

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.372/86.

Shri Damoo Janoo Mhasane,
Sheloo, Post-Neral,
Tal-Karajat,
Dist. Raigad.

... Applicant.

V/s.

The General Manager,
Central Railway,
Bombay, V.T.
Bombay-400 001.

... Respondent.

Coram: Member(A), J.G.Rajadhyaksha,
Member(J), M.B.Mujumdar.

Oral Judgment:

(Per M.B. Mujumdar, Member(J))

Dated: 4-12-1986.

Heard Mr.Sonwalkar the Learned Advocate for the applicant on the point of admission of the application.

²⁴⁴⁻ The applicant was serving as an Engine Driver. On ~~23rd~~^{24th} of February, ¹⁹⁷⁵ 1986, there was an accident between a Passenger Train which he was driving and a Goods Train. For that accident he was suspended and departmental enquiry was held against him. The disciplinary authority held him guilty of the charge framed against him and imposed penalty of removal from service. The applicant preferred an appeal against that order, but it was dismissed on August, 1976. The applicant preferred a mercy petition to the General Manager of the Railways, but that was also dismissed on 26th October, 1976.

It may be pointed out here that the applicant was prosecuted for that accident in the Court of the Judicial Magistrate 1st Class at Karjat under section 337 B of I.P.C. and of section 101 of the Indian Railways Act. On 1st August, 1979, the applicant was acquitted because the prosecution did not lead any evidence.

Thereafter on 27th September, 1979, the applicant requested the Railway Authorities for his reinstatement, but no reply was sent to that application— Thereafter, he made six representations to the Railway Authorities between 15-10-1979 to 7-3-1986, but according to the applicant no reply was sent to any of these applications. On 17th October, 1986 he has filed the present application for quashing the order of removal from service.

Apart from the merit of the case we have heard the applicant's advocate at some length on the point of limitation. According to him the representations made by him for his reinstatement would save this application from the clutches of limitation as laid down in Sec.21 of the Administrative Tribunals Act, 1985. That section reads thus:

S.21. Limitation.—(1) A Tribunal shall not admit an application,—(a)

(a) in a case where a final order such as is mentioned in clause(a) of sub-section(2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause(b) of sub-section(2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section(1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfied the Tribunal that he had sufficient cause for not making the application within such period.

Mr. Sonwalkar relied on Clause (b) of sub-sec.

(1) of the above section and submitted that the representations made by him would bring the application ~~in~~ ^{within} time. But the representations mentioned in that clause is ~~is~~ not a representation which is referred to in sec.20(2)(b) of the Act. All the representations made by the applicant were not made under any provision or rule.

The final order of removal from service was passed by the authorities in 1976. Even the order of acquittal passed by the Judicial Magistrate First Class, Karjat was passed in 1979. We are told that if the applicant would have been in service he would have retired on superannuation in December, 1980. If he was so serious about his reinstatement he could have approached the proper forum such as the High Court under ^{article} sec.226 of the Constitution of India or appropriate Civil Court. He has not done so. We are therefore unable to hold that the application is in time.

Hence we summarily reject the application under section 19(3) read with section 21 of the Administrative Tribunals Act, 1985.

True copy.

SG
(J.G.RAJADHYARSHA)
MEMBER(A)

n 1 May 1985
ADMINISTRATIVE TRIBUNAL
FOR BOMBAY AND GOA
11, BOMBAY HOUSE, BOMBAY

SG
(M.B.MUJUMDAR)
MEMBER(J).