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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
LUCKNOW CIRCUIT BENCH

REGISTRATION O.A. No.45 of 1990.

Shri Narain Srivastava Applicant
versus
Union of India & Others Opposite Parties.

Hon. Justice K. Nath, V.C.

Hon. K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing the order dated 8.1.75, Annexure-2 and order dated 17.1.90, Annexure-2A and for direction to reinstate the applicant in service with full benefits of salary, allowances, increments and pensionary benefits as permissible under the Rules.

2. The applicant Shri Narain Srivastava has addressed this Tribunal in person and the question which has arisen immediately for consideration is whether this claim is within limitation.

3. The facts stated in the petition are that the applicant was appointed on 22.12.59 in the Railway Service and was working as a Clerk in the office of the Divisional Railway Manager, Northern Railway, Lucknow in 1968. He sent a letter of resignation from service on 1.6.68. Having heard nothing in that regard he made a representation, Annexure-3 on 11.7.68 stating that he had reported for duty on 1.7.68 but was not allowed to join on ground of his having submitted the resignation. He added that since then he had returned to Faizabad and was trying to obtain a

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a certificate for practicing as an Advocate in Faizabad in case his resignation was accepted. He requested that he may be informed of the result of his resignation.

4. It is alleged that reply to representation dated 11.7.68, Annexure-3 was not received. Annexure-4 dated 25.8.70 is a letter of the Divisional Personnel Officer to the applicant stating that on account of his failure to repay certain advances drawn by him, whose details were given in the letter, the question of acceptance of his resignation did not arise. The letter called upon the applicant to repay the amounts of advances. In the context of that letter, the applicant wrote a letter, Annexure-5 dated 29.12.70 in which he called upon the Divisional Personnel Officer to arrange payment of his salary and admissible allowances with effect from June, 1968 upto date and also to intimate the date on which he could report for duty.

5. Nothing seems to have transpired for sometime. Annexure-I is a chargesheet dated 1.5.71 served upon the applicant for disciplinary proceedings on the charge of his having absented himself unauthorisedly from 1.6.68 which amounted to a failure to maintain devotion to duty punishable under Rule 3(2) of the Railway Servants (Conduct) Rules, 1966. In order to enable him to file a reply to the chargesheet the applicant sent a letter, Annexure-8 dated 10.5.71 by

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which he requested for an opportunity to inspect certain specified documents. According to the applicant, that letter was not replied.

6. While on the one hand, the applicant seems to have been making representations to various authorities from time to time, ultimately on 8.1.75 the impugned order, Annexure-2 was issued by the Divisional Personnel Officer of the office of the Divisional Railway Manager, Northern Railway stating that the applicant had been on unauthorised absence from 1.6.68 and since the period of absence exceeded three months he was deemed to have resigned from service with effect from 29.8.68 (AN) in terms of Note 2 under Exception II of Rule 732 of the Railway Establishment Manual, Volume-I.

7. On 18.2.75, the applicant made representation, Annexure-9 to the Divisional Personnel Officer against Annexure-2 in which he stated inter alia that Rule 732 aforesaid was not applicable and that the order, Annexure-2 was in violation of Article 311(2) of the Constitution of India. According to the applicant, he heard nothing about his representation although he had continued to make further representations to the higher authorities.

8. Ultimately, he received Annexure-2A dated 17.1.90 of the Divisional Railway Manager, Northern Railway which runs as follows :-

" Reg: Re-instatement in service in E Branch of D.R.M. Office, N.Rly, Lucknow.

In reference to your representation dated 4.6.89 it is to inform you that you

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were on unauthorised absence w.e.f. 1.6.68 and, therefore, you were deemed to have resigned from service w.e.f. 29.8.68 as advised to you vide this office letter No.814-E/EVI/74 dated 8.1.75.

No further action is, therefore, required from this office."

9. This petition was filed on 8.2.90.

10. The applicant has urged that limitation for the present petition is saved because of the appellate order, Annexure-2A in which the original order dated 8.1.75, Annexure-2 merged. While there can be no controversy about the proposition that in an appellate order the original order gets merged, the question is whether the order which is considered to be a appellate order is really an appellate order in which the original order could merge. The applicant admits that an appeal against Annexure-2 dated 8.1.75 could have been filed within a period of three months. No appeal was filed within three months. A representation was made on 18.2.75, Annexure-9 to the D.P.O. who issued the original order dated 8.1.75, Annexure-2. It is not shown that an appeal can be preferred to the very authority which has passed an order. Ordinarily, an appeal can be made only to a superior authority which is prescribed for the purposes of entertaining an appeal. We find therefore that neither Annexure-9 could be treated to be an appeal nor the applicant filed any appeal.

11. The motion on which the letter dated 17.1.90, Annexure-2A was passed by the Divisional Railway Manager

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is described in Annexure-2A to be "a representation" dated 4.6.89 and not "an appeal". A copy of that representation also has not been produced before us and therefore it is not possible to interpret the representation to be an appeal.

12. An important feature of Annexure-2A is that it does not contain any decision. Having referred to the applicant's representation dated 4.6.89 it only informed him that he had already been advised by letter dated 8.1.75, Annexure-2 that he was deemed to have resigned from service with effect from 29.8.68 on account of unauthorised absence with effect from 1.6.68. Indeed, the last sentence of Annexure-2A leaves no manner of doubt that the Divisional Railway Manager purported not to take any action in the matter. In unmistakable terms he had recorded that no further action was required from his office. In other words, Annexure-2A does not constitute a final order in the matter of representation/ appeal of the applicant. The original order dated 8.1.75, Annexure-2 continues to be the last and final order on the subject. None of the representations which were made since then would bring any advantage to the applicant from the point of view of limitation.

13. The question whether or not Rule 732 of the Railway Establishment Manual Volume-I could be applied to the applicant's case or whether the order dated 8.1.75, Annexure-2 violates the provisions of Article 311(2) of the Constitution of India need not be

decided in this petition because, being barred by time, it is not entertainable. The contention of the applicant however is that his grievance is in respect of a continuous cause of action. We do not think that the cause of action which arose by order dated 8.1.75, Annexure-2 could be said to be continuous. It is wholly immaterial that a chargesheet dated 1.5.71 was issued to the applicant and was not pursued. Admittedly, in any case, the applicant had been kept out of employment atleast from 8.1.75 if not also since after 1.6.68 either because of the own conduct of the applicant or because of the silence of the Department.

14. If the impugned order dated 8.1.75, Annexure-2 was illegal or void and under the cover thereof the applicant had been kept out of job the cause of action for his reinstatement, nevertheless, arose atleast on 8.1.75. That cause of action could not be considered to be a continuous cause unless in the meantime he had been allowed to join and did join or the Department had acknowledged his right to join under the provisions of the Limitation Act. The remedy of the applicant to seek redress had expired under the Indian Limitation Act of 1963 itself long before the Central Administrative Tribunal was constituted under the Administrative Tribunals Act, 1985. That expired right could not be revived by enactment of the Administrative Tribunals Act.

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15. The applicant admitted that shortly after June, 1968 when he left for Faizabad with a view to practice as an Advocate he got himself enrolled as an Advocate in September, 1968. He appears to have been practicing as an Advocate since then and therefore we have had the benefits of the arguments not only of an applicant but also of an applicant who is an Advocate. We have given our anxious thought to the question and we are of the opinion that the claim is barred by limitation and the petition must fail.

16. The application is dismissed in limine.

Member (A)

Member (A)

John

Vice Chairman

Dated the 27th Feb., 1990.

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