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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.597 of 2011
Cuttack, this the 7th day of August, 2014

Tulsi Dora Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C. MISRA)
ADMN. MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Tulsi Dora,
aged about 46 years,
Son of Sri Padmanava Dora,
At present working as Office Superintendent,
L.W. Office, OFBL, Badmal,
Dist. Bolangir, Odisha.

...Applicant

(Advocates: M/s- L. Pradhan, D.P. Das)

VERSUS

Union of India Represented through

1. Secretary,
Department of Defence (Production),
Ministry of Defence,
Government of India,
South Block, DHQ,
New Delhi-110011.
2. Ministry of Defence,
Under Secretary,
Defence Seva Bhawan,
10-1, New Delhi.
3. Chairman,
Ordnance Factory Board,
10-A, Saheed Khudiram Bose Road,
Kolkata-700001.
3. The General Manager-cum-Disciplinary Authority,
Ordnance Factory,
Badmal, Dist. Balangir, Pin-767770.

... Respondents

(Advocate: Mr. U.B. Mohapatra)



ORDER(Oral)

R.C. MISRA, MEMBER (A)

The applicant who presently working as Office Superintendent, L. W. Office OFBL, Badmal, in the District of Bolangir, Odisha, has filed this Original Application under Section 19 of the Administrative Tribunal's Act, 1985 seeking the following relief:-

“(a) To admit the Original Application, call for the records from authority and after hearing the parties set aside the impugned order of reduction and stoppage of increments vide Annexures-5 & 6 with the reimbursement of financial loss incurred by the applicant.

(b) Further direct the authority Respondent No.3 to sanction increment for the suspension period i.e. 01.12.2003 to 04.10.2005.”

2. Brief facts of the case are that the applicant was initially appointed as LDC in the year 1989 and subsequently promoted as Assistant in the year 1997 and thereafter promoted to the post of Office Superintendent. While working as such, on 10.02.2004 a departmental proceeding was initiated against him vide office order No.1505/194/TD/VIG/OFBL/2003 and in conclusion of the said proceedings, the applicant was removed from service by the Disciplinary Authority vide its order dated 16.02.2005. Thereafter, the applicant preferred an appeal before the Appellate Authority. The Appellate Authority, vide order dated 14.09.2005 set aside the removal order dated 16.02.2005 and remanded the matter for fresh enquiry and pass a final order. Accordingly, the fresh inquiry was held and the Inquiry Officer submitted its report on 23.02.2007 (Annexure-A/2) finding the applicant guilty. In consideration of the report of the Inquiry Officer and other



materials, the Disciplinary Authority vide order dated 21.04.2007 (Annexure-A/5) imposed the following punishment on the applicant:-

“ It is therefore ordered that the pay of Shri Tulsi Dora, Assistant be reduced by two stages from Rs.5600/- to Rs.5300/- in the time scale of pay and Rs.5000-150-8000/- for a period of two years (24 months) with immediate effect. It is further directed that Sri Tulsi Dora, Assistant will not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay.”

3. Thereafter, the applicant prepared an appeal to the Appellate Authority against the above punishment order. The Appellate Authority rejected the appeal vide order dated 20.12.2007, which was communicated to the applicant vide letter dated 01.04.2008 (Annexure-A/6). The applicant thereafter submitted a petition before the Revisional Authority Vide Annexure-A/7 dated 10.09.2008 and having received no response, he has moved this Tribunal seeking relief as indicated above.

4. The matter came up for admission on 20.09.2011. On the memo filed by the Ld. Counsel for the applicant that he did not want to rely on Annexure-A/7 dated 10.09.2008, the same was ordered to be ignored, and accordingly, notice was directed to be issued on O.A. as well as M.A. No.774/11 seeking condonation of delay.

5. In response to notice, Respondents have filed a detailed counter opposing the prayer of the applicant. While not controverting the factual aspects of the matter, Respondents have submitted that there being no violation of the procedure or the principle of natural justice, and that the charges against the applicant having been established, the Tribunal should not interfere with the matter.



6. Regarding the point of limitation, Respondents have submitted that the present O.A. being barred by limitation should be dismissed.

7. Replying to the point of limitation, applicant in his rejoinder has submitted that the cause of action under challenge is a continuous one and the appeal under Rule 23 (v) (e) of the CCS (CCA) Rules, 1956 is still pending vide Annexure-A/7.

8. We have heard the Ld. Counsels for both parties and perused the records.

9. Undoubtedly, the cause of action in this O.A arose when the Appellate Authority rejected the appeal vide its order dated 20.12.2007, which was communicated to the applicant vide letter dated 04.01.2008. Therefore, January, 2008 is the deemed date when the cause of action for the applicant to approach the Tribunal first arose. However, the applicant preferred a petition dated 10.09.2008 to the Member/A & E, Ordnance Factory Board, Kolkata styling him as Appellate Authority, although the facts remain that Addl. DGOF, being the Appellate Authority had already rejected the appeal as communicated vide Annexure-A/6 dated 04.01.2008. In the petition for condonation of delay, applicant has submitted that due to wrong advice of local counsel and authority, applicant had filed a revision petition instead of approaching the Tribunal after his appeal could be rejected. Therefore, it is the submission of the applicant that there being no laches or willful negligence, the delay caused may be condoned.

10. We have carefully considered the submission made by Ld. Counsel for both the sides. As noted above, vide order dated 20.09.2011 of

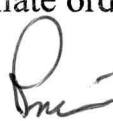


this Tribunal, petition dated 10.09.2008 (Annexure-A/7) has been treated as ignored on the memo dated 20.09.2011 filed by the learned counsel for the applicant that he did not want to rely on this. In the circumstances, the cause of action for the applicant, starts from January, 2008, when he ^{received} reviewed the order or the appellate authority rejecting his appeal. In the circumstances, as provided under Section 21 of the Administrative Tribunal Act, 1985, which reads as follows:-

"21. Limitation -(1)A Tribunal shall not admit an application-


- (a) In case where a final order such as is mentioned in Clause (a) of subsection (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.;
- (b) In a case where an appeal or representation such as is mentioned in Clause (b) of subsection (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months".

he should have approached the Tribunal within one year of the receipt of the communication dated 04.01.2008 (Annexure-A/6) whereas this O.A. has been filed on 03.08.2011, i.e., more than three years after the cause of action arose. Therefore, the O.A. suffers from limitation and laches. Even conceding that there being a provision of revision, applicant had rightly availed of that remedy, then the question comes what prevented him from preferring so before the Reviewing Authority after about nine months of the passing of the appellate order. This period of delay has to



be explained. The next point that arises is that even after waiting for a period of one and half years, as prescribed under Section 21 of the Administrative Tribunal Act, the applicant should have approached the Tribunal after filing petition dated 10.09.2008, i.e., by March, 2009. Therefore, from both the angles, the O.A. suffers an unexplained delay. As regards the submissions of the applicant that due to wrong counseling he had to file petition and there is no laches and willful negligence in approaching the Tribunal, it is to be noted that ignorance of law is ~~of no~~ excuse. In other words, once the applicant has taken shelter under a court of law, he has to establish his right by articulating unhesitatingly each and every point of law including the technicality in rule of law.

11. From the discussion held above, we hold that the present O.A. suffers unexplained delay and laches. In the circumstances, the O.A. is not worth admitting and accordingly, the same is dismissed. No costs.


(R.C. MISRA)
ADMN. MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER