CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.814/99 & 815/99

Tuesday this the 18th day of December,2001.

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

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

L.P.Kalshikar,
Fitter, Grade-I
Under Chief Wagon Supdt.,
CST, Mumbai. ...Applicant

By Advocate Shri K.B.Talreja

vs.

1. Union of India through
The General Manager,
Central Railway,
Mumbai CST.

2. The Divisional Railway Manager,
Central Railway,
Mumbai CST. ...Respondents

By Advocate Ms.Gulhane
for Shri Suresh Kumar

O R D E R (ORAL)

{Per : Shri B.N.Bahadur, Member (A)}

We are considering two OAs. together viz. OAs. bearing No.814/99 and 815/99, both filed by the same applicant, Shri L.P.Kalshikar. In the first OA. applicant seeks reliefs as follows :-

> (i) The Hon'ble Tribunal may kindly be pleased to quash and set asdie the Ex-Parte Enquiry letters from Disciplinary Authority and reviewing authority, which are inconsistent to rules, sham & null & void-being non-follow up of procedure of Enquiry under RS (D&A) Rules,1968.

..2/-

(ii) The enquiry conducted is arbitrary and Ex-parte, without affording the applicant reasonable opportunity to attend and allow him examination and cross examination of witnesses, which could not be done knowingly that the applicant is undergoing treatment of the Railway Hospital and declared unfit to attend the enquiry.

(iii) This Hon'ble Tribunal is also requested to direct the respondents to treat the interim period of removal and reinstatement as duty and pay him the wages for the period, he has been wrongly removed from service.

(iv) Non-compliance of 'Mercy Petition' pending with the respondents, including the Legal Notice is bad in law and violates the principles of natural justice for which necessary costs may kindly be awarded to the applicant who has been dragged to litigation which was avoidable.

(v) Any other relief/reliefs as this Hon'ble Tribunal may deem fit and appropriate looking to the facts and circumstances of this case."

In the second OA.No.815/99 the reliefs sought are as below :-

(i) The Hon'ble Tribunal may kindly be pleased to direct the respondents to treat the applicant voluntary retired on health ground after completion of 3 months from the date of notice dated 16.10.1996, i.e. on and from 15.1.1997.

(ii) That the respondents may kindly be directed to pay all the consequential benefits to the applicant, which the employees who are voluntarily retired on health ground are due and eligible to be granted.

(iii) That the respondents may kindly be directed to appoint a son on compassionate ground in liew of his voluntary retirement on medical grounds.

(iv) Any other relief/reliefs as this Hon'ble Court may deem proper and appropriate considering the facts and circumstances of the case.

(v) Award the cost of this petition looking to the pitiable condition of the applicant."

..3/-

2. We have heard learned counsel Shri K.B.Talreja for the applicant in both the OAs. and learned counsel Ms.Gulhane for Shri Suresh Kumar, for the respondents. We have considered all papers on record.

3. At the first instance, before going into the merits, we have to look into the point of limitation which is some what conspicuous on the dates seen from record. Especially so because in para 3 of both the OAs. it is categorically stated by the applicant that the application is within the limitation period as prescribed under Section 21 of the A.T.Act, 1985.

4. In the first OA.NO.814/99 the applicant had initially been awarded penalty of removal against which he has appealed and on the appeal being negative, applicant had gone in revision. The said revision petition has been rejected on 23.6.1997. This OA. is filed on 4.8.1998. It is clearly hit by the law of limitation, with no M.P. being filed for condonation. On the other hand, there is a statement by applicant that the OA. is within the limitation period. The ratio of the case decided by the Hon'ble Supreme Court in the case of R.C.Sharma vs. Udham Singh Kamal & Ors. (2000 SCC (L&S) 53) guides us in the case and we can not go into the merits since the case is badly hit by limitation.

..4/-

5. Again, in the second OA. (815/99), the Applicant had served Government with the notice for voluntary retirement on 16.6.1996. Vide the same order dated 23.6.1997 referred to in para 4 above, whereby revision petition has been rejected, the notice of voluntary retirement has also been rejected. We must in this context recall that the order of removal is dated 6.12.1996 which is well within three months of the notice of voluntary retirement given. In view of this position and the dates as relevantly pointed out, the second OA. is also barred by limitation.

6. We note that the applicant has filed a mercy petition in both cases. The copies of mercy petition are placed on record by the applicant. Learned counsel informs us that there is no decision yet on the mercy petition. As discussed above, we cannot provide any relief to the applicant in either case in view of the point of limitation discussed above. Nevertheless, our dismissal of the case will not prevent the respondents from deciding the mercy petition on merits and in accordance with law. Both the OAs. are therefore dismissed with no order as to costs.

(S.L.JAIN)
MEMBER (J)

(B.N.BAHADUR)
MEMBER (A)

mrj.