

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

O.A. 522 of 2001

Dated this the 12th day of October, 2001

Hon'ble Smt.Lakshmi Swaminathan - Vice Chairman (J)
Hon'ble Shri B.N.Bahadur - Member (A)

Dnynoba Nivruti Shinde,
R/o Shinde Chawl,
Uttamnagar, Pune 411 023.

... Applicant

(By Advocate Shri Avinash Shivade)

VERSUS

1. The National Defence Academy,
through the Commandant,
Khadakvasala, N.D.A.,
Pune - 411 023.
2. The Commandant, N.D.A.,
Khadakvasala, N.D.A.,
Pune 411 023.
3. The Chief of the Army Staff,
Army Headquarters, DHQ,
New Delhi - 110 001.

ORAL ORDER

Hon'ble Smt.Lakshmi Swaminathan - Vice Chairman (J) -

This application was listed on 18.9.2001. The learned counsel for the applicant had prayed for some time to produce the proof in respect of the representation made by the applicant to respondent no.3 against the impugned order of termination dated 15.6.1994. The learned counsel has produced a photocopy of the Receipt No.5907 dated 30.8.1994 which he submits is the receipt of the appeal/representation dated 25.8.1994 which he had submitted to respondent no.3. He has drawn our attention to the Postal Seal showing DHQ/PO/New Delhi dated 30.8.94 together with a letter from Department of Posts, copies placed on record. The applicant has also filed MP 793/01 together with the OA praying for condonation of delay.

2. We have heard the learned counsel on MP 793/01. The learned counsel has submitted that the applicant was under a mis-apprehension that he should wait till he receives a reply to the aforesaid appeal submitted by him to respondent no.3 and as such kept on waiting. At the same time, the learned counsel has emphasised that the applicant had also made some efforts to contact the respondents, for example, through his brother Shri S.Shinde who had gone in July, 1997 and 1999 to enquire about the matter. The learned counsel has also contended that as the applicant was a Class IV employee and comes from a very poor family, he was ignorant about the law of limitation and provisions of law. Accordingly he submits that this is a fit case for condonation of delay on sympathetic grounds. He has also submitted that the impugned order of termination dated 15.6.1994 is a very harsh punishment, quite disproportionate to the alleged unauthorised absence of the applicant from duty from 15th to 18th November, 1993 i.e. for four days.

3. While there is some merit in this submission regarding the disproportionate nature of the punishment meted out to the applicant on the alleged absence from duty, but we do not find any reason, let alone any sufficient reason made out by the applicant in MP 793/01 to condone the delay of more than five years, having regard to the provisions of Section 21 (1) (b) read with sub-section 3 of this Section of the Administrative Tribunals Act, 1985. As per the averments made by the applicant

himself, it appears that the first attempt made by him to ascertain the position was when his brother Shri S.Shinde went to Delhi in 1997 i.e. well after two and a half years of the representation/application dated 25.8.1994 was filed. In *Rattam Chandra Sammanta & others Vs. Union of India & others* (JT 1993 (3) SC 418) the Hon'ble Supreme Court has held that "delay deprives the person of the remedy available in law - A person who has lost his remedy by lapse of time loses his right as well". Reference may also be made to the judgment of the Hon'ble Supreme Court in *State of Punjab Vs. Gurdev Singh* ((1991) 17 ATC 287) and *State of Karnataka & others Vs. S.M.Kotrayya and others* (1996 SCC (L&S) 1488). In the facts and circumstances and having regard to the catena of judgments of the Supreme Court on the question, we are unable to find any sufficient reasons to allow the prayer for condonation of delay in MP 793/01. The mere fact that the applicant was under a mis-apprehension that till he receives a reply to his appeal sent by him to respondent no.3 dated 25.8.1994, he should keep waiting is not sufficient. If that reason had weighed in the mind of the applicant, it does not also satisfactorily explain why at this stage he has come to the Tribunal, when admittedly no reply has been received by him even till date. Therefore, MP 793/01 is liable to be dismissed and OA is also liable to be dismissed on the ground of bar of limitation.

4. However, taking into account the facts and circumstances and the contentions of the learned counsel, we find some merit in his submissions that the penalty of termination from service for alleged unauthorised absence from duty for a period of only four days from 15th to 18th November, 1993 is excessive and accordingly disproportionate. The learned counsel has also submitted that the applicant had rendered more than 17 years of service as "Groom" before the impugned order terminating his services was issued on 15.6.1994. Therefore, in the facts and circumstances of the case, while the OA is dismissed on the aforesaid ground, this should not come in the way of the respondents to consider the appeal filed by the applicant and received by them on 30.8.1994. No costs.

B.N. Bahadur

(B.N. Bahadur)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman