

(3)

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

Original Application No.554/89.

Shri Madhukar Motiram.

... Applicant.

v/s.

Divisional Railway Manager,
Central Railway,
Nagpur and another.

... Respondents

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Mr.Y.B.Phadnis, advocate for
the applicant and
Mr.D.N.Dadilwar, Law Assistant,
for the respondents.

Oral Judgment:

(Per Shri M.B.Mujumdar, Member(J)) Dated: 16.11.1989

The applicant was appointed as Ladderman which is a class iv post since May, 1984. Along with a memorandum dt. 21.3.1985 one article of charge was served on him. The charge was that he had indulged in unauthorised absence from duty. The statement of imputations of mis-conduct shows that he had remained absent unauthorisedly from duty from 18.11.1984 to 21.11.1984 and from 18.12.1984 to 13.3.1985. In that statement there is a reference to the illness of the applicant and some medical certificates. After holding inquiry the applicant was removed from service by order dt. 29.11.1985. That order was served on the applicant on 16.2.1986. The applicant challenged that order by preferring an appeal dt. 25.3.1986. As the appeal was not decided for a long time he submitted his representations, mercy appeal etc. As he did not receive

any reply he has filed this application on 18.8.1989 challenging the order by which he is removed from service.

2. By order dt. 3.10.1989 the application was admitted and the respondents were directed to file their reply. It was also clarified in that order that admission of this application need not prevent the concerned authorities from disposing of the appeal of the applicant finally.

3. The respondents have filed their reply dt. 7.11.1989. As regards the appeal dt. 25.3.1986 preferred by the applicant the respondents have submitted that the appeal could not be considered as it was time barred. We have just now heard Mr.Y.B.Phadnis, learned advocate for the applicant and Mr.D.N.Dadilwar, Law Assistant for the respondents.

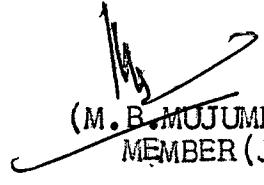
4. Mr. Phadnis submitted that his application may be disposed by directing the respondents to dispose of the appeal according to law. After hearing Mr.Dadilwar we find no merit in the submission of the respondents that the appeal could not be disposed of because it was barred by limitation. Though the order by which the applicant was removed from service was passed on 29.11.1985, ~~which~~ was served on the applicant on 16.2.1986. This was ~~not~~ disputed by Mr.Dadilwar before us. The period for appeal is 45 days. Even assuming that the period will start from the date of the order, as the order was served on the applicant on 25.3.1986 that date of service should be treated for the purpose of limitation. It is difficult to understand how an employee is to file an appeal before the order is received by him. As the appeal was preferred within 45 days from 16.2.1986 we feel that it should have been deemed to be within limitation.

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Hence we direct:

- (1) that the appellate authority should decide the appeal preferred by the applicant on 25.3.1986 after giving a personal hearing to the applicant and by passing a reasoned order.
- (2) the applicant will be at liberty to approach this Tribunal by way of filing a fresh application if the result of the appeal goes against him.
- (3) Parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J)