

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

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O.A.No.243/90 with M.A. 151/90.

Date of the order: 19-4-1990.

Between:

P. Nagabhushana Rao

... APPLICANT

A N D

1. The General Manager,  
South Central Railway,  
Secunderabad.

2. The Divisional Railway Manager,  
South Central Railway,  
Vijayawada.

3. The Divisional Commercial  
Superintendent,  
South Central Railway,  
Vijayawada.

... RESPONDENTS

Appearance:

For the applicant : Sri G.V.Subba Rao, Advocate

For the Respondents : Sri N.R.Devaraj, S.C. for Rlys.

CORAM:

The Hon'ble Mr. B.N.Jayasimha, Vice-Chairman

and

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

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(ORDER OF THE BENCH DELIVERED BY THE HON'BLE  
SRI D.SURYA RAO, MEMBER (JUDICIAL))

The applicant herein is a retired employee of the South Central Railway. He has filed the main O.A. 243/90 questioning the orders of the Divisional Commercial Superintendent, South Central Railway, Vijayawada in Memo. No.B/C-560/II/250/3/85 dated 21-1-1986 and 25-2-1986 <sup>annual</sup> imposing upon him a punishment of withholding of his/increment for two years and the consequential order of the General Manager, South Central Railway, No.P.86/BZA/PNB/990 dated 28-9-1988 rejecting the review application submitted by the applicant against the order of the punishment. A condone delay petition has been filed to condone the delay of 147 days in filing the Original Application. The original order of punishment against the applicant was issued in February 1986. Admittedly the applicant did not prefer any appeal against the order. Subsequently in 1987 he made a representation to the Divisional Railway Manager, S.C.Rly., Vijayawada for revising the penalty imposed, whereupon the D.R.M. by letter dated 25-4-1988 informed the applicant that the time limit under rule 25 of the Railway Servants (Discipline and Appeal) Rules in the case of D.R.M. to entertain a revision petition <sup>is maintainable</sup> provided it is made within one year from the date of imposition of penalty or disposal of appeal. He was informed that no action can be taken by the DRM but it is open to the applicant to submit a revision petition to the General Manager under Rule 25 since the General Manager could entertain a revision petition without any time limit. Thereafter the applicant,

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on 26-4-1988 submitted a revision petition to the General Manager who rejected the same stating that the punishment imposed was a conscious decision considering the gravity of the offence committed. He further held that the case is time barred and therefore he is not agreeable to review the punishment. Thus, the final order against which the applicant is aggrieved is the order of the General Manager dated 28-9-1988 which was communicated to the applicant on 3-10-1988. The O.A. has been filed on 5-3-1990 i.e. after a period of one year and ~~five~~ months, after the order of the General Manager was passed. There is admittedly a delay of 147 days in filing the O.A.

2. We have heard the arguments of the learned counsel for the applicant, Sri G.V.Subba Rao and Sri N.R. Devraj, learned Standing Counsel for the Railways who took notice for the Respondents.

3. The ground on which the delay is sought to be condoned is that the applicant was <sup>advised by Advocate</sup> ~~under the impression~~ that he can file a suit in the civil court within three years from the impugned order. Therefore he was under the impression that there was sufficient time for filing the application. ~~before this Tribunal~~. He further states that under the Central Administrative Tribunal Rules he had time till 10-10-1989 to file the application, that thereafter he fell ill due to blood pressure <sup>and</sup> sugar complaint, that he was advised not to go out and avoid physical strain by his doctor and hence there was delay in filing the present application before this Tribunal.

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There is a certificate enclosed, dated 21-2-1990 from Dr.A.Trimurthy Rao of Vijayawada to show that the applicant was under the treatment of the doctor from 10-10-1989 till 21-2-1990. On the basis of this medical certificate the learned counsel for the applicant contends that the delay may be condoned.

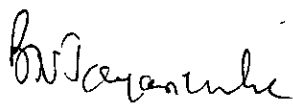
4. No doubt the applicant has produced a medical certificate to show that he was ill between October 1989 and February 1990. But the applicant did not satisfactorily explain why he kept quiet ever since 10-10-1988 in filing the present application and did not come to this Tribunal during the interregnum of that one year when he was not ill. No reason whatsoever has been given for not coming to the Tribunal during this period except to state that he was advised by some unnamed advocates that he could approach the civil court within three years. This submission is, in our view, wholly untenable. The Central Administrative Tribunals Act, 1985 had been in force for three years as on the date when the impugned order of the General Manager was passed. The factum of the Tribunal's Act having been established is well known to all employees and that they must approach the Tribunal and not the civil court. This plea that he was advised by some Advocate or Advocates that he could approach the civil court at any time within three years from the date of being aggrieved is clearly an after thought and put forward only for the purpose of seeking to explain away his laches. He neither mentions who these advocates are nor when he approached them. Sri Subba Rao, on behalf of the applicant contended that it is open to the applicant to wait till one year is expired before coming to this

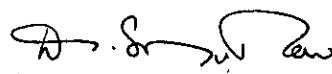


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Tribunal, that the delay to be explained is only 147 days and, therefore, the fact that he kept quiet between October 1988 and October 1989, need not be explained, <sup>this untenable</sup> is equally untenable. No doubt an application made within one year from the date of the order by which a person is aggrieved, will be within time. However, it does not necessarily mean that the applicant should wait till the last date before filing the application and thereafter allow other circumstances like illness, etc. to supervene and come to the Tribunal at his leisure any time thereafter. We are not satisfied that a valid explanation has been given by the applicant for the delay. As this is not, in our opinion, a fit case for condoning the delay, the M.A. 151/90 is dismissed and consequently the O.A. 243/90 is also dismissed. No costs.

  
(B.N. Jayasimha)  
Vice-Chairman

  
(D. Surya Rao)  
Member (J)

Dated: 19<sup>th</sup> <sup>April</sup> ~~March~~, 1990.

mhb/

  
For Deputy Secretary (J)

To:

1. The General Manager, south central railway, Sec'bad.
2. The Divisional Railway Manager, south central railway, Vijayawada.
3. The Divisional commercial superintendent, south central Railway, Vijayawada.
4. One copy to Mr. G.V. Subba Rao, Advocate, 1-1-230/33, Chikkadpally, Hyderabad.
5. One copy to Mr. N.R. Devaraj, SC for Railways., CAT, Hyderabad.
6. One spare copy.

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CHECKED BY

TYPED BY:

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBU-  
NAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

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

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: 19-4-90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. in

T.A.No. W.P.No.

O.A.No. 243190

Admitted and Interim directions  
issued.

Allowed.

Dismissed for default.

Dismissed. no costs

Disposed of with direction.

M.A. ordered.

No order as to costs.

Sent to Xerox on:

