal) Rules, 1968. In this Original Application filed on 27.7.1998, the applicant prays that this Tribunal should direct Respondent No.2, i.e. Divisional Railway Manager, S.E.Railway, Khurda Road to dispose of his letter dated 26.3.1997(Annexure-4) styling it as Mercy Appeal.

3. In the counter the Department admit to have received this Annexure-4 dated 26.3.1997 and the same is pending consideration. At the same time on the very next sentence they submit that since the appeal has already been disposed of in the year 1994, further appeal cannot be entertained and his case has already been closed. Moreover, the case being of 1986 the papers could not be traced. Further in Para-10 of the counter there is averment that this mercy appeal under Annexure-4 was received on 2.4.1997, much beyond the prescribed time-limit and as such merits no consideration.

4. In the Original Application applicant though pointed out many illegalities committed in the disciplinary proceedings

has not made any prayer for quashing of the punishment order, but confined his prayer only for issuing direction to Respondent No.2 to consider and dispose of mercy appeal under Annexure-4. He has not filed any rejoinder to the counter.

5. We have heard Shri M.M.Basu, learned counsel for the applicant and Ms. S.L.Patnaik, learned Addl.Standing Counsel appearing for the Respondents(Railways). Also perused the records.

6. During hearing Shri Basu, on more than one occasion referred to Annexure-4 as mercy petition. When we confronted him that Annexure-4, in the prayer portion of the Application has been termed as mercy appeal and not mercy petition, Shri Basu replied that in fact it is a mercy petition and that too under Rule-25 (4) of Railway Servants (Disciplinary & Appeal) Rules, 1968. Since there is no prayer for quashing the punishment imposed on him, we need not enter into discussion as to the legality of the order passed by the disciplinary authority. Even if there would have been any such prayer on the ground that order of punishment imposed was void ab initio because of non-service of charge-sheet and non-intimation of date(s) of inquiry and so on, as has been mentioned in the narration of facts in the Original Application, still in this Application filed in the year 1998, we cannot entertain such prayer on the ground of inordinate delay and limitation with reference to Section 21 of the Administrative Tribunals Act, 1985, providing the period of limitation. As has been held by the Full Bench of Ahmedbad C.A.T. in Dhiru Mohan v. Union of India reported in Full Bench Judgments of C.A.T.(1989-91), Vol-II, Bahri Brothers (Page-498), period of limitation as prescribed under Section 21 of the A.T.Act is applicable for impugning

even a void order. The only point for determination is whether the applicant has a legal right to secure a direction from this Tribunal on Respondent No.2 for consideration and disposal of Annexure-4 dated 26.3.1997. As earlier stated, Shri Basu clarified that this Annexure-4 is a petition under Rule-25(1) (IV) of the Railway Servants (Disciplinary & Appeal) Rules, 1968. Rule-25(Sub-rule IV) relevant for the purpose of this case provides that the appellate authority not below the rank of a Divisional Railway Manager, in cases where no appeal has been preferred, may at any time either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules and -

- a) confirm, modify or set aside the order; or
- b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
- c) remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or
- d) pass such other orders as it may deem fit;

There is proviso that no power of revision shall be exercised under this rule -

- i) by the appellate or revising authority where it has already considered the appeal or the case and passed orders thereon; and
- ii) by a revising authority unless it is higher than the appellate authority, where an appeal has been preferred or where no appeal has been preferred and the time limit laid down for revision by the appellate authority, has expired

The appellate authority in its order dated 10.8.1994 (Annexure-3) communicated to the applicant, while intimating the dismissal of the mercy appeal as hopelessly time-barred did not lay down any time-limit for revision. It would there

follow that the revisional authority has to exercise his power within the prescribed time-limit. Time limit for revision petition is 45 days.

"Note: Time limit for revision petition is 45 days from the date of delivery of the order sought to be revised. Where no appeal has been preferred against the order of the disciplinary authority the time limit of 45 days will be reckoned from the date of expiry of the period of limitation for submission of appeal (E(D&A) 84 RG6-44 of 2.12.1986 W.R. No.188/86)

(Railway Servants (Disciplinary and Appeal) Rules, 1968 4th Edition (Bahri Bros) Page-274)

There is no mention in the Application under Section 19 of the Administrative Tribunals Act, 1985, with regard to date of receipt of Annexure-3, i.e., the order rejecting the mercy appeal. This Annexure-3 was sent to the applicant by Regd.Post on 10.8.1994. It is, therefore, presumed that it was received by the applicant within a few days thereafter. Yet, he preferred this mercy petition under Annexure-4, more than two and half years thereafter. This being the position it is not desirable for us to direct Res. No.2 to condone the delay in preferring this petition under Annexure-4, orally submitted to have been preferred under Rule-25(1)(iv) and thereafter pass necessary orders thereon. At the same time we make it clear that our order in this regard does not debar Respondent 2 to consider this petition and pass necessary orders thereon, if he so deems fit.

7. In the result, O.A. is disposed of with the observation made above, but without any order as to costs.

G. Narasimham
(G. NARASIMHAM)
VICE-CHAIRMAN 2000

15.8.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//