

Central Administrative Tribunal  
Lucknow Bench

OA No.581/2003

Lucknow this the 15th day of December, 2003.

Hon'ble Mr. Shanker Raju, Member (J)  
Hon'ble Mr. S.P. Arya, Member (A)

Rajinder Prasad,  
S/o late Sh. Ram Narain Kashyap,  
R/o Mohalla Pandey Tola,  
H.No.532, Aliganj,  
Lucknow.

-applicant

(By Advocate Sh. R.A. Mishra)

-Versus-

1. Union of India through  
the Secretary, Railway Board,  
Ministry of Railway, Govt. of India,  
New Delhi.
2. Director General,  
R.D.S. Lucknow,  
Ministry of Railway,  
Rail Board, India, Alambagh,  
Lucknow.

-Respondents

(By Advocate Sh. N.K. Aggarwal)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

The present OA is directed against an order passed by the respondents on 22.4.2003, wherein the sick memo issued to applicant was found to be inadvertent and it was also found that Doctor in KGMC Sh. R.C. Shukla does not exist in the Psychiatry Department.

2. Applicant has prayed for arrears of pay from 7.5.1983 with re-instatement and other retiral benefits.

3. Briefly stated, the factual matrix appears from the pleadings is that applicant who was appointed on the post of Refrigeration Mechanic in unskilled category was selected in the year 1982 for deputation to Iraq. Due to mental illness he was issued a certificate from KGMC of the concerned Doctor, advising him rest from 7.5.1983 to 15.11.1995. It is contended that respondents without informing applicant and without taking up the usual proceedings in violation of Article 311 removed applicant from service on a false excuse that the Doctor who had issued the medical certificate does not exist.

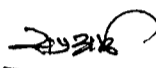
4. On the other hand, respondents' counsel brought to our notice that applicant had replied to the memorandum dated 20.8.85, removing him from service w.e.f. 17.7.85 as a result of disciplinary proceedings preferred an appeal against the removal from service contending that the chargesheet was served upon him and he was removed. The appeal was rejected as time barred on 23.11.87. In this view of the matter it is stated that the fact of removal was within the knowledge of applicant in 1987 itself. The present OA filed after 16 years is hopelessly barred by limitation.


5. We have carefully considered the rival contentions of the parties and perused the material on record.

6. As per Section 21 of the Administrative Tribunals Act of 1985 limitation for filing an OA is one year from the date of the final order passed. As the order of removal was served upon applicant, against which he preferred an appeal and the appellate order was also communicated through registered post and posted on notice board on 7.12.87 service is deemed. However, assuming that the appellate order was not served as per Section 22 of the Administrative Tribunals Act, in such a case where a statutory remedy preferred has not been disposed of is 1½ years from the date of filing such an appeal. As the appeal was preferred on 11.10.85 the limitation expired in April, 1987 but applicant had not preferred any OA.

7. We also find that no MA for condonation of delay has been filed. In view of the decision of the Apex Court in State of Karnataka v. Udham Singh Kamal, 2000 SCC (L&S) 552 as well as Hukum Raj Kinswara v. Unio of India, (1997) 4 SCC 284, as there is no request or explanation of delay OA is to be dismissed as time barred.

8. We are also of the view that one who sleeps over his rights loses his remedy as well. In absence of any justification or explanation<sup>h</sup> for coming to the Court after long gap of 16 years present OA is hit by laches and hopelessly barred by limitation. Finding<sup>h</sup> no good grounds to condone the delay, though not specifically prayed, OA is dismissed. No costs.

  
(S.P. Arya)  
Member (A)

  
(Shanker Raju)  
Member (J)