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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK,

Original Application No. 225 of 2002
Cuttack, this the 23rd day of December, 2004

Mr. Azhar Mohammed.

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Applicant.

-versus-


Union of India & Ors.

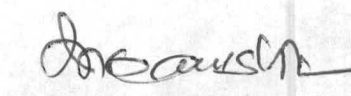
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Respondents.

FOR INSTRUCTIONS

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


(B.N. SOM)
Vice-Chairman


(J.K. KAUSHIK)
Judicial Member

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 225 of 2002
Cuttack, this the 28th day of December, 2004

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. J. K. KAUSHIK, JUDICIAL MEMBER.

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MR. AZHAR MOHAMMED,
Aged about 58 years,
Son of Late A. R. Mohammed,
At-Thoriapada, Po: Sompur,
District-Cuttack.

....

Applicant.

By legal practitioner: Mr. J. K. Lenka, Advocate.

-Vrs.-

1. Union of India represented by
General Manager, S.E. Railway,
Garden Reach, Calcutta-43.
2. Divisional Railway Manager(P),
S.E. Railway, Khurda Road,
Dist. Khurda.
3. Senior Divisional Mechanical Engineer,
S.E. Railway, Khurda Road, Dist. Khurda.

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Respondents.

By legal practitioner: Mr. R. C. Rath,
Standing Counsel for Railways.

O R D E R

MR. J. K. KAUSHIK, JUDICIAL MEMBER:

Mr. Azhar Mohammed, has assailed the
punishment order dated 16-04-1998 and consequential
compulsory retirement order dated 05-05-1998 and has
prayed for its setting aside. He has also prayed for
a declaration that the Applicant is entitled to remain
in service upto 60 years of age with all consequential
benefits.

[Signature]

2. We have heard learned counsel for the parties at a great length and have earnestly perused the records and pleadings of this case. Learned Standing Counsel for the Respondents has been fair enough to make available the relevant service book; which was called on by us on previous date.

3. The factual score of this case is very amazing. The Applicant came to be appointed on the post of Engine Cleaner on 04-07-1962 in Loco Shed, Khurda. He was issued with a charge-sheet under Rule-9 of Railway Servant Discipline and Appeal Rules, 1968 vide Memo dated 31-05-1994 alleging a set of charges against him. The significant of them being the manipulation of transfer certificate by changing the date of birth from 16-01-1941 to 16-04-1944. A confronted enquiry was conducted into the allegations and the enquiry Officer found the charges as established. Thereafter, after giving him due opportunity to make representation against the findings of the enquiry officer, the Disciplinary Authority vide order dated 16-04-1998 (Annexure-A/9) imposed the penalty of compulsory retirement on the Applicant.

4. As regards variances in the facts, the further case of the Applicant is that he preferred an appeal on dated 14-09-1998 under Annexure-A/12

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but the same has not been decided so far. This Original Application has been preferred on multiple grounds mentioned on para-5 and its sub-paras. Respondents have categorically submitted in their reply that the Applicant has not preferred any appeal and the Annexure-A/12 which is said to be an appeal is only a representation in connection with release of his settlement dues. In the reply a specific plea has been taken that there is a delay of about three and half years in filing of this Original Application. Other facts and grounds are generally denied. The Applicant has not found it expedient to file any rejoinder to the counter filed by the Respondents.

5. Learned Counsel for the Applicant has reiterated his pleadings and has submitted that the date of birth of the Applicant is "16-01-1944" and he has carried us through various applications which were made to the Co-operative Bank in connection with some funds and certain other documents including a copy of the Transfer Certificate. His main thrust has been that there has been denial of reasonable opportunity inasmuch as the material witness i.e. the Principal of the School, has not been examined during enquiry. He has also submitted that the Appeal of the Applicant has not so far been decided.



6. Per contra, learned Counsel appearing for the Respondents while re-iterating the facts and grounds raised in the counter reply, has submitted that as per the Service Book of the Applicant his date of birth is 16-01-1941 and this has been duly got noted to the Applicant and even this fact is evident from the signature of the very Applicant below the entry relating to the date of birth of the Applicant. In this view of the matter, the Applicant tried to mislead the Authorities and tried to take extra undue advantage of serving the Department for a longer period.

7. We have considered the rival submissions put forth by both the parties. Before adverting to the merits of this case, we would like to deal with the peripheral issue relating to the preliminary objection i.e. regarding limitation. At the very outset we would like to clear ^{the issue} relating to the factum of filing the appeal by the Applicant. We have perused Annexure-A/12 which is said to be an appeal by the learned counsel for the Applicant and refuted by other side. The perusal of the same reveals that the same is addressed to the Senior Divl. Personnel Officer and it is captioned as payment of settlement dues with immediate effect and pray for early action. By no stretch of imagination

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the same can be considered as an appeal; especially the appeal would lie to Divisional Railway Manager, since the punishment order itself was passed by the Senior Mechanical Engineer and the Appeal cannot lie to an authority who is holding the corresponding rank. In this view of the matter, we have absolutely no hesitation in agreeing with the submission of the learned Counsel for the Respondents that the Applicant did not file any appeal in the matter. Therefore, the cause of action to the Applicant has arisen on 16.4.98 and as per Section 21 of the Administrative Tribunals Act, 1985, Original Application ought to have been filed by 15-04-1999 but the same has been filed on 17-04-2002. Thus, there is a clear delay of three years in filing this Original Application.


8. Now we would analyse the effect of delay in this instant case. Incidentally, the Applicant has not filed any application for condonation of delay - rather an ex facie mis-statement of fact has been made that the Application is within the limitation. The repercussion of non-filing of application for condonation of delay is that we have no platform to examine the matter relating to the condonation of delay and, as such, question of condoning the delay does not arise. Since the delay cannot be condoned until there is an application for the same and there are good and sufficient grounds for condonation of delay. The other proposition of law

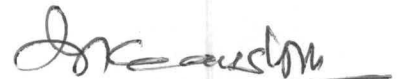
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which comes to our ways that until and unless the hurdle of delay is crossed, we are debarred from examining the case on merits and it is the settled position of law which has been pronounced by the Apex Court in the country in the case of RAMESH CHANDRA SEHARMA vs. UDHAM SINGH KANHAE (2000(1)ATJ 178). That was a case relating to promotion and without there being an application for condonation of delay and without condoning the delay, the Tribunal allowed the prayer of Applicant therein. The Supreme Court was pleased to set aside the order of the Tribunal and have held that the Tribunal was not right in adjudicating the matter on merits without considering the points of delay. In this view of the matter, we are afraid of examining the matter on merits in this case. Therefore, we need not dilate any further. However, we have seen the service-sheet of the Applicant wherein the date of birth of the Applicant has been indicated as 16-01-1941 and there are number of letters he has submitted to change his date of birth. As far as law on this point is concerned, para-145 of the Indian Railway Establishment Code Vol. I is very clear; wherein it has been laid down that the date of birth which has been initially declare at the time of entry into service shall prevail and thus, the same cannot be changed especially at the far end of the service of an employee. In this view of the matter, the correct date of birth of the Applicant is 16.1.1941. In any case, we find that the very O.A. is not maintainable being hit by the law of limitation.

[Signature]

9. The result is rather unfortunate but we are left with no option except to dismiss this O.A. being hit by the law of limitation and without going into the merits of this case. We do so accordingly; but without any order as to costs.


(B.N.SOM)
Vice-Chairman


(J.K.KAUSHIK)
Judicial Member