

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 06.02.2004

OA No. 99/2000

Ghisa Lal Verma s/o Shri Bakhtawar Mal, aged about 67 years, r/o of plot No.87, Nandpuri Colony, Hawa Sarak, Behind Dundlod House, Jaipur.

.. Applicant

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Ajmer.

.. Respondents

Mr Dharmendra Jain, counsel for the applicant.

Mr. U.D.Sharma, counsel for respondents

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant while working as Station Master Chirai was served with a chargesheet under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The charge against the applicant was that while working as Station Master, Chirai in 2 to 14 hours on 7.11.87, the applicant gave permission to take off the signal and permitted delivery of authority to proceed to the driver of the train No.1/GIM-VTA Dn. Goods without ensuring that the line No.6 of CHII Yard over which the said train was to be pass running through was clear and free from obstruction. Thus the careless and negligent working on

the part of the applicant resulted in the derailment. It is also alleged that the applicant failed to depute a member of Group 'D' staff to watch the train from off side and he also failed to report against Shri Pranlal Jeevan Sr. F/Man CHII who tempered with the evidence by removing gunny bags entangled in the derailed wagon and thus failed to maintain devotion to duty.

1.1 An Enquiry Officer was appointed to prove the charges against the applicant and the Enquiry Officer held the applicant guilty of the charges. Thereafter the Disciplinary Authority imposed the punishment of stoppage of increments for 3 years with future effect vide order dated 5.6.89 (Ann.A1). Since the applicant was not satisfied with the penalty so imposed, he preferred an appeal before the Appellate Authority and the Appellate Authority on examination found that the charges stand established. Since the applicant was retiring shortly, the Appellate Authority reduced the punishment to stoppage of increment to two years without future effect vide order dated 24.9.90 (Ann.A2). The applicant remained silent for a considerable period and thereafter filed a revision petition dated 29.7.94. However, the said revision petition was also dismissed vide order dated 7.6.95 (Ann.A3). Thereafter the applicant submitted a petition to the President of India on 6.9.95 against the punishment order and the said petition was also disposed of vide order dated 30.8.99 (Ann.A4). It is thereafter the applicant has filed the present OA on 1.2.2000 thereby praying for the following reliefs:-

"i) That the present Original Application may kindly be allowed and all the orders passed in pursuance to the enquiry conducted in the matter deserves

: 3 :

to be quashed and set aside and the order passed by the appellate authority and the reviewing authority deserves to be quashed and set aside with award of all consequential benefits in favour of the present applicants.

- ii) That the respondents may further be directed to pay the full pension with arrears and interest thereupon to the applicant.
- iii) Any other appropriate relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also be granted in favour of the applicant."

2. Notice of this application was given to the respondents. The respondents have filed reply.

2.1 In the reply, the respondents have taken the stand that the order dated 30.8.99 (Ann.A4) does not pertain to any statutory remedy available to the applicant under Railway Servants (Discipline and Appeal) Rules, 1968 (for short, Discipline and Appeal Rules) but pertains to a petition submitted by the applicant to the President. The statutory remedies in the disciplinary matters are only the remedies of appeal and revision provided to a delinquent employee under Rules 18 and 25 of the Discipline and Appeal Rules. As such, according to the respondents, the present OA is hopelessly time barred. The respondents have also taken objection that the applicant has sought multiple reliefs which is prohibited by Rule 10 of the Central Administrative Tribunal (Procedure) Rules as the applicant in para 8 of the OA has sought relief for quashing and setting aside of the punishment order as well as a direction to the respondents to pay him full pension

with arrears and interest thereon. Thus, according to the respondents, both the said reliefs are not co-related and the application is liable to be dismissed on this score also.

2.2 On merits, it has been stated that the enquiry has been conducted after applying the principles of natural justice and affording adequate opportunity to the applicant. Since the applicant on every occasion has given assurance to bring the defence counsel, but on every occasion none of the two defence counsel has attended the enquiry, as such the Enquiry Officer was justified in holding the enquiry ex-parte and recording the statements of the witnesses, who were present on the said date. As regards the applicant's grievance about incorrect fixation of pension, it has been stated that the pension has been correctly fixed and a sum of Rs. 1584/- was paid to the applicant vide cheque dated 27.11.2000 and his PFO has also been revised vide order dated 15.11.2000 in terms of recommendations of the 5th Central Pay Commission. Thus, the applicant is now getting full pension of Rs. 4059/- per month w.e.f. 1.1.1996 and his grievance regarding pension does no longer subsist.

3. The applicant has filed rejoinder. Regarding limitation, it has been stated that the applicant has preferred application to the President of India being the highest authority for the Union of India and he was pursuing the said remedy under a genuine belief that being the highest authority, he is the authority who can be approached for a relief. However, it was decided by the President of India against the applicant and immediately thereafter this OA was preferred within limitation.

40

Therefore, this OA is well within limitation. As regards payment of full pension with arrears, the applicant in the rejoinder has admitted that after filing the OA, the respondents have revised the pension of the applicant correctly. Thus, the grievance of the applicant regarding payment of revised pension does not survive.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 As can be seen from the material placed on record, the applicant was awarded punishment of stoppage of increment for 3 years with future effect by the Disciplinary Authority vide order dated 5.6.89 (Ann.A1). On appeal and taking into a sympathetic view that the applicant was retiring shortly, the punishment was reduced to stoppage of increment for 2 years without future effect vide order dated 24.9.90 (Ann.A2). Thereafter, the applicant did not resort to the statutory remedy as provided under Rule 25 of the Disciplinary and Appeal Rules within the prescribed period of limitation. However, the revision petition dated 29.7.94 was filed after lapse of considerable period as per provisions laid down under Rule 25 of the Disciplinary and Appeal Rules. The Revising Authority taking note of the fact that the revision petition has not been filed in time and the reasons mentioned in the appeal do not bear scrutiny, however, passed a reasoned order thereby disposing of the revision petition of the applicant on merit vide order dated 7.6.95 (Ann.A3). Admittedly, this OA has been filed in the year 2000 after expiry of the period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4.2 The respondents in para 3 of the OA has made the

16

following averments:-

"3. That the contents of Para 3 of the application are not admitted. It is submitted that the punishment order was issued on 5.6.1989 and the Appellate order was passed on 24.9.1990. It is submitted that the applicant was having the statutory remedy of appeal and revision under Rules 18 and 25 respectively of the said Disciplinary Rules, which he had availed. Thus, the cause of action to the applicant for approaching this Hon'ble Tribunal had accrued on 24.9.1990 and this OA having been filed by him sometime in May, 2000 is clearly barred by limitation. The applicant had, no doubt, preferred a Review Petition on 29.11.1991, that is beyond the period of one year from 24.9.1990, the date on which the appellate order was passed, and the said Review Petition was also dismissed on 7/16.6.1995. Even from this date of 7/16.6.95, this OA is barred by limitation. The petition submitted by him to the President on 6.9.1995, being not in the nature of a regular statutory remedy against the punishment order, the disposal of the said petition vide order dated 30.8.1999, will not have the effect of giving to the applicant a fresh cause of action vide the said order dated 30.8.1999. In fact, even otherwise, the applicant had submitted the said petition to the President on 6.9.95 and he ought to have waited for a period of six months from the date of submission of the said petition and the belated reply given to the said representation

66

will also not have the effect of extending the period of limitation. It is, therefore, submitted that this OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1995 and deserves to be dismissed."

Thus, in view of what has been stated above, we agree with the stand taken by the respondents that the present application is time barred and the petition submitted by the applicant to the President of India on 6.9.95 which was disposed of on 30.8.99 will not have the effect of giving the applicant a fresh cause of action. The matter in this regard is no longer res-integra. The Apex Court in the case of S.S.Rathore v. State of Madhya Pradesh, AIR 1990 SUPREME COURT 10, decision rendered by the Constitution Bench, has held 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 representation shall be taken to be the date when cause of action shall be taken to have first arisen. The Apex Court further held that repeated unsuccessful representation not provided by law are not governed by this principle. Further, it has been held that submission of a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation. At this stage it will be useful to reproduce para 20, 21 and 22 of the said judgment, which has bearing on the matter in issue and read as under:-

"20. We are of the view that the cause of action shall be taken to arise not from the date of 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.

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 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.

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 cause 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 or 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."

4.3 The decision rendered by the Hon'ble Apex Court in the case of S.S.Rathore (supra) was also relied by the Full Bench of CAT-Hyderabad in OA No. 27 of 1990, B.Parameshwara Rao vs. The Divisional Engineer, Telecommunications, Eluru and Another, 1989-1991 CAT (F.B.) Vol.II 250. In para 22, the Full Bench of the Tribunal held that the cause of action may arise when an impugned order is passed and the time begins to run from the date of the impugned order. Section 20(2) of the Act visualises a case where no order is passed by the Appellate authority in a service matter for a period of six months from the date of filing of the said appeal etc. The aggrieved person should not wait indefinitely and law, therefore, provides that on the expiry of six months, he can approach the Tribunal forthwith. The limitation begins from the expiry of the period of six months from the date of filing of the appeal. The right accrues then and not before.

4.4 To the similar effect is the decision of the Punjab and Haryana High Court in the case of Ramesh Kumar vs. Union of India and ors., 2003 (5) SLR 55 whereby in

para 20 after analysing the provisions of the Act and the decision of the Apex Court, it has been held that :-

"(i) The Tribunal established under the Act cannot entertain an application filed after expiry of the period of limitation prescribed under Section 21(1) unless the application satisfies it that he had sufficient cause for not filing the application within the prescribed period of limitation.

(ii) The rejection of successive representations cannot justify entertaining of an application filed after expiry of the period of limitation unless the relevant service rules as to the redressal of the grievances provide for such representations".

4.5 Thus in the light of the ratio laid down by the Apex Court in the case of S.S.Rathore (supra) whereby the scope of Section 21 of the Administrative Tribunals Act was considered by a Seven Judges Bench, the present OA is barred by limitation. We agree with the submissions made by the respondents that the applicant was having statutory remedy of appeal and revision under Rule 18 and 25 respectively of the Disciplinary and Appeal Rules which he has availed. Thus, the cause of action to the applicant for approaching this Hon'ble Tribunal had accrued on 24.9.1990 or in any case on 7/16.6.1995 when his revision petition was dismissed. The petition submitted by the applicant to the President of India on 6.9.95 being not in the nature of regular statutory remedy against the punishment order, which will not have the effect of giving to the applicant a fresh cause of action in view of the law laid down by the Apex Court in the case of S.S.Rathore

: 11 :

(supra) and also the decision quoted above. Admittedly, the OA was presented in the year 2000 i.e. beyond the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act. As such the present OA deserves to be dismissed on this ground without findings on merit.

4.6 During the course of arguments the learned counsel for the applicant half-heatedly argued that since the present OA has been admitted, as such the question of limitation cannot be gone into while hearing this OA. According to us, this arguments is not tenable in view of the law laid down by the Apex Court in the case of Ramesh Chand Sharma vs. Udhamp Singh Kamal, 1999 (5) SLR 654 whereby it has been held by the Apex Court that the application filed beyond the period of limitation prescribed under Section 21 of the Administrative Tribunals Act cannot be admitted and decided on merit without there being any application for condonation of delay as contemplated under Section 21 sub-section (3) of the Administrative Tribunals Act, 1985. The ratio as laid down by the Apex Court in this case is squarely applicable to the facts of this case.

5. In view of what has been stated above, the present OA is dismissed being time barred without giving any finding on merit. No order as to costs.

  
(A.K. BHAMBHANI)

Member (A)

  
(M.L. CHAITAN)

Member (J)