

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1098/93

Transfer Application No.

Date of Decision 4.4.92

B.G.Tambe

Petitioner/s

Shri Y.J.Master

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.C.Dhawan.

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. M.R.Kolhatkar, Member(A).

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

Hegde
(B.S.HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1098/1993.

this the 10 day of April 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

B.G.Tambe. ... Applicant.

(By Advocate Shri Y.J.Master)

V/s.

1. The Divisional Railway Manager,
Central Railway, Sholapur.

2. The General Manager,
Central Railway,
Bombay V.T.

3. Union of India
(Through Respondent No.2)
herein The General Manager,
Central Railway,
Bombay V.T. ... Respondents.

(By Advocate Shri S.C.Dhawan).

Q R D E R

(Per Shri B.S.Hegde, Member(J))

Heard Shri Y.J.Master, counsel for the
applicant and Shri S.C.Dhawan, counsel for the
respondents.

2. In this O.A. the applicant has challenged
the impugned order dt. 19.7.1985 issued by the
Disciplinary Authority removing the applicant from
service against which he preferred an appeal to the
Appellate Authority. The Appellate Authority after
considering the appeal has affirmed the order passed
by the Disciplinary Authority vide its order
dt. 30.8.1985, against which he preferred a Revision
Application dt. 22.9.1986, he states that no reply
has been received from the Competent Authority. He
filed this O.A. in 1993 after his superannuation from

...2.

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service. The penalty imposed by the applicant was removal from service which became effective from 29.7.1985 and the appeal preferred by him was also disposed of in 1985 itself.

3. The Respondents in their reply submitted that the petition filed by the applicant is belated one and is barred by law of limitation and the applicant did not disclose any cause of action in filing this petition, though belated. The charge levelled against the applicant ~~was~~ is that while on duty on 4.4.1984 he was creating nuisance in the running room (Rest Room of the Drivers) and disturbing the occupants of the running room. The applicant ^{major penalty} was issued with a charge sheet prior to that he has been under suspension. Accordingly, Enquiry Officer was appointed. The Enquiry Officer conducted the inquiry in which the applicant had participated even though he has not nominated any ARE. The applicant personally was present at the proceedings, but declined to cross-examine the witnesses examined in the said enquiry. The Enquiry Officer gave his findings on 11.7.1985 holding the applicant responsible for the charge levelled against him, that he was found under the influence of alcoholic drink after testing him on breath analyser test machine. During the course of inquiry he accepted the charge levelled against him.

4. During the course of hearing the learned counsel for the applicant contended that the respondents ought to have examined the applicant by calling for report of blood test before coming to the conclusion, that he was under the influence of Alcohol and that the breath analyser test is not sufficient. The fact that the inquiry has been

overlooked by the applicant and that the applicant has not filed any condonation petition for filing the belated application itself proves that he was not vigilant to pursue his case in time. Therefore, in our opinion, ⁱⁿ the application filed by the applicant belatedly he has not given proper explanation for the delay. The Tribunal cannot give any relief on the belated application unless we are satisfied for filing the delayed petition. As stated earlier, in this petition no explanation is given by the applicant except stating that the review application is pending, therefore, he could not approach the Tribunal.

5. The explanation offered by the applicant is not satisfactory, not only on the ground that the application is barred by limitation, but also on merits. This Court cannot interfere with the findings of the Enquiry Officer or the Competent Authority where they are not arbitrary or utterly perverse, in view of the Supreme Court decision in Union of India V/s. Parmananda. It is apparent that unless the applicant alleges any mala fide or arbitrariness in the order passed by the Respondents, the Tribunal does not have any jurisdiction to go into the merits of the findings given by the Competent Authority. The Tribunal also cannot interfere with the penalty if the conclusion of the Enquiry Officer or Competent Authority is based on evidence.

6. In view of the above, we are of the opinion that the O.A. is required to be dismissed both on count of limitation as well as on merits. Accordingly,

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...4.

the O.A. is dismissed with no order as to costs.

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

B.S. Hegde
(B.S. HEGDE)
MEMBER (J)

B.