

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 49/96

29.5.2000  
Date of Decision :

N.L.Gupta Applicant.

Shri K.B.Talreja Advocate for the  
Applicant.

VERSUS

Union of India & Others, Respondents.

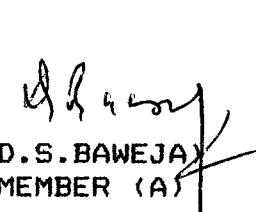
Shri R.R.Shetty Advocate for the  
Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

  
(D.S.BAWEJA)  
MEMBER (A)

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.49/96

Dated this the 20th day of May 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

N.L.Gupta,  
Enquiry-cum-Reservation Clerk,  
Central Railway,  
Bombay V.T.

... Applicant

By Advocate Shri K.B.Talreja

V/S.

1. Union of India through  
the General manager,  
Central Railway,  
Bombay V.T.

2. The Divisional Railway Manager,  
Central Railway,  
Bombay V.T.

... Respondents

By Advocate Shri R.R.Shetty

O R D E R

(Per : Shri D.S.Baweja, Member (A))

The applicant through this OA. has sought the quashing of the orders of the disciplinary authority and the appellate authority imposing punishment of stoppage of increment next due for one year.

2. The applicant while working as Enquiry-cum-Reservation Clerk in Central Railway at Mumbai was issued a minor penalty charge sheet dated 9.11.1990 with the charge of failure of the applicant to return excess of Rs.50/- paid by a passenger while doing reservation which resulted in public complaint. The applicant submitted representation against the same on 19.11.1990. However, the disciplinary authority holding that the representation is not satisfactory, imposed the punishment of stoppage of increment of one year when next due as per order dated 28.11.1990. The applicant filed appeal against the same and the appeal was rejected as per order dated 8.2.1991. Thereafter, the applicant filed revision application addressed to Divisional Railway Manager (DRM). Instead of putting up the same to the DRM, the revision application has been disposed of by the Senior Divisional Commercial Manager. The applicant also represented the matter through one of the recognised Labour Union's pointing out lapses in the disciplinary proceedings. Feeling aggrieved, the present OA. has been filed on 3.1.1996.

3. The applicant has set up his case on the following grounds in assailing the impugned punishment orders :-

(a) The disciplinary authority (Assistant Commercial Superintendent (ACS) Reservation had checked the cash at the counter when the alleged complaint was made but no excess of Rs.50/- was found.

Inspite of this, ACS (Reservation) issued the charge-sheet and thus acted as Disciplinary authority, i.e. inquiry officer and the judge in violation of rules.

- (b) The applicant had asked for confronted enquiry and personal hearing but the same was denied and thereby there is violation of principles of natural justice.
- (c) Reliance has been placed on the complaint and the enquiry conducted with the complainant at the back of the applicant without giving opportunity of confronted inquiry.
- (d) The complainant was a tout and has no locus standi to make any complaint against the applicant.
- (e) Revision application has been rejected by an incompetent authority.

4. The respondents have filed written statement. At the outset, the respondents have objected to the OA. stating that it is barred by limitation since the cause of action arose latest on 8.2.1991 and OA. has been filed only in January, 1996. On merits,

have  
the respondents/stated that the penalty has been imposed in  
compliance with the extant rules and after due application of  
mind and considering all relevant facts by the disciplinary and  
appellate authorities. The contention of the applicant that  
enquiry conducted at the back of the applicant has been relied  
upon is refuted. As regards the holding of inquiry, it is  
averred that as per Railway Servants (Discipline & Appeal) Rules,  
there is no requirement to hold an inquiry in case of minor  
penalty chargesheet. Granting of personal hearing by the  
appellate authority in the case of minor penalty chargesheet is  
at the discretion of the appellate authority and in this case the  
appellate authority did not consider it necessary. Revision  
appeal has been correctly considered by the Senior Divisional  
Commercial Manager who is next higher to appellate authority,  
i.e. Divisional Commercial Manager and therefore the contention  
of the applicant that the same should have been considered by DRM  
is not tenable.

5. The applicant has not filed any rejoinder reply.

6. We have heard the arguments of Shri K.B.Talreja and Shri  
R.R.Shetty, learned counsel for the applicant and respondents  
respectively.

7. The respondents have strongly opposed the OA. advancing  
the plea of limitation. It is noted that appeal against the  
punishment order dated 28.11.1990 was disposed of as per the

order dated 8.2.1991. Thereafter, the applicant filed revision application and it is noted from the Annexure-9 that the same had been disposed of. However, neither the respondents nor the applicant have brought the copy of the order on record. However, from the Annexure-8, it appears to be dated 29.7.1991. The applicant has also not impugned the order of the revision authority. From these facts, it emerges that the cause of action first arose on 8.2.1991 with the disposal of the appeal. Next cause of action arose when the revision application was rejected on 29.7.1991. Though the applicant has contested the competence of the authority which disposed of his revision application but that is not material for considering the limitation aspect. The applicant can challenge such an order but cannot take the plea that revision application should have been considered by DRM and therefore his revision application if not considered by the DRM is to be treated as pending.

8. The issue of limitation under Sections 20 & 21 of the Administrative Tribunal Act, 1985 in context of disciplinary proceedings has been gone into by the Constitution Bench of the Apex Court in the case of S.S.Rathore vs. State Of Madhya Pradesh (1989) 11 ATC 913. In paras 20 & 21, their Lordships have concluded as under :-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no

such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-Section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court's jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

With the dates of cause of action detailed in para 7 above and keeping in view the law laid down in S.S.Rathore's case, there can be no hesitation to conclude that the present OA. filed in 1996 is hit by limitation.

9. We also refer to another judgement of the Hon'ble Supreme Court in the case of Ramesh Chand Sharma vs. Udham Singh Kamal & Ors., 2000(1) ATJ 178. In this case, the respondent was over-looked for promotion in 1991. He challenged his non promotion by filing OA. in 1994. The OA. was allowed. However, the decision was challenged in SLP before the Hon'ble Supreme

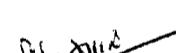
Court. Hon'ble Supreme Court set aside the order of the Tribunal stating that Tribunal was not right in deciding the OA. on merits limitation overlooking the statutory provisions with regard to/contained in Section 21 of the Administrative Tribunal Act,1985. Hon'ble Supreme Court has also noted that the appellant had raised the plea of limitation before the Tribunal but despite this objection, the respondent, i.e. applicant in the OA. did not file any application for condonation of delay to demonstrate that the delay was for sufficient cause for consideration of the Tribunal for condonation of the delay.

10. In the present case, situation is the same as in the cited case above. The respondents have taken the plea of limitation in the written statement, but the applicant has neither contested this plea in the rejoinder reply nor any application for condonation of delay has been filed after the ground of limitation being taken by the respondents. The applicant during the hearing contended that OA. is within the limitation as reply to the Union through which the applicant's case was given only as per letter dated 29.1.1993 and was conveyed to the applicant during 1995. We are unable to accept this explanation for the delay. Taking the matter by the recognised Union through the Permanent Negotiating Machinery does not mean that limitation is to be reckoned from/when the matter is decided with Union by the Administration. As held by the Hon'ble Supreme Court in the case of S.S.Rathore (Supra)

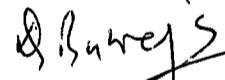
representations not provided as per the rules will not count for start of the limitation period. Therefore, the limitation is to be reckoned with regard to cause of action on 28.2.1991 or 29.7.1991. Present OA. filed on 3.1.1996 without any application for condonation of delay is barred by limitation. In view of the law laid down in the case of Ramesh Chand Sharma (Supra), the present OA. is barred by limitation on the face of it and does not deserve to be gone into on merits.

11. During the hearing, the applicant cited a number of orders of the Tribunal to support his grounds taken in challenging the punishment orders. Since we restrain from going into merits of the grounds taken, the orders cited are not being referred to.

12. In the result of the above, the OA. deserves to be dismissed and is accordingly dismissed. No order as to costs.

  
(S.L.JAIN)

MEMBER (J)

  
(D.S.BAWEJA)

MEMBER (A)

mrj.