

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. No. 1047/1996.

Date of Order : 28 feb 2002

P. R. Kudanpur, Suptg. Engineer, (Diploma Wing), College of Military Engineering, Dapodi, Pune 400 031.

...APPLICANT

V E R S U S

1. Union of India through the Secretary, Ministry of Defence, DHQ, P.O. NEW DELHI-10 001.
2. The Engineer in Chief Kashmir House, Army Head-Quarters, DHQ P.O., NEW DELHI-110 001.
3. The Chief Engineer, Southern Command, Poona-1.

... RESPONDENTS

Mr. S. P. Saxena counsel for the applicant.
Mr. R. K. Shetty, counsel for the respondents.

CORAM

Hon'ble Mr. M. P. Singh, Administrative Member
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. In this application, the applicant has prayed for the following reliefs :-

" (i) to quash and set aside the impugned order dated 9.8.1995 and to award all consequential benefits to applicant.

(ii) to pass any other just and equitable orders which may be considered necessary in the facts and circumstances of the case.

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(iii) to award cost of application."

2. The facts of the case of the applicant are that the applicant was recruited as Supdt. E/M Grade-I, in MES on 03.10.1963. He has got an opportunity to appear against an open advertisement, for appointment to the post of Assistant Executive Engineer through UPSC. He was appointed on the post of Assistant Executive Engineer on 24.06.1966. He was allowed to his due promotions to the post of Executive Engineer and Supdtg. Engineer from 19.01.1979 and 09.08.1996 respectively. During the year 1983-1987 he was employed on the post of Garrison Engineer at Chandigarh and thereafter he was posted in a routine manner to other Stations/Places. He was issued with a charge sheet under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965, vide memo dated 06.08.1992, alleging that while working as Garrison Engineer at Chandigarh during the aforesaid period, he committed gross negligence and irregularities in performing the official duties, and in exercise of power conferring on him. There was also lack of devotion on duty and he failed to exercise administrative control of the contract. The details of the charges have been mentioned in the memo dated 06.08.1992 (Exhibit A-2). The applicant denied the charges and a detailed oral enquiry was conducted. It was a joint enquiry against the applicant and Shri K. S.

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Minhas, AE/B/R SPS-II and Shri Ram Swaroop B/R, 1/Offg.

AGE. The enquiry was conducted and he was supplied a copy of the Enquiry Report. In enquiry, charge No. 2 and 3 have been held as not established and on the charge No.1, the finding has been given that the charges were partially proved up to 10% and the balance stands unstablished. He submitted a detailed representation against the findings of the Enquiry Officer on Charge No.

1. Thereafter, he was imposed with the penalty of "Reduction of pay by one stage in the present time scale of pay for a period of one year with immediate effect and with further direction that he will earn increments of pay during the period of such reduction and on the expiry of this period the reduction will not have the effect of postponing his future increments of pay." The applicant has challenged the order of penalty on the ground that it is a case of no evidence, the order of penalty is a non speaking order, the charges were vague, there is contradiction between the statement of the witnesses, the Disciplinary Authority has not applied his mind and imposed the penalty by passing a mechanical order without considering the representation of the applicant against the findings of the Enquiry Officer.

3. The Original Application was admitted on 18.11.1996 and the notices were issued to the counsel for the respondents. Shri R. K. Shetty, counsel for the

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respondents has accepted the notices. The reply to the O.A. has been filed. The respondents have controverted the averments made in the O.A. and have maintained that there was over payment of Rs. 6.9 lacs for which the applicant was responsible. It has also been averred that the O.A. is not within the limitation. Further, the objection has been taken that the applicant has not exhausted the departmental remedy of appeal which was imposed to him and, therefore, the application was pre-mature. They have placed the list of duties, which was to be performed by the applicant and have averred that the sole Authority for signing the cheque was the applicant. The matter involves a loss to the National Exchequer to the tune of Rs. 6.9 lacs. The enquiry was conducted as per the Rules and he has been held guilty of the Charge No. 1 and no interference is called for. Hence, the OA should be dismissed with exemplary costs.

4. We have heard the Learned Counsel for the parties and have carefully peruse the records of this O.A.

5. On the preliminary objection regarding the non-availing of the alternative remedy i.e., non-filing of the appeal, learned counsel for the applicant has asserted that the penalty order has been passed in the

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name of President of India and as per the provisions of the Rules, no appeal lies against the order of the President. This preliminary objection is overruled.

6. As regards the next objection i.e. of the limitation, specific averments have been made in Para 4 of the written statement, on behalf of the respondents, that the impugned order is dated 09.08.1995 and the Original Application has been filed on 07.10.1996 i.e., after a period of more than one year. There is no rejoinder to the written statement, on behalf of the applicant. The applicant has also not filed any Miscellaneous Application for condonation of delay. Thus, the O.A. has not been filed within the limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. The Original Application deserves to be dismissed on the ground of being barred by limitation alone.

7. Learned Counsel for the respondents took an oral objection regarding the maintainability of the O.A. before this Hon'ble Tribunal on the ground of jurisdiction and has produced a copy of the judgement dated 17.07.2001 in O.A. No. 243/2000 in the case of Mr. M. R. Gupta, BSO VS. U.O.I. & Ors., passed by the Central Administrative Tribunal, Ahmedabad Bench. We have carefully gone through the facts of that case. That

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was a case where the applicant was a civilian employee in the Defence Forces and his service were terminated under Article 310(1) of the Constitution of India without any reason. The case was rejected on the ground that the Tribunal had no jurisdiction to entertain and decide the O.A. and try such matter in view of the provisions of Article 310(1) of the Constitution, since the protection of Article 311(2) of the Constitution of India was not available to the civilians in Defence. This case is distinguishable on the facts inasmuch as the proceedings were taken and the applicant was issued a charge sheet, due proceedings were held against him and the impugned order has not been passed under Article 310(1) of the Constitution of India, in exercise of pleasure power of the President.

8. Thus, the judgement quoted by the Learned Counsel for the respondents has no application in this case.

9. We have come to the conclusion that the Original Application has not been filed within the limitation of one year from the date of impugned order as per Section 21 of the Administrative Tribunals Act, 1985. No application for condonation of the delay has been filed on behalf of the applicant, as per the rules in force. Even though, a lengthy argument were advanced on

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behalf of the parties but it would be futile exercise to adjudicate and discuss the same, once the very Original Application is not within limitation. In view of the above, we are constraint to dismiss this OA on the ground of limitation alone and without going into the merits of the case.

10. The O.A. is accordingly dismissed. However, there shall be no order as to costs.

J.K.Kaushik

(J.K. Kaushik)
Member (J)

M.P.Singh

(M.P. Singh)
Member (A).

Joshi.

dt-28/2/02

cc: D-69/6

1. Respondent 1/

u/a/02

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