

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 189/99

DATE OF DECISION:

Shri Arun Bhima Vakhade Applicant.

Shri T.D.Ghasias Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri R.R.Shetty Advocate for  
Respondent(s)

CORAM

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri B.N.Bahadur, Member 'A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to  
other Benches of the Tribunal?
- (3) Library.

*R.G.Vaidyanatha*  
(R.G.Vaidyanatha)  
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 189/99

MONDAY the 22nd day of NOVEMBER 1999

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman  
Hon'ble Shri B.N.Bahadur, Member(J)

Arun Bhima Vakhade  
Ex-Fitter (C and W)  
Chich Mahallah  
Jamner Road  
Bhusawal. ....Applicant

By Advocate Shri T.D.Ghasias alongwith Shri M.S.Lad.

V/s

1. Union of India through  
General Manager  
Central Railway  
CST Mumbai.
2. A.M.E. (C and W)  
Divisional Railway  
Manager Officer  
Central Railway  
Bhusawal
3. Sr. D.M.E. (C and W)  
Central Railway  
Bhusawal
4. Divisional Railway Manager  
Central Railway,  
Bhusawal.
5. Chief Personnel Officer  
(Mech.) Central Railway  
Head Quarter Office  
Personnel Branch  
B.N.V.T. .... Respondents

By Advocate Shri R.R.Shetty for Shri R.K.Shetty.

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed by the applicant challenging the order of removal from service. The respondents have filed reply opposing the application. We have heard counsel for both sides.

*[Signature]*

2. The applicant was working as Fitter, Grade III in Central Railway . Due to unauthorised absence a charge sheet was issued. The applicant admitted his unauthorised absence stating some circumstances like illness. The Disciplinary Authority passed an order dated 13.8.1992 by imposing the penalty of removal from service. The applicant preferred an appeal which came to be rejected by order dated 13.4.1993. It appears that the applicant has filed a mercy application to the higher authority which came to be rejected. Finally the applicant has come up with the present OA challenging the order of removal from service.

3. The respondents have filed reply justifying the action taken against the applicant. They have also taken a stand that the application is barred by limitation.

4. After hearing both sides we find that the order of Appellate Authority was passed in 1993 but the present application is filed in 1999. That means the applicant has approached this Tribunal six years after the order of the Appellate Authority. On the face of it the application is hopelessly barred by limitation.

5. The learned counsel for the applicant placed reliance on the decision of the Single Bench of this Tribunal in the case of R.C.Kotiankar V/s Union of India and others 1996(2) CAT AISLJ 440 wherein the Single Bench in the facts and circumstances of that case condoned the deslay of two years. The question of delay is always a question of fact. It has to be decided on the peculiar circumstances of the case. There is no rule or law how much delay should be condoned.



In the present case we find that the order of the Appellate Authority was passed in 1993 and the applicant has approached this Tribunal six years later. Time taken for statutory appeal has to be excluded. Sending repeated representations or mercy petition will not arrest the period of limitation as held by Apex Court in 1996 SCC (L&S) 205 in R.D. Valand's case. Therefore we find the present case is hopelessly barred by limitation and no case is made out for condoning the delay of six years.

6. Even on merits we find that the applicant has admitted the charge against him and the Competent Authority has passed the final order. He explained reasons for unauthorised but the Disciplinary Authority imposed the penalty of removal from service. The only contention of the learned counsel for the applicant is regarding the quantum of penalty. It is well settled by a number of recent decisions of Supreme Court that the scope of judicial review on the question of penalty is very limited. It is for the Domestic Tribunal to decide the quantum of penalty and Court or Tribunal should not interfere with the matter even if another view is possible. The Court or Tribunal can interfere on the question of penalty only when it is grossly dis-proportionate to the mis-conduct so as to shock the conscience of the Court. In the present case the applicant was charge sheeted for unauthorised absence of one year and four months during different spells of time during 1989-91. Total period of absence is about 502 days. One of the authorities has also stated that inspite of number of punishments given to the applicant previously no

improvement has been shown and therefore the order of removal is justified. It is not a case of stray absence of few days or months. Earlier also he had received number of penalties for the same mis-conduct of unauthorised absence. Hence this is not a fit case even on merits to say that the penalty is grossly dis-proportionate to mis-conduct so as to shock the conscience of the Tribunal and therefore we find that this is not a fit case to admit the application.

At this stage the learned counsel for the applicant submits that the applicant has not been paid provident fund amount and any other amount that is due to him as a result of removal from service. The learned counsel for the respondents makes a statement that whatever amount is due to the applicant as per rules including the provident fund will be paid to him.

7. In the result OA is rejected at the admission stage. This order is without prejudice to the right of the applicant to approach for payment of provident fund and any other amount that may be due to him as per rule by making a representation. The respondents may make the payment as expeditiously as possible. No order as to costs.

B.N.Bahadur

(B.N.Bahadur),  
Member (A)

R.G.Vaidyanatha

(R.G.Vaidyanatha)  
Vice Chairman

NS