

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : CAMP : NAGPUR

O.A. 224 of 1989
M.P. 630 of 1989

Present : Hon'ble Mr. A.P.Bhattacharya, Judicial Member

Hon'ble Mr. P. S.Chaudhuri, Administrative Member

R. V. THAKRE

VS

UNION OF INDIA & ORS

For the applicant : Mr. V.S.Yawalkar, advocate

For the respondents : Mr. Ramesh Darda, advocate

Heard on : 19.1.90 : Order on : 19.1.90

O R D E R

A.P.Bhattacharya, J.M. :

This application under section 19 of the Administrative Tribunals Act, 1985, has been filed by Shri R.V.Thakre, ^{Secretary,} against the Union of India, represented by the Ministry of Defence and two others. In this application, the applicant has prayed for quashing the order passed by the appellate authority on 9.7.86 and for issuing a direction on the respondents so that his period of suspension from 16.7.84 to 13.3.86 be treated as on duty.

2. The applicant was appointed in the Ammunition Depot, Phulgaon on 3.10.69. This unit was closed and his service was transferred to the Headquarters, Maintenance Command, ^{Nagpur} in October 1970 in the capacity of Civilian Motor Transport Driver. The applicant states that as he had been working as a J.C.M. leader he incurred displeasure of the concerned authority. On 19.9.80, a major penalty charge-sheet was issued against him on the allegation that he remained absent from duties for six days. As no material was available to establish the charge, the case was closed by an order issued on 20.8.85. Subsequently, on 16.7.84

u
Jm

: 2 :

another charge-sheet was issued against him. He was placed under suspension with effect from that date. An enquiry was held and the Inquiry Officer appointed for the purpose submitted his report. Agreeing with the findings of the Inquiry Officer, the disciplinary authority on 20.3.86 imposed a penalty on the applicant by way of reduction in the time-scale by two stages for a period of 10 months. Against that, the applicant preferred an appeal on 3.4.86. By an order passed on 9.7.86, the appellate authority reduced the penalty by one stage. The applicant retired from service on 31.1.1987. The present application was filed on 23.3.89. By filing a Misc. Petition, numbered as M.P. 630 of 1989, the applicant has prayed for condonation of delay in filing the original application.

3. At the very outset we must say that this application cannot be entertained as it is hopelessly barred by limitation. In filing the application on 23.3.89 the applicant has prayed for setting aside the order passed by his appellate authority on 9.7.86. It may be mentioned here that the applicant has not made any prayer for quashing the enquiry proceeding or for setting aside the penalty imposed by his disciplinary authority. It appears from Annexure-A9 to the original application that his disciplinary authority on 20.3.86 by way of penalty passed an order to the effect that his pay should be reduced by two stages from Rs. 350/- to Rs. 334/- in the time scale of pay of Rs. 260-350/- for a period of ten months with effect from 1.4.86. The copy of the order passed by the appellate authority is shown in Annexure-A11. By that order the appellate authority reduced the said penalty by one stage. The applicant retired from service on superannuation on 31.1.87. On that date the aforesaid penalty, which was to run for a period of ten months, ^{been} expired. It is not understood, as it has not explained by the applicant, as to why after the passing of the appellate order on 9.7.86 he had not taken any further steps for filing this

application in time. In his Misc. Petition, he has given some explanations for filing the original application so late. It appears from Annexure-A to the application that after his retirement the applicant filed an application on 2.8.86 for passing an order with regard to his period of suspension. In reply to that, a letter was given on 23.9.86 (vide Annexure-A to M.P. 630 of 1989) in which it was decided that the period during which he was kept under suspension should not be treated as on duty for any purposes and as such he would not be entitled to get any pay and allowance for the said period. So, there was a finality in the matter first on 9.7.86 and thereafter on 23.9.86. It appears that on 5.1.87, the applicant sent a notice^{to} the respondents under section 80 of the C.P.Code (vide Annexure-B to the M.P.) Annexure-C to the M.P. further shows that he sent another such notice on 24.9.87. It is his case that thereafter he gave a letter to the Central Administrative Tribunal, New Bombay Bench requesting for settlement of his case. From Annexure-A/12 to the original application we find that on 1.12.88, a reply was given by the Deputy Registrar of this Bench. According to the applicant, as he had been pursuing the matter in the aforesaid way, the limitation would be treated as saved. We are unable to accept his contention.

4. A reference ~~reference~~ has been made by the side of the applicant to the decision of the Supreme Court passed in the case of Collector, Land Acquisition, Anantnag & Anr- vs.- Mst. Katigi & Ors reported in A.I.R. 1987 SC p. 1353. In that case it has been held by the Supreme Court that the doctrine of explaining each day's delay as contemplated in deciding a petition under sec. 5 of the Limitation Act, must be applied in a rational common sense pragmatic manner. In our opinion thehsaid decision of the Supreme Court cannot be applied to the facts and circumstances of the case before us.

M. O.
M.

(6)

: 4 :

It was the view of the Supreme Court that refusal to condone the delay may result in a meritorious matter being thrown out on the very threshold and cause of justice being denied. In this case, the applicant has not prayed for any relief against the departmental enquiry held against him or against the punishment imposed on him by his disciplinary authority. Being aggrieved by the penalty imposed by his disciplinary authority, he simply preferred an appeal and the appellate authority after considering his appeal rejected it. The applicant slept over his right and without taking appropriate action in pursuing the matter, filed this application after about two years. In our opinion, the way the applicant had been proceeding in the matter, the intentional delay caused by him merits no condonation. The grounds shown in his Misc. Petition are far from satisfactory. Such being the position, we hold that his prayer for condonation of delay is liable to be rejected. As and when the applicant had not filed this application within the period prescribed in Section 21 of the Administrative Tribunals Act, 1985, we are constrained to hold that the original application is hopelessly barred by limitation.

5. In view of our findings made above, we dismiss the application summarily along with M.P. 630 of 1989.

P.S. Chaudhuri

(P.S.CHAUDHURI)
ADMINISTRATIVE MEMBER
19.1.90

A.P. Bhattacharya
19.1.90

(A.P.BHATTACHARYA)
JUDICIAL MEMBER
19.1.90