

18. 11. 2. 4. 2001.

At the request of Lt. Counsel for the applicant due to his illness, adjd. to 20.04.2001 for hearing as a post heard matter.

*Mr. J. K. Nayak
20/4/2001*

memt,

19. Order dated 20.4.2001

Heard Shri P.K.Giri, learned counsel for the applicant and Shri J.K.Nayak, learned Addl. Standing Counsel for the Respondents and also perused the record.

In this Application the petitioner has prayed for quashing the order dated 15.12.1993 of the Appellate Authority, which has not been communicated to him and the order dated 26.7.1991 (Annexure-6) of the Disciplinary Authority, removing him from service after conclusion of the disciplinary proceedings on the ground urged in his Original Application. Respondents have filed their counter opposing the prayer of the applicant and applicant has filed rejoinder.

We have perused the pleadings of the parties. The admitted position is that applicant was working as E.D.B.P.M., Mohada in the District of Ganjam when he was put ~~up~~ off duty in order dated 22.4.1985 and after conclusion of the disciplinary proceedings he was removed from service in order dated 28.4.1987. The petitioner appealed against the order of punishment and the Appellate Authority in his order dated 7.1.1988 remitted the matter to the Disciplinary Authority to get one defence witness Arakhita Behera examined. Applicant has stated that de novo enquiry was completed on 22.2.1988, but the report was submitted by the Inquiring Officer only on 4.4.1991 and taking into consideration the inquiry report and other matters, punishment

set aside

the punishment and remitted the matter to the Disciplinary Authority

to get one defence witness Arakhita Behera

examined. Applicant has stated that de novo

enquiry was completed on 22.2.1988, but the

report was submitted by the Inquiring Officer

only on 4.4.1991 and taking into consideration

the inquiry report and other matters, punishment

J. K. Nayak

of removal from service was imposed in order dated 26.7.1991. Before that had approached the Tribunal in O.A. 1 which was disposed of in order dated 2 (Annexure-4). The Tribunal directed the of Postal Services, Berhampur to hear appeal of the petitioner on merits and of the same within a period of 60 days. Tribunal also gave liberty to the petitioner to file a fresh appeal within 15 days. It is important to note that it has been by the learned counsel Shri P.K.Giri that the petitioner in that O.A. made a grievance that his representation dated 17.7.1991 one even filed earlier had remained pending without being disposed of. Thus these representations were not statutory appeals. It is also submitted by Shri Giri that representations were filed for early regularization of the disciplinary proceedings. Ultimately the petitioner filed appeal dated 6.6.1993 and the same was disposed of in dated 14.12.1993 by the appellate authority who confirmed the order of the Disciplinary Authority. It has been submitted by the counsel for the petitioner that the order of the Appellate Authority was not neither sent to him nor had he been received any such order, that is why he has stated that he was not in a position to approach the Tribunal earlier and has come up only in November, 1999. Respondents have pointed out that the order of the Appellate Authority was sent to the petitioner through a Special Messenger and the petitioner received the same and gave the receipt, copy of which has been annexed as Annexure-R/4 to the counter affidavit. Applicant in his rejoinder has stated that Annexure-R/4 is a manufactured document. He has, however, not specifically denied that the signature appearing at Annexure-R/4, purported to be his signature, is not actually so and is a forged signature.

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We have considered the above submissions carefully. We find that Annexure-R/4 ~~appears~~ bears the signature of the applicant. We have compared this signature with the signature of the petitioner appearing at Annexures 5 and 7, which on a bare perusal appears to the same. In any case, since the petitioner filed appeal on 6.6.1993 and in case he did not receive any order on his appeal he should have waited for six months and thereafter approached the Tribunal, within one year of the expiry of the said period of six months. Instead of that he ~~has~~ approached the Tribunal after six years. In view of the above, we hold that the application filed by the applicant under Section 19 of the A.T.Act, 1985 is barred by limitation. Petitioner has also not filed any petition seeking condonation of delay, explaining the reason for such delay, supported by an affidavit. In view of this we are powerless to consider the submission of the applicant with regard to condonation of delay. Hon'ble Supreme Court in a series of decisions have held that the power to condone delay has to be exercised only on sufficient grounds. In this case no such ground ~~was~~ urged by the applicant by filing any petition for condonation of delay.

In consideration of the above, it is not necessary for us to consider other submissions made by the learned counsel for the applicant in support of his contentions. In the result, therefore, O.A. is rejected being barred by limitation, but without any order as to costs.

MEMBER (JUDICIAL)

John Mathew
VICE-CHAIRMAN
20.4.2001

Four copies of
final order dt. 20.4.2001
issued to counsels
for both sides.

RS
26/4/01

Partha S. S. S. S. S.