

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH.

No. O.A. 1108 of 1997.

Present : Hon'ble Dr. B. C. Sarma, Member (A)

Hon'ble Mr. D. Purkayastha, Member (J)

PRANAB KUMAR SARKAR

Vs.

1. Union of India, through the General Manager, Metro Railway, Calcutta.

2. General Manager, Metro Railway, Calcutta.

3. Chief Elect. Engineer, Metro Rly., Calcutta.

Respondents.

For applicant : Mr. B.C.Sinha, counsel.

For respondents : Ms. U. Sanyal, counsel.

heard on : 11.11.97 :: ordered on :

02.11.1998

O R D E R

D. Purkayastha JM

Feeling aggrieved by and dissatisfied with the order dated 24.9.96 passed by the appellate authority, Dy. Chief Elect. Engineer, Metro Railway, Calcutta, rejecting the appeal of the applicant on the ground of delay in preferring the appeal as after the period of three years from the date of the impugned order the said appeal was preferred.

2. The case of the applicant is that regular enquiry was held on the charge framed against him and inquiring officer submitted his report against him. Thereafter, the disciplinary authority (Dy. Chief Elec. Engg.) after considering the inquiry report and reply of the applicant awarded punishment of reduction to one

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stage lower at Rs.2250/- of his present time scale of Rs.1400-2300/- for a period of three years with further orders that this reduction will have the effect of postponing future increments of his pay. On receipt of the said order of penalty, applicant preferred an appeal before the General Manager on 22.9.95 and the said appeal to the General Manager was duly forwarded to the Dy. Chief Electrical Engineer with the remarks "CEE may kindly see". No action was taken on the said appeal and no reply was given to the applicant. Subsequently, on enquiry the applicant came to learn that appeal should be addressed to the CEE in his case. Thereafter, he submitted two representations on 4.3.96 and 6.5.96 with requests to return the appeal addressed to the General Manager with liberty to submit the same to the appropriate appellate authority. Thereafter the applicant submitted an appeal dated 20.8.99 to the appellate authority with a prayer for setting aside the punishment imposed upon him by the disciplinary authority along with the prayer for condonation of delay in preferring such appeal. But the Dy. Chief Electrical Engg. dismissed the appeal by an order dated 24.9.96 (annexure-A7). Hence the applicant has filed this application.

3. The case has been resisted by the respondents through their advocate without filing any written reply in this case. Ld. counsel Mr. B.C.Sinha appearing for the applicant submits that the impugned order of dismissal of appeal on the ground of delay is not tenable in view of the fact that the applicant was under misconception of fact and law preferred the appeal before the General Manager, who redirected the appeal to the CEE with the remarks "CEE may kindly see", but no action was taken on the said appeal. The applicant came to know later that the appeal was wrongly filed and accordingly he applied for withdrawal of the same and subsequently filed an appeal on 20.8.96. In view of the aforesaid circumstances, delay in preferring the appeal should be condoned in the interest of justice. But the Dy. Chief Electrical

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Engg. had dismissed the appeal arbitrarily without considering the reasons for the delay and thereby, the impugned order is liable to be quashed and a direction may be issued upon the appellate authority to re-consider the case. Ld. Advocate Ms. U.Sanyal appearing for the respondents could not substantiate her argument in absence of written reply except the question of law involved in this case. She submits that the order dated 24.9.96 (annexure-A) was disposed of ~~with~~<sup>on</sup> the ground that the appeal was hopelessly time barred and thereby, no reason left to consider the appeal again by the appellate authority.

4. We have heard the ld. counsel for both the parties and gone through the records. It is found from annexure A to the application that appeal was to be addressed to the Chief Electrical Engg, Metro Railway, Calcutta through proper channel, but from the order dated 24.9.96 (annexure A7) it is found that the appeal was placed before the CEE for his perusal and he passed the order rejecting the appeal on the ground of delay of three years and he found no sufficient cause for preferring the appeal so late and hence, there is no reason to consider the appeal at this stage. Rule 20 of the RS(D&A)Rules, 1968 envisages that no appeal preferred under this para shall be entertained unless such appeal is preferred within a period of 45 days from the date on which the copy of the order appealed against is delivered to the appellant, provided that appellate authority may entertain the appeal after the expiry of the said period if it is satisfied that the appellant has sufficient cause for not preferring the appeal in time. We find that in view of the provisions of Rule 20 of the RS(D&A)Rules, 1968, the appellate authority has a discretionary power regarding entertaining the appeal even after the expiry of the said period of 45 days. But in the instant case, according to the applicant, <sup>he</sup> preferred appeal to the wrong appellate authority, i.e. the General Manager, and that appeal has been ~~referred~~<sup>sent back</sup> to the CEE. From the averment of the applicant, it is found that he

preferred the appeal to the General Manager within time. If the appeal was sent to the CEE for disposal by the General Manager without returning it to the applicant for preferring to the appropriate authority, then the applicant has sufficient ground for condonation of the delay. In the instant case, none of the counsel could enlighten us what is the fate of the original appeal which was <sup>Sent</sup> to CEE by the General manager to the needful, it is found from the averment made in para 4(6) that the said appeal was duly forwarded to the CEE with the remarks "CEE may kindly see". In that case the subsequent appeal preferred by the applicant on 20.8.95 addressed to the CEE, Metro Railway, Calcutta can be said to be a supplementary appeal due to pendency of the original appeal. It is also found from the record that before disposal of the appeal, no opportunity of being heard personally has been given to the appellant to satisfy himself with the reason as to why he could not prefer the appeal within time.

6. In view of the aforesaid circumstances, it is found that the representation of the applicant regarding return of the appeal had not been disposed of till 6.5.96. If the appeal was filed before the wrong authority who could have returned the appeal to the applicant for preferring it to the appropriate authority, But in the instant case, the applicant preferred appeal before the General manager who sent back appeal to the appropriate authority who is authorised to dispose of the appeal. But the appellate authority, without disposing the original appeal, entertained the subsequent appeal treating it as a new one and held that the appeal is time barred. In view of the aforesaid circumstances, we are of the view that there are some procedural wrong apparent in this case. Therefore, it would be a fit case to send back the case to the appellate authority to decide it on merit as well as on the ground of limitation as opined by him. If it is found that the original appeal was returned to the applicant, but he did not prefer appeal, then, the decision of the appellate authority shall

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stand good.

7. Accordingly, we set aside the order dated 24.9.96 and direct the appellate authority to consider the question on the ground stated in this order and to decide the appeal on merit in accordance with law and on the ground of limitation within a period of three months from the date of communication of this order. No order is passed as regards costs.

*D. Purkayastha*  
24.9.96

( D. Purkayastha)  
MEMBER (J)

*B.C. Sarma*  
2/1/98

(B.C. Sarma)  
MEMBER (A)