

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

Date of Decision: July 12, 1993.

QA 1173/92 &
MP 114/93

PRABHU DAYAL GUPTA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON. MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.
HON. MR. O.P. SHARMA, ADMINISTRATIVE MEMBER.

For the Applicant

... SHRI R.N. MATHUR.

For the Respondents

... SHRI S.S. HASAN.

PER HON. MR. JUSTICE D.L. MEHTA, VICE CHAIRMAN.

Heard the learned counsel for the parties. The applicant was removed from services on 22.1.86 vide order Annexure A-1. He preferred an appeal against the said order which was rejected vide order dt.21.3.86 (Annexure A-2). The applicant filed Review Petition, which was also rejected vide order dt. 23.7.86 (Annexure A-5). The applicant submitted a mercy petition to the General Manager, which was also disposed of vide Annexure A-6 dated 15.10.86. The General Manager passed order that on humanitarian grounds ^{for} re-appointment as Fitter Grade-I in the scale of Rs.380-560 at the minimum of the scale i.e. Rs.380/- p.m. can be given to the applicant. However, he ordered that before such re-appointment, the applicant should be required to submit "a clear understanding" from two Railway Employees for good behaviour henceforth.

2. Whether this order on the mercy petition gives a cause of action or not needs consideration. Filing of a mercy petition is not a right and the order passed on it may not give a cause of action against the order passed in the

disciplinary proceedings. If it is assumed, for the time being, that the order Annexure A-6 gives a cause of action to the applicant, then the cause of action arose in 1936. He however submitted a memorial to the President of India on 19.6.39 i.e. about after two years and 11 months after the ~~order~~ in mercy petition was disposed of. The same has been rejected on 7.9.39 vide Annexure A-7. The ground for rejection is that the petitioner has availed the remedies available and the petition before the President of India has been submitted more than six months after passing of the order against which the petition~~er~~ has been submitted. Under Rule 31 Appendix 10, a petition can be filed to the President of India within a period of six months.

3. Mr. Mathur, appearing on behalf of the applicant, has cited before us the case of Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji & Ors. (AIR 1987 SC 1353) in support of the plea that delay should be condoned. To condone, or not to condone, is not the only question. The question which needs consideration by the court is whether there is sufficient cause for the delay. Under Section 21 of the A.T. Act, 1935, the word 'sufficient cause' is used which is similar to the provisions of Section 5 of the Limitation Act. Mr. Mathur submits that the expression 'sufficient cause' employed by the legislature is sufficient^{ly} elastic to enable the courts to apply the law in a meaningful manner which subserves the interests of justice. When it is stated that every day's delay must be explained, it does not mean that a pedantic approach should be adopted in the matter. There cannot be also a presumption that the delay has been occasioned deliberately. He has, therefore, argued that the delay in this case deserves to be condoned.

4. Mr. Hasan submits that the applicant is bound to explain the delay for the following periods: The Review Application was rejected on 23.7.86 and the applicant filed the petition before the President on 19.6.89. Thus, the delay of three years and two months will have to be explained and the applicant will have to satisfy the court why he has not moved within six months. The second delay is from 7.9.89, when the petition filed before the President was rejected, to the date of filing the application before this Bench on 19.3.91. This delay is of 18 months.

5. The applicant has also filed MP No.114/93 for the condonation of delay.

6. We have heard the rival contentions of the parties. After passing of the order Annexure A-5 dt. 23.7.86, the applicant had no legal remedy, and to move to the General Manager by way of a mercy petition cannot be said to be a legal remedy. Even if it is assumed that a cause of action had accrued to the applicant on 23.7.86 and thereafter he had a right to file a petition before the President of India under Rule 31, he should have done so within a period of six months.

7. Thus, there is an inordinate delay of about five years in filing the OA. The disciplinary action has been taken and the applicant has been removed from services and even his Review Petition has been disposed of with the direction that his case can be considered for fresh appointment. The fact that the applicant did not take any action after rejection of his review application for a period of over three years and two months, goes to show that the applicant was apparently satisfied with the order passed by the General Manager taking

- 44

him back in service. Apart from that, the arguments of Mr. Mathur that in the interest of justice every type of delay should be condoned cannot be accepted. The court has discretion to condone the delay. The discretion has to be exercised judicially and not arbitrarily. There are no sufficient grounds for condoning the delay in this case. The application for condonation of delay as well as the OA are dismissed. No

(J.P. SHARMA)
MEMBER (A)

(D.L. MEHTA)
VICE CHAIRMAN