BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.450, 451, 452 & 453/2000

Dated this the 30th day of January 2001.

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

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

1. A.S.Barve (Applicant in OA.NO.450/2000)
2. N.S.Waidande (- do - 451/2000)
3. S.P.Nemade (- do - 452/2000)
4. A.L.Banga, (- do - 453/2000)

All are Sr.Auditor in the Office
of P.A.O. (DRS) Artillary,
Lekha Nagar, Nashik. ...Applicants

By Advocate Shri U.M.Joshi

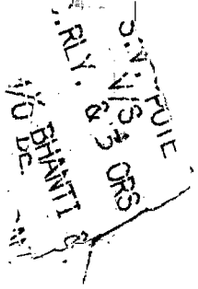
V/S.

1. The Union of India through
The Controller General of
Defence Accounts,
R.K.Puram, West Branch - V,
New Delhi.

2. The Controller of Defence
Accounts (SC) No.1,
Finance Road,
Pune.

3. PAO (ORS) Artillery,
Lekha Nagar,
Nasik. (Respondents in all the OAs.)
...Respondents

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



O R D E R

{Per : Shri S.L.Jain, Member (J)}

As the same question of fact and law is involved in all these OAs. (OA.Nos.450/2000, 451/2000, 452/2000 and 453/2000) we proceed to decide all together with a common order.

2. This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking a declaration that (a) strike called out by the employees of the respondents on dated 25.10.1996 was legal, (b) declaration that applicant is entitled to be considered for promotion w.e.f. 29.12.1997 along with similar ranked and employee who were already promoted w.e.f.29.12.1997 and (c) the punishment of "Censure" dated 18.2.1998 (penalty order) along with appellate order dated 10.3.2000 be quashed and set aside.

3. The applicant has filed this OA. on 27.4.2000 and M.P.No.728/2000 on 15.9.2000 stating that though the application is not barred by time but delay if any, delay condonation application is filed.

4. The respondents in their written statement raised the objection regarding limitation, delay and laches.

5. On perusal of the penalty order which is dated 18.2.1998 and the appellate order dated 10.3.2000, as the penalty order against which an appeal is preferred merges in the appellate order which is passed on 10.3.2000, OA. has been filed on 27.4.2000, OA. in respect of the said relief cannot be said to be barred by time in view of the Section 21 of the Administrative Tribunals Act, 1985 (1969 (3) SCC 384 Somnath Sahu vs. The State of Orissa and others).

6. The other reliefs which the applicant sought namely the declaration that strike called out on 25.10.1996 was legal and the applicant is entitled to be considered for promotion w.e.f 29.12.1997 are barred by time in view of the Section 21 of the Administrative Tribunals Act, 1985. If we peruse the delay condonation application, we do not find any cause for delay condonation. On the other hand, in last but one para of the application, it is stated that the applicant states that "if there is any delay, the same is binding to be condoned considering the facts and circumstances and uniqueness of the case". On perusal of the delay condonation application, we find that no cause for not filing the application well in time is mentioned.

7. The learned counsel for the applicant argued that there are affidavits of Shri O.D.Sonawane, J.P.Telgote, Suhas N.Safai, P.R.Savant, R.G.Kshirsagar. The fact stated that :-

> "I say that Disciplinary Authority agreed that no charge has been proved but as a minimum punishment as per Rule 14, I am awarding penalty of "Censure". But further she assured that no body will put to any type of financial loss or deprived of any promotional avenue."

..4/-

On perusal of the said affidavits, we are of the considered opinion that the applicant claims that on the said assurance he has not filed the appeal. Thus, it appears that the applicant claims that a fraud is being played. The Disciplinary Authority is not arrayed in her personal capacity to answer the same. Hence, in our considered opinion there is no cause for condoning the delay sought. Further, in appeal memo the ground for filing of the delayed appeal , such cause is not mentioned. It is an after thought matter, inspires no confidence.

8. In addition to it, the disciplinary proceedings terminated in Censure and appeal against the same is also rejected is an independent cause of action and the declaration of the strike to be legal one and non promotion of the applicant is based on different causes of action. Hence, the claim of the applicant also suffers from the defect of plural remedies. In view of Rule 10 of CAT (Procedure) Rules, 1987, an application shall be based upon a single cause of action and may seek one or more reliefs provided which are consequential to one another. Thus, the application in respect of plural reliefs cannot be entertained also.

9. We proceed to examine the legality of the orders passed in appeal.

10. On perusal of A-1 (d), we find that the appeal has been rejected as barred by time. In appellate order, it is mentioned that the reason put forth by the appellant for delay are not acceptable. On perusal of the appeal memo, we find that the

cause for not filing the appeal well in time is that "As I was not anticipating any adverse effect on my promotion/service seniority, on account of the penalty in good hope and good faith, I preferred to wait until the orders of promotion." If the applicant chooses the method involved by himself having no legal bearing, we cannot consider it to be a ground for condoning the delay in filing the appeal which was preferred after 16 months.

11. As the penalty order merges in appellate order, as the appeal was held to be barred by time, there was no necessity to consider the grounds in respect of disciplinary proceedings, either of procedure or anything else.

12. In the result, the OA. in respect of reliefs mentioned in para 2 of this order (a) & (b) is barred by time and in respect of relief mentioned in para 2(c) of this order has no merit. Hence, OA. is liable to be dismissed and is dismssed with no order as to costs.

(S.L.JAIN)
MEMBER (J)

(B.N.BAHADUR)
MEMBER (A)

mrj.