

1 OA 551/05 with MA 344/06

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 551 of 2005 with MA 344 of 2006

Date of order : 12.7.06.

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Shri S.N.P.N. Sinha, Member (A)**

Kailash Dutta Thakur, S/o Late Mahadev Dutta Thakur, resident of Mithila Tola, Near Katihar Jail, Mirchaibari, P.S. & District Katihar.

....Applicant

By Advocate : Shri S.K. Bariyar

Vs.

1. The Union of India through the Secretary, Department of Defence.
2. The Engineer-in-chief, Army Head Quarter, DHQ, New Delhi.
3. Commander Works Engineer (P) Ranchi Cantt., Ranchi.
4. Lt. Col cum chief Ordnance Officer, H.W., 16 FAD, Bang Dubbi, Siliguri.
5. Major cum Garrison Enginner, Danapur Cantt., Patna.
6. Chief Engineer, Central Command Lucknow.
7. H.Q., Chief Engineer, Jalalpur Zone, jabalpur.
8. Chief Engineer, Lucknow Zone, Lucknow.

....Respondents

By Advocate : None.

O R D E R

By Sadhna Srivastava, M (J):-

By means of this application the applicant has



challenged two orders, firstly, the memorandum dated 27.3.1983 (Annexure A/1) whereby the applicant was granted 15 days' time to file representation against the proposed punishment of removal, and secondly, the order dated 22.3.1985 (Annexure A/2) passed by the appellate authority rejecting his appeal against the punishment of removal from service.

2. The facts as alleged in the OA are that the applicant was appointed as Majdoor on 3.12.1971 in the defence service. While the applicant was under the control of respondent No. 5, a departmental proceedings was initiated against him vide order dated 25.8.1981 for unauthorised absence with effect from June, 1981. According to the applicant, he fell ill on 16.6.1981 and after being fit to resume the duty, he went to the office of respondent No. 5 to join his service on 25.7.1983. He came to know that he was removed from service. Aggrieved by the order of removal, the applicant filed an appeal which was also rejected vide order dated 22.3.1985. Hence this OA.



3. After about 21 years from the date of appellate order, he filed the present application under Section 19 of the Administrative Tribunals Act, 1985 (for short the Act) for quashing of removal orders. He also filed an MA 344 of 2006 under Section 21 (3) of the Act for condonation of delay in filing the application. However, in the OA the applicant has pleaded that the OA is within time. During the course of argument, Shri S.K. Bariyar, the learned counsel for the applicant has placed reliance on the judgment reported in 2002 (3) PLJR page 247. Their Lordships have referred to Limitation Act, 1963 and held that "in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor."

4. Section 21 of the Act⁶ clearly lays down that a Tribunal shall not admit an Original Application (in a case where the Original Application challenges a final order), if the



application is filed beyond the limitation period of one year from the date of passing of the final order. Clause (a) of Subsection (1) of Section 21 , which is relevant for our purpose, reads thus:-

(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 of which such final order has been made.

Sub-section (3) of Section 21 also contains a non-obstante clause. It empowers the Tribunal to admit an application after expiry of the period specified in clause (a) or (b) of Sub-Section (1) or, as the case may be, the period of six months specified in sub-Section (2) if the applicant satisfies that he had sufficient cause for not making the application within such period.

5. In the present case MA No. 344 of 2006 has been filed on 30.6.2006 by the applicant duly supported by an affidavit dated 6.10.2005 which has been sworn by the learned counsel of the applicant. In the said affidavit neither the paragraph of the said affidavit has been verified properly nor it has been disclosed that in what capacity the counsel



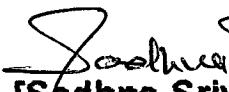
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has filed his own affidavit. Thus, the said affidavit cannot be accepted in the eye of law, hence the position emerges that MA stands without the support of any valid affidavit. In view of Rule 8 (4) of CAT (Procedure), 1987, an application without affidavit cannot be accepted and as such MA is rejected.

6. As regards the law referred to by the learned counsel for the applicant is concerned, the decision of the said case will not help the applicant as the facts of the said case is quite different from the present case.

7. In view of the above position, this OA fails and is, accordingly, dismissed, without any order as to the costs.


[S.N.P.N. Sinha] M [A]


[Sadhna Srivastava] M [J]

/cbs/