

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

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T.A. No. 371/86

DATE OF DECISION 14.6.1989

Shri T.D.Londhe Petitioner

Shri S.N.Desai Advocate for the Petitioner(s)

Versus

Union of India and others. Respondent s

Advocate for the Respondent(s)

CORAM

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

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

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
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

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

Tr.A.No. 371/86

Shri T.D.Londhe  
R/o. Urlikanchan  
Tal. Haveli, Dist.Pune.

.. Applicant

vs.

Union of India through  
the General Manager,  
Central Railway, Bombay.

2. The Divisonal Railway Manager,  
Sholapur Division,  
South Central Railway,  
Solapur.

.. Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar  
Hon'ble Member (A) Shri P.S.Chaudhuri

ORAL JUDGMENT

Dated: 14.6.1989

(PER: M.B.Mujumdar, Member (J))

On 16.12.1975 at 2.30 p.m. a goods train, which the applicant was driving, met with an accident at Bhalwani Railway Station. On 18.12.1975 he was placed under suspension. On 26.12.1975 a charge-sheet containing two charges was served on him. The first was that he had exceeded the speed limit prescribed at that place and that he had failed to keep his train under his full control and thereby capsized the engine and 7 wagons next to it in a Nalla and derailed another three wagons. The second charge was that the applicant had consumed alcohol before he came on duty to work the diesel goods train.

2. The <sup>applicant</sup>~~accused~~ denied the charges and hence an Inquiry Officer was appointed. No Presenting Officer was appointed, but the applicant nominated an Assisting Railway Employee to defend him in the inquiry. About 10 witnesses were examined before the Inquiry Officer and the applicant was also examined at length. The Inquiry Officer submitted his report to the

Disciplinary Authority, that is, the Divisional Mechanical Engineer, holding that both the charges were established. The Disciplinary Authority issued a notice dated 9.6.1976 to the applicant directing him to show cause as to why the penalty of dismissal from service should not be imposed on him. Along with that notice a copy of the Inquiry Officer's report was sent to the applicant. The applicant replied to it on 21.6.1976 stating that he was not given a fair chance to plead his case and the proposed penalty was too serious. The Disciplinary Authority did not agree with the applicant and imposed the penalty of removal from service on him by the order dated 26.6.1976. The applicant had preferred an appeal against that order but it was rejected on 14.10.1976. He had also preferred a mercy appeal to the General Manager on 10.1.1978 but it was also rejected on 8.6.1978. The applicant had given a notice dated 8.6.1981 through his advocate under Section 80 of the Civil Procedure Code. As no reply was received to that notice, he filed the suit on 1.10.1981 in the Court of the Civil Judge, Senior Division at Pune.

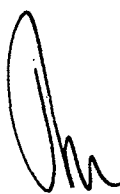
3. In the Suit the applicant has challenged the order dated 28.6.1976 on various grounds and prayed for declaring it to be illegal, null and void etc.

4. The respondents have filed their written statement on 7.6.1983 giving the factual position and justifying the impugned order of penalty. They have also submitted that the suit is barred by limitation.

5. We had kept this case pending for some time because of the difference of opinion among some Benches of this Tribunal on the question of limitation. One of the Benches had held that the provisions of Limitation Act will not apply to a suit which is transferred to this Tribunal while a different view was taken by some other Bench. Hence, two questions were referred to a Full Bench. One of them was whether the provisions of Limitation Act, 1961 apply to suits transferred to Central Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985. The Full Bench of this Tribunal comprising of Mr. Justice K. Madhav Reddy, Chairman, Mr. Justice G.D. Jain, Vice Chairman and Mr. Kaushal Kumar, Administrative Member, has held (Sheikh Maharban Khan vs. Union of India, 1989 (1) CAT SLJ 609) that the provisions of the Limitation Act do apply to suits transferred to the Tribunal under Section 29 of the Administrative Tribunals Act 1985.

6. Now, we have to consider whether the Suit filed on 1.10.1981 in the Court of Civil Judge, Senior Division was within limitation. In this case, the applicant has challenged the order of the Disciplinary Authority dated 28.6.1976 by which he was removed from service. It is true that the appeal preferred by the applicant against that order was rejected on 14.10.1976. Though the applicant has not challenged the order passed by the Appellate Authority, we assume that he is entitled to exclude the period upto the date on which the appeal was disposed of, i.e. upto 14.10.1976.

7. But about one year and three months after the appeal was rejected, the applicant preferred a mercy appeal to the General Manager but that was also rejected on 8.6.1978. A copy of the order was received by the applicant on 16.6.1978. It



may be noted that there is no provision for mercy appeal in the Rules. But assuming for the sake of argument that the period during which the mercy appeal was pending is liable to be excluded, even then the Suit shall have to be held as barred by limitation because it was not filed within three years from the date of receipt of a copy of the decision of the mercy appeal. Even if the notice period of two months is excluded there is still a delay of about 3 to 3½ months. There is no provision for condoning this delay.

8. In this connection, Mr. S.N.Desai, learned advocate for the applicant relied on the judgment in Rafiq v. Munshilal, AIR 1981 SC 1401. In that case the dismissal of appeal was set aside by the Supreme Court by pointing out that the party should not suffer because of the misdemeanour or or inaction of his counsel. Mr. Desai for the applicant submitted that because the applicant's advocate did not file the suit in time, the applicant should not suffer. But the question of limitation was not involved before the Supreme Court.

9. In result, we hold that the application, i.e. the Suit, is barred by limitation as it was not filed within three years from the date on which cause of action arose.

10. In view of the above finding, we need not consider the case on merits. Still we may point out that the applicant has challenged the impugned order on two grounds. The first is that the inquiry was not properly held and the second is that the findings of the Inquiry Officer are perverse. We have gone through the proceedings of the inquiry. Before the Inquiry Officer 10 witnesses were examined. It is true that the applicant was first examined on 23.2.1976, but on that date only some three preliminary questions were put to him. Thereafter, four witnesses were examined on 28.2.1976. On the same

day the applicant was also examined. Again on 29.2.1976 some more witnesses were examined and the applicant was also again examined. The remaining 4 witnesses were examined on 2.3.1976 and one more witness on 11.3.1976. Finally, the applicant was again examined on 16.3.1976. It was contended by Mr. Desai that the applicant should not have been examined before all the prosecution witnesses were examined. Though the rules so provide, we do not think that by examining the applicant on some previous days the proceedings can be said to have been vitiated. The applicant was not prejudiced because he was examined earlier. In any case, the applicant was finally examined on 16.3.1976, that is five days after all the prosecution witnesses were examined. Copies of all the evidence were supplied to him and he has filed his defence statement on 23.3.1976. Hence, in our view the irregularities committed by the Inquiry Officer would not vitiate the inquiry because it has not caused any prejudice to the applicant.

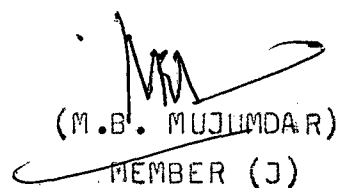
11. Then, Mr Desai submitted that the Inquiry Officer has practically cross-examined the applicant. It may be pointed out that no Presenting Officer was appointed in this case. Hence, the Inquiry Officer himself was required to examine the applicant. The applicant had taken the assistance of a railway employee to defend him. Moreover, after going through the questions asked to the applicant and the answers given by him, we are not inclined to hold that the Inquiry Officer has cross-examined the applicant. Regarding the submission that the findings given by the Inquiry Officer are perverse, we find that 10 witnesses were examined before the Inquiry Officer. We have gone through the answers of some witnesses and we are unable to hold that the findings were given without there being

any evidence to support the findings. Hence, on merits also we find that the applicant has no case.

12. In result, we dismiss the application, i.e. Regular Civil Suit No. 1802/81, with no order as to costs.



(P.S. CHAUDHURI)  
MEMBER (A)



(M.B. MUJUMDAR)  
MEMBER (J)