

(2)

CAT/8/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI  
NEW BOMBAY BENCH

O.A. No. 170/88

198

~~Ex. No.~~

DATE OF DECISION 1-6-1988

Muruganandan Narayanswamy Pillay Petitioner

Shri L.M.Nerlekar Advocate for the Petitioner(s)

Versus

Divisional Railway Manager, Central Respondent  
Railway, Bombay V.T.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G.Rajadhyaksha, Member(A)

The Hon'ble Mr. M.B.Mujumdar, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(3)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

D.A.170/88

Muruganandan Narayanswamy Pillay,  
C/o. Ajay M. Pillay,  
Flat No.8, "B" Building,  
Paradise Housing Co-op. Society,  
S.No.4,  
Wanwadi,  
Pune - 411 040.

.. Applicant.

vs.

Divisional Railway Manager,  
Central Railway,  
BOMBAY V.T.

.. Respondent

Coram: Hon'ble Member(A) Shri J.G. Rajadhyaksha  
Hon'ble Member(J) Shri M.B. Mujumdar.

Appearance :

Shri L.M. Nerlekar,  
Advocate  
for the applicant.

ORAL JUDGMENT

Date: 1-6-1988

{ PER : M.B. MUJUMDAR, MEMBER(J) }

Heard Shri Nerlekar, the learned advocate for the applicant.

2. The relevant facts for the purpose of this order are these :  
In 1953 the applicant was appointed as a Commercial Clerk. In 1960 he was promoted as Senior Assistant Coaching Clerk. Along with memorandum dtd. 24-5-1975 a statement of one charge was served on him. The charge was that while working as Assistant Coaching Clerk from January, 1974 to August, 1974 the applicant committed serious misconduct as he made heavy short remittances and short accountals of cash which amounted to temporary misappropriation of Government money and he failed to clear it fully inspite of matter being brought to his notice. An Inquiry Officer was appointed and after completing the enquiry he held the applicant guilty of the charge by his report dtd. 1-9-1976. According to the Inquiry Officer the total debit outstanding against the applicant was to the tune of Rs.3,353.70- Thereafter a show cause notice regarding penalty was issued to the applicant. He replied to the penalty notice

but the Disciplinary Authority was not satisfied with the explanation and hence he passed an order dtd. 22-1-1977 imposing the penalty of removal from service on the applicant. The applicant had preferred an appeal dtd. 7-3-1977 against that order but it was rejected on 12-4-1977. The applicant had also preferred a revision application dtd. 20-4-1977. It was also rejected on 7-7-1977. More than 5 years thereafter i.e. on 15-10-1982 he has preferred an appeal against the order of penalty of removal from service to the Chairman, Railway Rates Tribunal, Madras. According to the applicant he has not received any reply regarding that appeal.

3. As we found that the application is hopelessly time barred we have heard Shri Nerlekar, the learned Advocate, for the applicant at length on the point of limitation. According to him as the appeal preferred by the applicant to the Chairman of Railway Rates Tribunal is not replied to, this application shall have to be treated to be within time. Alternatively he requested for condoning the delay in preferring this application.

4. In this connection Shri Nerlekar brought to our notice Rule 24(2) of the Railway Servants Discipline & Appeal Rules, 1968. According to that sub-rule, a Class III railway servant may after his appeal to the appropriate appellate authority has been disposed of and within two months thereafter, apply to the General Manager for a revision of the penalty imposed on him. The sub-rule further provides that in that application he may, if he so chooses, request the General Manager to refer the case to the Railway Rates Tribunal for advice before he disposes it of. On receipt of such a request, the General Manager is to refer the case to the Chairman Railway Rates Tribunal for advice sending him all relevant papers. But in our view the applicant cannot take advantage of this provision because in the revision application preferred by him on 24-4-1977 he had not made a request for referring the matter to the Railway Rates Tribunal for advice. Apart from this the appeal which he has made to the Chairman of the Railway Rates Tribunal was on 15-12-1982 i.e. more than 5 years after his revision application was rejected. Moreover there is no provision in any rules for making an appeal to the Chairman of the Railway Rates Tribunal, after the appeal and revision

are rejected. We, therefore, feel that the appeal made by the applicant to the Chairman of the Railway Rates Tribunal on 15-10-1982 will not bring the application within limitation.

5. Regarding condonation of delay also the applicant has no case whatsoever. The Principal Bench of this Tribunal in V.K. Mehra v. The Secretary, Ministry of Information and Broadcasting, New Delhi, ATR 1986 CAT 203, has taken the view that the Act does not vest any power or authority in the Tribunal to take cognizance of a grievance arising out of an order made prior to 1-11-1982 i.e. more than three years prior to the Constitution of this Tribunal. It is further held that in such a case there is no question of condoning the delay in filing the petition but it is a question of the Tribunal having jurisdiction to entertain a petition arising in respect of grievance ~~XXXX~~ prior to 1-11-1982. As the grievance in that case had arisen on 22-5-1981 i.e. more than 3 years immediately preceding the constitution of the Tribunal it was held, that the Tribunal had no jurisdiction, power or authority to entertain an application regarding that grievance. This view is affirmed in a number of decisions of different Benches of this Tribunal and we find no reason to differ from that view.

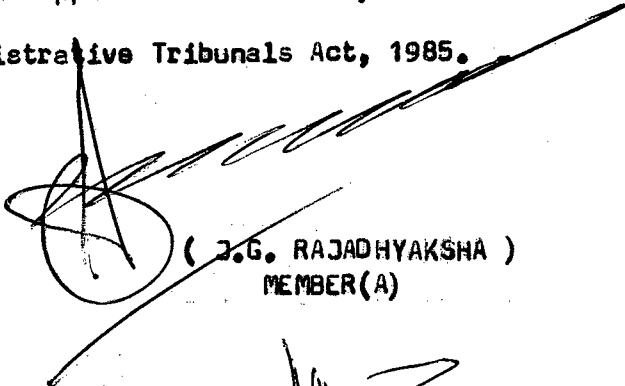
6. In this connection Shri Nerlekar relied on one judgment of the Supreme Court in Collector, Land Acquisition, Anantnag and another vs. Smt. Katiji and others, AIR 1987 SC 1353. It is held by the Supreme Court in that case that Courts should adopt a liberal approach while considering the question of condonation of delay. There cannot be any doubt about this purposition. But in the present case the applicant's revision application was rejected on 7-7-1977. He did not take any steps thereafter for more than 5 years. It was on 15-10-1982 that he preferred an appeal to the Chairman of the Railway Rates Tribunal. That appeal, as already pointed out, was not provided by any rules whatsoever. If he was so serious he could have made a request to the General Manager in the revision application for referring the matter to the Railway Rates Tribunal for advice. He did not do so. Even after preferring appeal to the Chairman of the Railway Rates Tribunal he did not take any steps till he approached this Tribunal on 2-3-1988. We do not think that this is a case

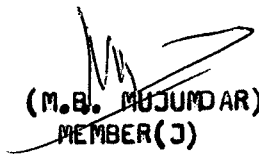
(6)

where the delay should be condoned. Moreover as already pointed out the cause of action has arisen in this case much more than 3 years prior to the constitution of this Tribunal and as held by the Principal Bench of the Tribunal in the above mentioned case we will have no jurisdiction to condone the delay.

7. Shri Nerlekar has relied on a judgment of the Jodhpur Bench of this Tribunal in K.K. Sharma vs. Union of India reported in ATR 1988 (1) CAT 608. But the point involved in that case was altogether a different one. The applicant in that case had challenged an order of his transfer from Jaipur to Salumber passed on 30th June, 1986. Instead of filing an application under Section 19 of the Act to the Tribunal he preferred a Writ Petition in the High Court against the order of transfer. The Jodhpur Bench of the Tribunal held that the time spent in the High Court was a sufficient cause to condone the delay under Section 21(3) of the Administrative Tribunals Act. That case does not help the applicant before us in anyway.

8. In result we reject the application summarily under Section 19(3) read with 21 of the Administrative Tribunals Act, 1985.

  
( J.G. RAJADHYAKSHA )  
MEMBER(A)

  
( M.B. MUJUMDAR )  
MEMBER(J)