

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Original Application No.115/2008
This the 27 day of July 2012**

Hon'ble Dr. K.B.S. Rajan, Member (J).

Hon'ble Mr. S.P. Singh, Member (A)

Surendra Nath Srivastava, aged about years, son of Late Sri Raj Karan Srivastava, resident of 78, Patel Nagar, Alambagh, Lucknow.

...Applicant.

By Advocate: None.

Versus.

1. The Union of India, through the Secretary, Indian Posts & Telegraph Department, Ministry of Finance, New Delhi.
2. The Director, Postal Services, Lucknow Region, Lucknow.
3. The Senior Superintendent of Railway, Mail service (O), Division, Lucknow.

.... Respondents.

By Advocate: Sri S.P. Singh.

(Reserved on 25.07.2012)

ORDER

By Dr. K.B.S. Rajan, Member (J).

Invoking the provisions of Rule 15 of the CAT(Procedure) Rules, 1987 in view of the absence of the applicant either in person or through his counsel and after hearing the counsel for respondents, this order is passed.

2. Brief facts: The applicant was employed as mailman in the office of the senior Supt of Railway, mail service (O) division. An FIR was lodged against the applicants for certain offence committed by him in which the applicant was initially convicted and later on, on appeal before the sessions Court, acquitted. Independent of the same, the respondents had initiated proceedings ~~and~~ and after following the necessary procedure, the applicant was imposed the ~~order~~ ^{penalty} of dismissal from service. The applicant

had preferred appeal against the same. The appellate authority had by order dated 31st of December 1988 softened the penalty of dismissal as under: -

" In view of the above, I hereby partly admit the appeal of the applicant and modifying the penalty imposed on the appellant vide SSRM 'O' Dn. Memo referred to above order as under:-

(i). That the pay of the appellant be reduced to the lowest stage of the scale of Rs.750/- 940/- for a period of three years without any further effect.

(ii). That during the period of three years, the appellant will not get any annual increment which would become due after the said period without any claim for the arrears of the increments;

(iii). That the appellant would be taken on duty with immediate effect and the period between the dismissal and reinstatement as a result of this order would be treated as suspension period for all purposes;

(iv). That for the period between the dismissal and his reinstatement I propose that the appellant would be entitled for 50% of pay;

(v). That the appellant is hereby given notice to make any representation as he deems desirable against the proposal in the above sub para (iv) within a period of 60 days from the date of receipt of this order."

3. The applicant has challenged the same and prayed for quashing of the said order and for a direction to provide all service benefits along with interest at the rate of 18%.

4. Respondents have contested the OA. According to them, the applicant was found guilty of misconduct under the service rules and the penalty imposed was for the same.

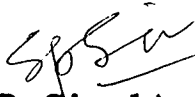
5. The applicant has filed his rejoinder reiterating his contentions as in the OA.

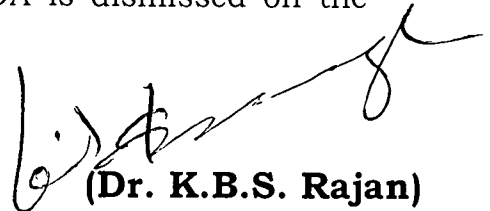
6. When the case came up for hearing the applicant was not represented. Counsel for the respondents submitted that the relief sought would be sufficient to indicate that the Application is hopelessly time-barred. The order under challenge is of 1988 and the application made is of 2008. There is no application for condonation of delay.



7. Pleadings were perused and the argument of the respondents counsel also taken into account. It is seen from the records that the applicant was acquitted of criminal charges by the appellate court in 2007. It is thereafter that he had asked for payment of arrears of salary etc. In other words it appears that the applicant is under the impression that the penalty imposed upon him was on the basis of conviction from which he now stands acquitted. That is not the case here. Had the respondents invoked the provisions of Rule 19 of the CCS(CC&A) Rules, 1965 and without holding inquiry and on the basis of conviction by a criminal court, imposed any penalty, it is only that penalty that could be subjected to review on the ground of honourable acquittal. That is not the case here. The Respondents had conducted a full fledged inquiry and further, the inquiry report clearly states that full opportunity was given to the applicant to cross examine the witnesses and the applicant chose not to file even defence statement. The disciplinary authority had imposed penalty of dismissal on the basis of the enquiry reports. The appellate authority had diluted the same. The applicant could come against the said order at the appropriate time but he had chosen not to file any application before the Tribunal when the appellate authority's order was pressed into service. The applicant has to blame himself for the delay involved. His explanation that the cause of action arose when the criminal courts acquitted him cannot be accepted since the same was independent of the enquiry conducted. The council ^{for} ~~to~~ the respondent is right when he contended that the application is hopelessly time-barred.

8. In view of the above, the OA is dismissed on the grounds of limitation. No costs.


(S.P. Singh)
Member (A)


(Dr. K.B.S. Rajan)
Member (J)

Girish/-