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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

R.A.No.35 of 1989

Date of Order 23.11.89

In

O.A.No.512 of 1989

And

M.A.No.394 of 1989.

...

D.Jakkaraiah

Applicant.

Versus

The Chief Mechanical Engineer,
South Central Railway,
Secunderabad and others.

Respondents.

Counsel for Applicant: Shri M.N.Narasimha Reddy, ADVOCATE

Counsel for Respondents: Shri N.R.Devaraj, S.c for RAILWAYS.

CORAM:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY : MEMBER (JUDL)

(Judgment of the Bench delivered by Hon'ble
Shri B.N.Jayasimha Vice-Chairman)

1. This is an Application for a Review of our
judgment dated 13-7-1989 in Miscellaneous Application
No. 394 of 1989 in Original Application No.512 of 1989.

2. The review applicant had filed Original Application
S.R.No. 841 of 1989 (O.A.512 of 1989) on 5-6-1989
challenging the order of removal from service on
24-11-1986, confirmed in appeal and revision. In the
Original Application, the applicant had contended that
the application was within limitation and had averred
that he received the order of removal on 24-11-1986
and preferred an appeal on 3-12-1986. The appeal was
dismissed on 27-1-1987. He filed a Review Petition on
19-2-1987 and it was dismissed on 31-7-1987. Thereafter
he filed a representation before the Chairman Railway

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Board on 18-11-1987 and it was not been disposed of. In the meantime he approached the High Court in writ petition (S.R.No.76107 of 1988) and it was returned for want of jurisdiction. He therefore contended that the application was within limitation prescribed under 21(1) ^{of the} Administrative Tribunals Act 1985.

3. Subsequently he filed Miscellaneous Application No.394 of 1989-an application for condonation of delay, Stating that there was a delay of 18 days in the presentation of the application. In the Miscellaneous Application he had stated that he had time till 17-5-1989 and with great difficulty he could come over to Hyderabad and file the application on 5-6-1989, and that as the Writ Petition filed was returned, he could not bear additional expenditure. He therefore sought condonation of the delay of 18 days.

4. After hearing the learned counsel for the applicant we had rejected the Miscellaneous Application No.394 of 89, ^{order} for the condonation of delay in our dated 13-7-1989.

5. In this review application it is stated that as a last resort, the applicant had filed a representation before the Chairman Railway Board on 18-11-1987. He has ~~refuted~~ his earlier averments in Miscellaneous Application No. 394 of 1989 that he had approached the High Court of A.P., in Writ Petition (S.R.No. 76107/88) on 23-9-1988. The High Court had no jurisdiction to entertain the Writ Petition as the powers are now conferred on this Tribunal. He could not immediately approach the Tribunal. He filed Original Application No. 572 of 1989 with a petition to condone delay of 18 days. In the application for condonation of delay, he had stated that he had no income whatsoever and his

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financial position was bad. His Writ petition was in time but as it was returned he could not bear any additional expenditure immediately, and file the application. With great difficulty he came to Hyderabad and could file the Original Application No.512 of 89 on 5-6-1989.

6. He further says that the delay of 18 days was calculated on the basis of the representation made by him to the Chairman on 18-11-1987. He had filed his representation on the bonafide belief that it would be considered by the Chairman favourably and it was not filed with a view to save the limitation. If however the delay is calculated from 31-7-1987, it would be 10 months 4 days. Hence he seeks a review of the order.

7. We have heard Shri M.N.Narasimha Reddy and Shri N.R.Devaraj, learned Standing Counsel for the Railways. Before we consider the case, it is necessary to notice the following chronology of the case:

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|---------------|---------------------------------------------------------------------------------------------------------------|
| 1. 24.11.1986 | Applicant dismissed from service. |
| 2. 27.1.1987 | Appeal of applicant dismissed by the appellate authority. |
| 3. 31.7.1987 | Review petition also dismissed. |
| 4. 18-11-1987 | Representation made to the Chairman Railway Board. |
| 5. 23.9.1988 | Writ Petition filed in the High Court. High Court returned the petition on the ground it has no jurisdiction. |
| 6. 5.6.1989 | Application filed in this Bench. |
| 7. 5.7.1989 | M.A. 394 of 1989 for condonation of delay filed. |

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8. Shri Devarj points out that the applicant ~~had~~ ^{had} ~~repeated~~ ^{he had urged earlier} urged the very same points and what the applicant is asking now is for a reconsideration of the orders. There is no error apparent on the face of the record and there are no new materials which were not available and are now placed for consideration. No reason has been given for the delay except that he had no source of income. He also states that when the High Court had returned the papers on the ground of lack of jurisdiction, it is rather ~~an~~ strange that the counsel of the applicant could not have filed the application in the Tribunal, immediately thereafter. The applicant waited for over 8 months to file this application after the High Court returned the application. He therefore contends that no valid grounds have been made out by the applicant for a review of the order. ✓

9. In our order dated 13-7-1989, we had rejected the application for condonation of delay applying the decision of S.K.Dey's case which had laid down that repeated representation will not save the case from limitation and that pendency of a representation does not extend the period of limitation. Shri Narasimha Reddy's contention is that if the representation made to Chairman Railway Board is taken into consideration, the delay would be only 18 days. The applicant with the hope that Chairman would sympathetically consider his case, was waiting for disposal of his representation. Shri Narasimha Reddy also submits that the applicant had filed the Writ Petition in High Court after incurring heavy expenditure and he could not immediately file the application in this Tribunal due to lack of resources.

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10. We have given careful consideration to the submissions. It must be noticed that in the original application, it was maintained that the application was within time. Later in Miscellaneous Application it was urged that there was a delay of 18 days and later it was urged that the delay is ten months and four days. It should also be noticed that the applicant filed a Writ Petition on 23-9-1988 which was returned at the S.R. stage on 23-9-1988 and he filed the Original Application only on 5-6-1989. In these circumstances, we did not accept the contention that there was no delay which was originally urged and also dismissed the Miscellaneous Application No. 393 of 1989 for reasons already given.

11. In regard to limitation Under Administrative Tribunals Act, 1985, the Supreme Court had the following to say, (S.G. Rathore Vs. State of Madhya Pradesh- (J.T. 1989 (3) S.C. 530)

Para 20: "We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

Para 21: It is appropriate to notice the provision regarding limitation Under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period

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of six months has been vested under sub-section(3). The Civil Court's jurisdiction has been taken away by the Act and therefore as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be Governed by Article 58.

Para 22: It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of case of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed as representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation.

It therefore follows that the contention of Shri Narasimha Reddy, that the representation made to Chairman should be taken into consideration for purpose of limitation, is without merit. Applying the above, the contention first urged that there was no delay at all is without any merit. It is also seen that the delay is not 18 days as urged in the Miscellaneous Application No.394 of 1989 but it is over 10 months.

12. Shri Narasimha Reddy again urged that the delay should be condoned as the applicant did not have any ~~washed~~ ^{washed} source of Income. This ~~also~~ urged in the Miscellaneous Application. Shri Devaraj the counsel for the Respondent had ~~argued~~ urged even then that the applicant had filed a Writ Petition which was dismissed at the Registrar it-self on 23-9-1988, and he did not file this Original Application till January 1989. We had taken this also while dismissing the Miscellaneous Application No. 394 of 1989. The same ground is urged by Shri Narasimha Reddy once again in this Review Application and this has already been considered by us.

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13. In the result, we see no reason to review our order dated 13-7-1989. The Review Application is accordingly dismissed. No costs.

By Jayasimha

(B.N.JAYASIMHA)
Vice-Chairman

M.S.
(J.N.MURTHY)
Member (J)

Dated. 23 November, 1989.

VCR.

S. Venkateswaran
Deputy REGISTRAR. (July 30/89)

To:

1. The Chief Mechanical Engineer, south central Railway, Secunderabad.
2. The Divisional Railway Manager, Divisional Office, Personnel Branch, south central railway, Guntakal.
3. The Senior Divisional Mechanical Engineer, Divisional Mechanical personnel Branch, S.C.Railway, Guntakal.
4. One copy to Mr.M.N.Narasimha Reddy, Advocate, 9, Law Chambers, High Court Buildings, Hyderabad.
5. One copy to Mr.N.R.Devaraj, SC for Rlys., CAT, Hyderabad.
6. *For record*

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*27/8/89
20/11/89*

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6) The Dy.Registrar, Central Admn. Tribunal, Madras Bench, Tamilnadu Text Book Society Building, D.P.I.Compound, Nungambakkam, Madras-600 005.

7) The Dy. Registrar, Central Admn.Tribunal, Calcutta Bench, CGO Complex, 234/4-ADC Bose Road, Nizam Palace, Calcutta-700 020.

8) The Dy.Registrar, Central Admn. Tribunal, Bombay Bench, CGO Complex, (CBD), 1st Floor, New Bombay-400 614.

9) The Dy.Registrar, Central Admn.Tribunal, Chandigarh Bench, SCB.No.102-103, Sector-34, Chandigarh.

10) The Dy.Registrar, Central Admn. Tribunal, Allahabad Bench, 23-A, Thorn Hill Road, Allahabad-211 001.

11) The Dy.Registrar, Central Admn.Tribunal, Guwahati Bench, Rajgarh Road, Off.Shillong Road, Guwahati-781 005.

12) The Dy.Registrar, Central Admn.Tribunal, Bangalore Bench, Commercial Complex (BOA), Indira Nagar, Bangalore-560 030.

13) The Dy.Registrar, Central Admn.Tribunal, Ernakulam Bench, Kandamkulathil Towers, 5th & 6th Floors, Opp.Maharaja College, M.G.Road, Ernakulam, Cochin-682 001.

14) The Dy.Registrar, Central Admn. Tribunal, Jabalpur Bench, CARVS Complex, 15-Civil Lines, Jabalpur, M.P.

15) The Dy.Registrar, Central Admn.Tribunal, Patna Bench 32-A, B.M.Enterprises, Shri Krishna Nagar, Patna-1.

16) The Dy.Registrar, Central Admn.Tribunal, Jodhpur Bench, C/o Rajasthan High Court, Jodhpur, Rajasthan.

17) The Dy.Registrar, central Admn., Tribunal, Ahmadabad Bench Navrang Pura, Near Sardar Patel Colony, Usmanpura, Ahmadabad.

18) The Dy.Registrar, Central Admn.Tribunal, Cuttak Bench, Dolmandi, Cuttak- 753 001.

19) The Dy.Registrar, Central Admn. Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi-110 001.

20) Sri Sanjeev Malhotra, All India Services, Law Journal 89, Hakikatnagar, Mal Road, New Delhi-9.

21) M/s. Eastern Book Com., 34, Lal Bagh, Lucknow.

22) M/s Delhi Law Times, 5355, Jawahar Nagar, Kolhapur Road, Delhi-7.

23) Sri Hasiñ Ahmad, Spl.Representative Reporter, A.I.R. Ltd., No.21-1-1964 & 65, Gandhi Bazar, Opp.High Court Bar Association, Hyderabad.

24) The Administrative Tribunal Reporter, Bhagat Singh Market 90, New Delhi-110 001.

25) Sri KBS Sarma, General Secretary, All India Equal Rights Association, E-58, HUDA, Residential Complex, Vanasthalipuram, Hyderabad-661.

26) The By.Registrar (J), Central Admn. Tribunal, Hyderabad Bench, Hyderabad.

27) One copy to Library, CAT, Hyderabad Bench, Hyderabad.

28) 2. spare copy/copies.

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Draft by: Checked by: Approved by
D.R.(J)

Typed by: --- Compared by:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

HON'BLE MR. B. N. JAYASIMHA: (V.C.)
AND

HON'BLE MR. D. SURYA RAO: MEMBER (JUDL)
AND

HON'BLE MR. D. K. CHAKRAVORTY: MEMBER (A)
AND

HON'BLE MR. J. NARASIMHA MURTHY: MEMBER (J)

DATED: 23.11.89

ORDER/JUDGMENT

M.A./R.A./C.A./No. 35/89 in
T.A. No. (W.P.No.)

C.A.No. OA. 512/89

Admitted and Interim directions
issued.

Allowed.

Dismissed.

Disposed of with direction.

M.A. Ordered.

No order as to costs.

Sent to Xerox on: 21.11.89

