

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No.544/2001.

Thursday, this the 6th day of November, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri M.P.Singh, Member (A).

Ramesh Nagappa Chougale,
N.S.S.Road,
Hornman Compound, Opp. Dr. Doshi
Asalpah,
Ghatkopar.
(By Advocate Mrs. Marne)

...Applicant.

v.

1. Divisional Railway Manager,
Mumbai.

2. Union of India through
General Manager,
Central Railway,
Mumbai.

...Respondents.

: ORDER (ORAL) :

Shri Birendra Dikshit, Vice-Chairman

The applicant has filed this OA challenging the order of removal dt. 12.2.1997 which was passed on 12.2.1997 after holding disciplinary proceedings. He preferred an appeal, which was dismissed on 2.4.1997. He preferred Review Appeal before the Chief Commercial Manager on 2.4.1997 which was rejected on 20.11.1998.

2. OA has been filed after about two and a half years of the rejection of Revision Petition. Applicant has moved an M.P. for condonation of delay. The ground taken in the MP for condonation of delay is that the applicant awaited the payment of meagre amount by way of "Compensation Pension" to the petitioner sanctioned vide order dt. 28.8.2000. No reason

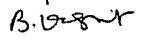
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...2.

has been assigned. Even though allowance was paid, it is not mentioned when it was paid. We are not satisfied with the explanation given. As in our opinion, sufficient reason does not exist for condoning the delay in filing the OA much beyond the prescribed period of limitation and as OA is filed after about two and a half year after rejection of revision, and there appears no sufficient cause for condoning the delay, the M.P. is rejected. As the MP has been rejected, the OA stands dismissed as barred by limitation.


(M.P.SINGH)
MEMBER(A)

B.


(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: :MUMBAI**

**REVIEW APPLICATION NO. 01/05
IN
ORIGINAL APPLICATION NO. 544/01**

THIS THE 09 TH DAY OF MARCH, 2005

**CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)**

Ramesh Nagappa Chaugule. ... Applicant

By advocate Shri G.K. Masand.

Versus

Divisional Railway Manager & Ors. ... Respondents

By Advocate Shri S.C. Dhawan.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant / petitioner has filed this petition to review the judgment and order dated 06.11.2001 passed in OA No.544/01.

2. Petitioner stated that the OA was dismissed by the Tribunal holding that sufficient reason do not exist for condoning the delay in filing the OA beyond the period of limitation. Learned counsel for the applicant contended that whenever there is continuous cause of action, the delay in approaching the tribunal would not be fatal to maintainability of the OA. Learned counsel has relied upon the ratio in case of M.R. Gupta Vs. Union of India 1995 SCC (L&S) 1273. It is further contended that on account of



summary rejection of the application as barred by limitation, the petitioner's grievances has not been adjudicated on merit by the Tribunal.

3. Learned counsel for the respondents stated that the applicant has failed to point out any error apparent on the face of the record as required for the review of the order and also to bring any new evidence on record which can change the decision of the Tribunal. Hence, there is no valid ground for reviewing the order of the Tribunal. He has also submitted that the applicant was removed from service on account of the proved misconduct after holding regular inquiry. Applicant was granted 1/3rd compassionate allowance as per rule, which is not a pension and hence this is not a case of curtailment of pension or pensionary benefits, but the case of punishment by the competent authority. Therefore, there cannot be any continuing cause of action.

4. We have heard learned counsel for the parties and perused the material placed on record.

5. The applicant filed this OA challenging the order of removal dated 12.02.1997. He preferred an appeal which was dismissed on 02.4.1997, thereafter he preferred review petition which was rejected on 20.11.1998. The applicant approached this Tribunal by filing OA No.544/01 on 12th April, 2001. The applicant approached this Tribunal after 2 1/2 years of the adverse order. Therefore, the cause of action shall be deemed to have arisen on the date of



rejection of review petition. In view of the settled principle of law laid down in S.S. Rathore Vs. State of Madhya Pradesh AIR 1990 SC 10. The applicant in MP for condonation of delay has taken a ground that the applicant awaited the payment of meagre amount by way of compassionate pension which was sanctioned vide order dated 28.8.2001. The Tribunal was not satisfied with the explanation given by the applicant in MP for condonation of delay. It is also noticed that the applicant is not a retired railway employee, but he was removed from service on account of misconduct after regular inquiry under discipline & Appeal Rules and he was granted 1/3rd compassionate allowance which is not a pension and therefore it is not a case of curtailment of pension or pensionary benefits, but the case of punishment by competent authority. Therefore, the question of continuing cause of action does not arise and hence the ratio laid down in case of M.R. Gupta (supra) does not apply.

6. The scope of judicial review under Section 22(3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgement was made, or

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on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in Ajit Kumar Rath V/s. State of Orissa & Ors 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 Rule-1 CPC. It would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."

In Union of India Vs. Tarit Ranjan Das 2004 (1) SCSLJ 47 the Apex Court held -

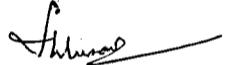
Administrative Tribunals Act, 1985 - Section 22 - Review - Held the scope of review is very limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original



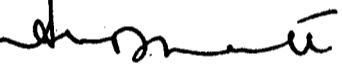
order by a fresh and rehearing the matter to facilitate a change of opinion on merits.

7. To sum up there appears no mistake or error apparent on the face of the record within the meaning of Order 47 Rule 1 of CPC. In this review petitioner has in fact prayed for taking a different view than the view taken by the Tribunal in the order dated 06.11.2001. We do not think that it can be done in a review petition. If the applicant is aggrieved by the order of the Tribunal, the proper forum was to approach the higher Court by way of appeal.

8. For the reasons recorded above, we feel no merit in the review petition. In the result the review petition is dismissed. No order as to costs.


(MUZAFFAR HUSAIN)

MEMBER (J)


(ANAND KUMAR BHATT)

MEMBER (A)

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