

In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

Date of order : 2. 11. 2000

O.A. No. 69 OF 1995

Anandi Lal S/o Shri Hanuman Bux, aged 55 years, R/o 162
B, New Railway Colony, Lalgarh, posted on the post of
Dresser, Divisional Hospital, Lalgarh.

.... Applicant.

Vs.

1. Union of India through
General Manager, Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager, Northern Railway,
Bikaner Division, Bikaner.
3. Senior Medical Superintendent, Divisional Hospital,
Northern Railway, Bikaner.
4. Divisional Personnel Officer, Northern Railway,
Bikaner Division, Bikaner.
5. Assistant Personnel Officer, Northern Railway,
Bikaner Division, Bikaner.

.... Respondents.

CORAM :

HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER
HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

Mr. J. K. Kaushik, Counsel for the applicant.
Mr. S. S. Vyas, Counsel for the respondents.

ORDER

PER MR. A. K. MISRA, JUDICIAL MEMBER :

The applicant had filed this application with
the prayer that the applicant be allowed all consequen-

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tial benefits in terms of his claim as detailed in Para 4.12 of the application in pursuance of Annex-A/4, along with interest at the compound rate of 24% per annum. He has further prayed that the respondents be directed to pay to the applicant wages/pay equivalent to his junior Shri Hari Kishan.

2. Notice of the O.A. was given to the respondents who have filed their reply to which a rejoinder was also filed by the applicant.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. Briefly, the facts of the case are that the applicant was appointed as Hospital Attendent w.e.f. 21.7.59. In December 1965, the applicant was convicted by the Munsif Magistrate, Ratangarh, for offences under Section 323 and 324 Indian Penal Code. The applicant filed an appeal against the order of conviction in the Court of Additional Sessions Judge, Churu. The appeal of the applicant was partly accepted and the applicant was released under Section 4 of the Probation of Offenders Act, vide judgement dated 31.8.1968. It is alleged by the applicant that without issuing any show cause notice, the applicant was dismissed from service w.e.f. 15.2.66. The applicant filed a departmental appeal against the order of dismissal. The respondents converted the order of dismissal from service into suspension from service w.e.f. 15.2.66. After the decision of Additional Sessions Judge, Churu, the applicant was dismissed from service w.e.f. 30.1.69. The applicant challenged the order of dismissal by filing a civil suit in a civil court. The suit of the applicant was dismissed, however, the appeal

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of the applicant was accepted by the learned civil judge, Churu, vide its judgement and decree dated 31.5.74, Annex.A/4. Against the judgement and decree of the appellate court, the respondents preferred an appeal before the Hon'ble High Court which was rejected by the Hon'ble High Court on 14.3.83 and the judgement and decree of the First Appellate Court, was maintained. It is further alleged by the applicant that the respondents re-instated the applicant on the post of Hospital Attendant, vide its order dated 10.4.84, Annex.A/2. The applicant represented to respondents for arranging payment of arrears of pay on account of reinstatement but no action was taken by the respondents. Therefore, the applicant filed an execution application for enforcing the order of the Civil Court. While entertaining the execution application the learned executing court passed an order that the applicant should deposit Rs. 38,485/- as Court Fee for securing the amount sought to be recovered from the Railways. As against this order, the applicant filed a revision petition in the Hon'ble High Court which was accepted vide its order dated 9.2.92, Annex.A/3, observing that the Union of India should make the payment of due amount within three months failing which the applicant shall be at liberty to recover the amount from the respondents and shall be granted the facility of paying the Court Fee in instalments. Against the aforesaid order of the Hon'ble High Court, a review application was filed by the applicant. The Review Application was accepted vide order dated 26.9.94, Annex.A/1. In this order following observation was made by the Hon'ble High Court :-



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"6. Learned counsel for the non-petitioner submits that the Tribunal may reject his application for execution on the ground of great delay and it may also insist for the payment of court-fee of Rs. 38,485/- before proceeding with the execution of the decree.

7. The decree-holder Anandi Lal will have to file a fresh application before the Central Administrative Tribunal for the execution of the decree obtained by him. Rule 7, Central Administrative Tribunals (Procedure) Rules, 1985 prescribes fixed court-fee of Rs. 50/- for an application moved before the Tribunal. Section 37 of the Act provides that the provisions of the Act shall have overriding effect. As such there is no question of the Union of India pressing for the payment of court-fee of Rs. 38,485/- and the Tribunal directing so. It is hoped and trusted that the Tribunal will condone the delay under Section 21(3) of the Act in filing application for the execution of the decree, if filed within three months.

8. Accordingly, the review petition is allowed. The order dated 9th February, 1990 is withdrawn and cancelled. The revision petition is dismissed."



5. In view of the aforesaid order of the Hon'ble High Court, the applicant filed an O.A. in the Tribunal on 24.1.95 and claimed that the respondents be directed to arrange payment of difference of salary from 15.2.66 to 30.1.69 and from 30.1.69 to 10.4.84, after taking into account the annual increments and fact of promotion of junior persons. The applicant also claimed various types of allowances for the period he remained under dismissal.

6. The respondents in their reply have stated that the O.A. is hopelessly time barred. The applicant had not prayed for condonation of delay, as directed by the Hon'ble High Court. The applicant has not come with the clean hands as he has not disclosed the fact of having received the arrears of pay amounting to Rs. 61,463/30. The respondents have further stated that since the applicant was not on duty during the period of termination, therefore,

he is not entitled to the allowances, as claimed by him. The applicant was also given promotion in compliance of the order but further promotion could not be given because of non availability of post. Full compliance of the order of the Civil Court, has been made by the respondents and the applicant is not entitled to any relief whatsoever, as claimed by him. The OA deserves to be dismissed.

7. The applicant reiterated the facts in the rejoinder as mentioned in the OA. and has further mentioned names of few persons who were junior to the applicant and were given promotion during applicant's dismissal. However, he admitted having received the payment of arrears of salary as alleged by the respondents. It was argued by the learned counsel for the respondents that the application of the applicant is hopelessly time barred as the same has been made almost 9 years after the Administrative Tribunals Act, 1985, came into force. He has further argued that as per the direction of the Hon'ble High Court the applicant did not move any application for condonation of delay. In reply, the learned counsel for the applicant submitted that facts relating to the present O.A. have been described in detail in O.A. which go to show that the applicant was through-out pursuing his remedy in competent court of jurisdiction, therefore, taking notice of pleaded facts, the delay in moving the present O.A. deserves to be condoned. We have given our thoughtful consideration to these arguments. In our opinion, the applicant should have moved application for condonation of delay as directed by Hon'ble High Court because in the Hon'ble High Court the applicant



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had expressed his apprehension that the Tribunal may not entertain his O.A. due to inordinate delay in moving the O.A. and it is in this context, the Hon'ble High Court was pleased to direct the applicant to move an application for condonation of delay and further directed that the Tribunal would condone the delay. But the applicant had filed no application for condoning the delay. In such application for condonation of delay, all facts are required to be given which may go to explain the delay in filing the O.A. including the applicant's efforts in different courts for pursuing the remedy. Simply describing the facts in the O.A. would not enable us to consider that the applicant was in fact pursuing his remedies in the Courts of competent jurisdiction. The purpose of moving application for condonation of delay is to acquaint the opposite party of the facts relating to delay in moving the application so that the opposite party may file appropriate reply. At the same time, such application helps the Court in evaluating the reasons of delay in moving the O.A. But, when such application is not moved by the applicant the Court remains at loss to evaluate the contention of the applicant in respect of such delay. In the instant case, the applicant by not moving any application for condonation of delay, as directed by the Hon'ble High Court deprived the opposite party and the Tribunal of an opportunity to evaluate the causes of delay. Moreover, the applicant had not moved the present O.A. within three months from the order of the Hon'ble High Court, as was directed. He had moved the application on completion of near about four months from the date of order. The delay in filing the O.A. by



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one month has also not been explained by the applicant. In view of these facts, in our opinion, the O.A. of the applicant is hopelessly time barred and deserves to be dismissed.

8. The applicant has alleged that he had moved an execution application in the Court of Munsif, Magistrate, Ratangarh in the year 1986 but inspite of giving many opportunities the applicant has not been able to file certified copy of the execution application alleged to have been moved by the applicant in 1986. Consequently, the Tribunal is at loss to know what the applicant had prayed in the execution application in respect of pay, allowances etc. or enforcement of the order of the appellate court. Therefore, it cannot be said that the relief which the applicant is claiming here before us through this O.A., was in fact claimed by him in the execution application because the present O.A. can only be termed as continuance of such execution application as per the order of the Hon'ble High Court which directed for condonation of delay in moving such application. Therefore also, in our opinion, the applicant is not entitled to any relief.

9. Considering the prayer of applicant for grant of arrears of pay etc. as described in Para 4.12, we are of the opinion that the applicant has not been able to show that the amount of arrears of pay paid by the respondents and admitted by the applicant, was incorrectly calculated and the applicant was paid lesser amount than due. When the respondents say that full payment has been made to the applicant in respect of arrears of pay as

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per his entitlement then it was for the applicant to establish that he was not correctly paid the amount of arrears of pay. However, there is nothing on record to establish the fact of short payment of pay to the applicant and consequently the applicant is not entitled to any relief on this count.

10. The applicant has claimed House Rent Allowance but has not been able to establish that he was entitled to House Rent Allowance as a consequence of reinstatement for the period of dismissal.

11. The applicant has also claimed night duty allowance and uniform allowance, but in our opinion when he was not on duty due to his dismissal, he cannot claim such allowances. He is also not entitled to claim amount equivalent to uniform allowance for the alleged number of years of dismissal. The night duty allowance is paid to an employee who is discharging his duties during the night. Likewise, uniform is provided to a Government servant as per his entitlement only if he remains in service. Since the applicant remained under dismissal for number of years, therefore, he is not entitled to these allowances. The applicant has claimed allowance for gazetted holidays and national holidays but when he was not discharging the active duties, his claim in this regard is baseless. The applicant has claimed amount equivalent to free supply of medicines, amount of free passes and amount of compensatory leave benefits, but in our opinion, he is also not entitled to these allowances because he remained under dismissal and was not discharging active duties. Moreover, the facilities to which a



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Section Officer (Signed)

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government servant is provided can be availed only when he remains on duty. He cannot claim any amount equivalent to the value of such privileges and facilities. Applicant's claim in respect of various allowances, in our opinion, is ill advised ^{and} ill founded and deserves to be rejected.

12. In view of the foregoing discussions, we are of the opinion that the O.A. of the applicant is hopelessly time barred and also bears no merit. The O.A. deserves to be dismissed.

13. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K.Misra
(A.K.MISRA)
Jud 1. Member

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11 May 1968

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under the supervision of
Section Officer (1) ~~as per~~
order dated 12/4/2007

Section Officer (1) ~~as per~~