

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 564/92 and 638/92

Date of Decision: 14.10.98

Shri M.D. Mastan Petitioner/s  
Shri P.D. Dabholkar

Shri Marne for Advocate for the  
Shri D.V. Gangal. petitioner/s.

v/s.

Union of India and others. Respondent/s


Shri V.S. Masurkar. Advocate for the  
Respondent/s

CORAM:

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

Hon'ble Shri D.S. Baweja, Member (A)

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

  
(R.G. Vaidyanatha)  
Vice Chairman

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO:6  
PRESCOT ROAD, BOMBAY:1

Original Application No. 564/92 and 638/92.

Wednesday the 14th day of October 1998.

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

Hon'ble Shri D.S. Baweja, Member (A)

M.D. Mastan  
Residing at R.No.340,  
9/N Gali, Behram Nagar(E)  
Bandra, Bombay.

... Applicant in  
OA 564/92

P.D. Dabholkar  
residing at Bldg. No. 11 A,  
R.No. 31/11 1st floor,  
Kala Chowki, Housing Board,  
Bombay

... Applicant in  
OA 638/92.

By Advocate Shri Marne for Shri D.V.Gangal.

V/s.

The Union of India through  
Secretary, Ministry of  
Defence, South Block,  
New Delhi.

The Chief of Naval Staff  
Naval Head Quarters,  
South Block,  
New Delhi.

The Flag Officer Commanding  
in Chief,  
Western Naval Command  
Bombay.

The Admiral Superintendant  
Naval Dockyard  
Bombay.

... Respondents

By Advocate Shri V.S.Masurkar.

ORDER (ORAL)

( Per Shri Justice R.G.Vaidyanatha, <sup>Vice</sup> Chairman. )

These are two applications filed under  
Section 19 of the Administrative Tribunals Act 1985.  
The respondents have filed reply opposing both the  
applications. We have heard the learned counsel  
for both the sides.

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2. In O.A. 564/92, the applicant was appointed as unskilled labour in Naval Dockyard, Bombay, on production of 8th standard school certificate. It was noticed that the certificate was fake and disciplinary action was initiated against the applicant and other similar officials who had produced fake certificates. The applicants pleaded quality to the charge and then the Disciplinary Authority passed the order of penalty dated 17.12.85 by imposing the penalty of withholding of increments for three years. The applicant did not challenge that order. After the lapse of about 3 years, by exercising the power of revision under Rule 29 of CCS CCA Rules the Revisional Authority enhanced the punishment to one of removal from service by order dated 5.4.1988, after issue of show cause notice.

The applicant is challenging the order of the revisional authority.

Similarly in the second case in OA 638/92 on identical facts a similar order was passed by the Disciplinary Authority on 17.12.1985 imposing the penalty of withholding of increments for three years. After the lapse of three years, the Revisional Authority after issue of show cause notice enhanced the punishment of the applicant to one of removal from service by the impugned order dated 5.4.1988.

Both the applicants in these two applications are challenging the order dated 5.4.1988 on number of grounds.

3. The respondents have filed reply in both the applications justifying the action taken by the reviewing authority by enhancing the punishment to one of removal from service. It is however stated that both the applications are barred by limitation, delay and laches.

4. It is not necessary to consider the pleadings and other documents on record, since the learned counsel for the applicants has raised a short legal point of challenging the impugned orders passed by the Reviewing Authority.

5. The only argument that was put before us by the learned counsel for the applicants is that the impugned order of the Reviewing Authority is illegal since he has exercised suo moto power, which is not conferred on him as per rules. The learned counsel for the respondents while justifying the impugned order on merits contended that the applications are hopelessly barred by limitation, delay and laches.

6. As far as merits are concerned, prima facie two views are possible.

It is brought to our notice that on an earlier occasion in a similar case in O.A. 941/89, by order dated 13.2.92, a Division Bench of this Tribunal took a view that the Revisional Authority cannot exercise suo moto powers and quash the order of Disciplinary Authority passed in that case. The learned counsel for the applicant has also placed reliance on subsequent decision of the Division Bench dated 20.7.92 in O.A. 154/89 and 155/89, wherein the

Divisional Bench followed the earlier judgement mentioned above and held that the order passed by the Revisional Authority is not sustainable. The learned counsel for the applicant strongly presses on these two decisions in support of his position that the reviewing authority has no power to exercise suo moto.

7. On the other hand, the learned counsel for the respondents invited our attention to a recent decision of the Division Bench of this Tribunal on 14.6.96 in O.A. 856/92 (B.S. Panigrahi V/s. Union of India and others) wherein on identical facts, referring to the first judgement mentioned above, the Division Bench held that the powers of suo moto revision can be exercised at any time by the Revisional Authority as provided under Rule 29 of the CCS CCS Rule. This decision certainly helps the case of the respondents.

The learned counsel for the applicants submitted that later decision cannot be good law since it has no power to over rule the earlier Division Bench judgement.

8. It is seen that the orders of the Revisional Authority were passed on 5.4.1988 but both the applications are filed in 1992. No application has been filed for condonation of delay as required under the law. Even in the O.A. no reasons are given for delay in filing these applications. The only reason given in the O.A. is that the applicants have filed Review Petition in 1991 and after waiting for some time they have approached this Tribunal

in 1992. As rightly pointed out by the learned counsel for the respondents, that the applicants must have thought of approaching this Tribunal only after the judgement of this Tribunal in the first case mentioned above. The learned counsel for the respondents invited our attention to two decisions of the Supreme Court on this point.

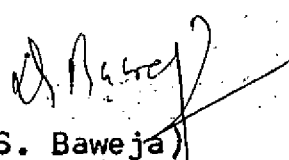
In (1996) 6 SCC 267 ( State of Karnataka and others V/s. S.M. Kotrayya and others), The Supreme Court has observed that mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, is no ground for condonation of delay. Similarly in AIR 1992 SC 1414 (Bhoop Singh V/s. Union of India and others) in that case also it is found that some of the officials whose services have been terminated, had earlier approached the High Court, and got re-instatement. The Supreme Court observed that merely others, similarly dismissed had been reinstated and got relief is no ground for condonation of delay.

9. In the present case, the applicants have lost their job in 1988, and they have kept quite without approaching this Tribunal for four years and they have also not given any explanation for condonation of undue and inordinate delay of 4 years. The applicants have not filed application for condonation of delay, but on the other hand they state that there is no delay at all since after 3 years they have filed R.P. and orders have been passed by the Competent authority.

10. In the facts and circumstances of the case we find that the applications are not only barred by limitation but also by principle of delay and laches.

In this view of the matter, the question whether we should follow the earlier decision of the Division Bench or we should refer the question to a larger Bench for resolving the conflict of opinions between the two Division Benches does not survive. Since both the applications are liable to be dismissed on the ground of limitation, delay and laches, we are not expressing any final view on the merits of the case.

11. In the result both the applications are dismissed. In the circumstances of the case there will be no order as to costs.

  
(D.S. Baweja)  
Member(A)

  
(R.G. Vaidyanatha)  
Vice Chairman

NS

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

R.P. 7/99 in  
Original Application No. 564/92

M.D. Mastan

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Tribunal's order on Review Petition on Circulation.

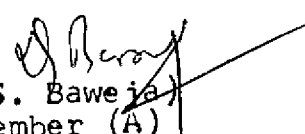
¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

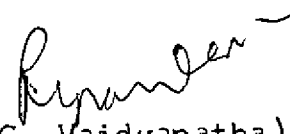
Dated: 18.2.1999

This is a Review Petition filed by the applicant in O.A. 564/92 seeking review of our order dated 14.10.1998. We have perused the contents of the Review Petition and the entire case file.

2. By order dated 14.10.1998 we have dismissed both the O.As 564/92 and 638/92 on the grounds of limitation, delay and laches.

The applicant has again repeated the same contentions which were pressed at the time of arguments in the two O.As. We have dismissed the O.As not only on the point of limitation but also on the point of principle of delay and laches. We do not find any apparent error on record or discovery of any new facts or any grounds as mentioned in Order 47 Rule 1 of the Court of Civil Procedure so as to call for review of our order. Hence there is no merit in the Review Petition and the same is hereby rejected by order on circulation.

  
(D.S. Baweja)  
Member (A)

  
(R.G. Vaidyanatha)  
Vice Chairman

NS