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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.76/2010
with
Misc. Application No.60/2010

Date of decision:15.12.2011

**HON'BLE Mr. JUSTICE K.S. RATHORE, JUDICIAL MEMBER,
HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER.**

Risal S/o Shri Ram Swaroop, age 48 years, R/o village Ladunda,
Post Pipali, Tehsil Chidawa, District Jhunjhunu (Raj.). Ex.
Gangman, Gang No.7, Jhunpa, Sadulpur, Bikaner Division, Earlier
Northern Railway now in N.W. Railway.

: Applicant

Mr. P.R. Singh, counsel for applicant.

Versus

1. The Union of India, through the General Manager, North Western Railway, H.Q. at Jaipur.
2. The Divisional Railway Manager, Bikaner Division, North Western Railway, Bikaner (Raj.).
3. The Divisional Engineer-II, Bikaner Division, North Western Railway, Bikaner (Raj.).
4. The Assistant Engineer, Sadulpur Sub Division, Bikaner Division, North Western Railway, Sadulpur, District Churu (Raj.).

.....Respondents

Mr. Vinay Jain, counsel for respondents.

ORDER (ORAL)

Per Justice K.S. Rathore

The present Original Application is directed against the order dated 12.10.1994 (Annexure-A/1). The brief facts of the case are that the applicant was appointed by the respondent No.4 as Gangman vide verbal order dated 28.06.1982 in the pay scale of



Rs.200-250. The controversy arose when the applicant proceeded on leave without prior sanction, and willfully remain absent from duty for a period of 101 days during the period 13.04.1989 to 01.08.1989. The respondents issued show cause notice, but that had not been responded to by the applicant. It is also alleged by the respondents that it has been alleged by the applicant that he was suffering from tuberculosis, but he has not been treated in the Railway Hospital, and nor has he submitted any application for taking medical leave alongwith medical (ailment) certificate etc.

2. The learned counsel for the respondents raised a preliminary objection that the applicant has preferred this O.A. without availing the efficacious alternate remedies available to him under the Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968. We have put a particular query to the applicant as to whether he had submitted an appeal or not before the respondents against the impugned order. It is alleged by the applicant that he had submitted an appeal on 10.11.1994, and our attention was drawn towards the Annexure-A/7 and A/8 of the O.A. But this has been emphatically denied by the respondents, stating that no such appeal had ever been filed by the applicant, and it is seen from the Misc. Application for condonation of delay that the applicant seems to have admitted that he had preferred an appeal only vide Annexure-A/7 & A/8, and it is said that the appeal has not decided by Appellate Authority, therefore, this Original Application has been filled by the applicant.

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3. Further, the respondents raised the preliminary objection regarding maintainability of the original application on account of delay and latches, as the impugned order is dated 12.10.1994 (Annexure-A/1), and has been assailed by the applicant by way of this original application after a lapse of more than 15 years, and this delay of more than 15 years has not been explained satisfactorily in the application for seeking condonation of delay, and it is only mentioned therein that the applicant belongs to SC category, and he does not have any livelihood, so also totally illiterate, and was not knowing about the consequences of the appeal preferred vide Annexure-A/7 & A/8 not being decided by the Appellate Authority.

4. We have heard the rival submissions made on behalf of the respective parties, and have carefully gone through the pleadings and documents available on record. We are satisfied with the submissions made on behalf of the respondents that applicant has failed to file any statutory appeal before the respondents, as is evident by averments made in the application of condonation of delay. Even if we assume that this O.A. is maintainable against the order dated 12.10.1994 without availing alternate efficacious remedies, that too is obviously barred by limitation. In the case of **D.C.S. Negi v. UOI & Ors.** [Special Leave to Appeal (Civil) No.7956/2011, the Hon'ble Supreme Court has held that prior to entering into the merits of the case the Tribunal ought to have first decided the issue relating to delay and latches of the case. Therefore, on merit, as well as on preliminary objections raised by

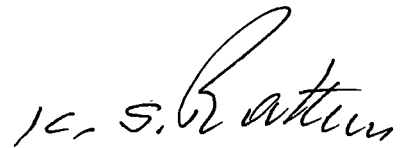
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the respondents, we are of the view that this O.A. is not maintainable, either on merit, or on account of delay and latches, and is also not maintainable as being premature, as the applicant has not availed alternate efficacious remedy available to him. Consequently, the O.A. is devoid of merit, and deserves to be dismissed, and the same is dismissed. Accordingly, the M.A. No. 60/2010 is also dismissed. No order as to costs.



[Sudhir Kumar]
Administrative Member



[Justice K. S. Rathore]
Judicial Member

RSS