

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
(CAMP OFFICE AT GWALIOR)

Original Application No. 32 of 2004

Gwalior, this the 19th day of May, 2004

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Maharaj Singh Mahore,
S/o Sh. Ram Dayal,
Age 46 years,
Occupation-Service (Group D)
Postal Assistant,
R/o Dullapur, Thatipur, Morar.

...Applicant

(By Advocate: Shri J.P. Kushwaha)

-versus-

1. The Ministry of Communications through
its Secretary,
Dak Bhawan,
New Delhi.
2. The Chief Principal Postmaster General,
M.P. Circle, Bhopal.
3. The Senior Superintendent,
Post office,
Gwalior.

...Respondents

(By Advocate: Shri P.N. Kelkar)

O R D E R (ORAL)

By M.P. Singh, Vice-Chairman -

By filing this Original Application, the applicant
has sought the following main reliefs:

"8. The applicant prayed that this Hon'ble
Tribunal may kindly be pleased to allow the
application of the applicant and the respondents
may kindly be directed to forward the review
petition dated 30.10.1995 and decide as earliest
as possible, in the interest of justice."

2. The brief facts of the case are that the applicant
was initially appointed as Group 'D' employee by the
respondents on 30.06.1980 and subsequently he was promoted
as Postal Assistant. While working as Group 'D' employee,
the applicant was issued with a chargesheet on 21.9.1987
for violation of Rules 3(i)(ii)&(iii) of the CCS (CCA) Rules,
1965 by slapping, threatening and disobeying the orders of

the then Assistant Post Master. Enquiry was held against him and the disciplinary authority imposed a penalty on the applicant reducing his pay by nine stages from Rs. 850/- to Rs. 750/- in the scale of Rs. 750-940/- for a period of four years with cumulative effect on 1.9.1988. The applicant against the said order of the disciplinary authority preferred an appeal to the appellate authority. The appellate authority after considering all aspect of the matter enhanced the penalty imposed by the disciplinary authority by reducing the pay of the applicant by nine stages for a period of ten years with cumulative effect.


3. The applicant had earlier filed OA No. 429/90 before this Tribunal which was dismissed vide Tribunal's order dated 30.10.1991. Thereafter the applicant filed a review petition which had also been rejected by the President vide his order dated 29.9.1992. The applicant filed another review petition under Rule 29-A of the CCS(CCA) Rules, 1965 which was rejected by the respondents vide their order dated 21.3.1997. While rejecting the aforesaid review petition, the respondents had stated that the review petition filed by the applicant under Rule 29-A of the CCS(CCA) Rules, 1965 had already been considered by the President and stood rejected vide order dated 29.9.1992. It is further mentioned that under the said Rule, there is no provision for filing second review petition before the President. The applicant, being aggrieved with the said order of the respondents, has filed the present original application seeking the aforesaid reliefs.

4. Heard the learned counsel for both the parties.

5. Learned counsel for the applicant has stated that earlier the applicant had filed a review petition under Rule 29 of the CCS (CCA) Rules, 1965 against the order passed by the disciplinary authority and the appellate authority which was rejected by the President on 29.9.1992. He further submitted that there is a provision under Rule 29-A of the

said Rules for filing a second review petition. Hence, he filed the second review petition before the President on 30.10.1995. It is argued that the respondents instead of forwarding the same to the President rejected vide their order dated 21.3.1997. The said act of the respondents is illegal, void and against the rules. Learned counsel for the applicant further argued that the Tribunal, while deciding the OA No. 429/90, had only considered the fact whether the applicant was given an opportunity of hearing or not and had not gone into other aspect of the case.

6. On the other hand, learned counsel for the respondents at the very outset stated that the applicant has not approached this Tribunal with clean hands and has suppressed the material facts to the effect that the impugned orders passed by the disciplinary authority as well as the appellate authority were challenged by him by filing OA No. 429/90 which stood rejected by the Tribunal vide its order dated 30.10.1991. It is further argued that after the dismissal of his earlier O.A., the applicant filed a review petition which was rejected by the competent authority on 29.9.1992. According to him, there is no provision under Rule 29-A of the Rules *ibid* for filing a second review petition. Therefore, the departmental review petition filed by the applicant on 30.10.1995 was rejected on 21.3.1997 by the respondents. He has further argued that the present application is hit by the principles of *res judicata* as the issue relating to the penalty imposed by the disciplinary authority and the appellate authority has already been considered and decided by the Tribunal vide its order passed on 30.10.1991 in OA No. 429/90. Learned counsel for the respondents also stated that apart from this, the present O.A. is barred by limitation as the applicant is challenging the order passed by the respondents on 21.3.1997 that too without filing any application for condonation of delay. Hence, this case is liable to be dismissed on this ground also.



7. We have given careful consideration to the rival contentions of the parties and we find that the applicant, while working as Group 'D' employee at Lashkar, was imposed with a major penalty of reduction of his pay by nine stages for a period of four years with cumulative effect which was later on enhanced by the appellate authority to reduction of pay by nine stages for a period of ten years with cumulative effect. He had earlier filed OA No. 429/90 which was dismissed by the Tribunal vide its order dated 30.10.1991. Thereafter, the applicant had filed a review petition under Rule 29 of the CCS (CCA) Rules, 1965 which was also rejected by the competent authority on 29.9.1992. We find that the applicant has not come with clean hands before this Tribunal as he has suppressed the material facts that he had earlier approached this Tribunal against the penalty imposed by the disciplinary authority and the appellate authority. In column 10 of the O.A. under the head "Matters not previously filed or pending: the applicant has declared that "The applicant declares that (sick) he has not filed/ previously filed any other writ petition suit or applications before any other court of law or authority in regard to the subject matter of the application with regard to the subject matter of the application nor any such matter is pending before any of them." Hence, the above declaration of the applicant is absolutely wrong as the issue relating to imposition of penalty by the disciplinary authority and the appellate authority has already been decided by this Tribunal in OA No. 429/90 and, therefore, the present original application is hit by the principles of res judicata, and concealment of material facts from this ~~xxxxxx~~ Tribunal. We further find that this Tribunal had considered the earlier O.A. No. 429/90 filed by the applicant, on merit, therefore, the contention of the applicant that the Tribunal had only looked into the aspect of giving an opportunity to the applicant is also

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not correct. It is also seen that the applicant had again filed a review petition under Rule 29-A of the Rules ibid to the President through proper channel on 30.10.1995. The respondent did not forward the same to the addressee concerned stating that there is no provision under Rule 29A of the Rules and rejected the same vide their order dated 21.3.1997. Even if it is considered that the respondents did not forward thesecond review petition of the applicant to the addressee without any authority and rejected the same on 21.3.1997 in an illegal manner, even then the present O.A. is barred by limitation as the applicant has come to this Tribunal by filing this O.A. only in the year 2004. Hence, the prayer of the applicant for forwarding his second review petition to the president cannot be granted at this belated stage.

8. In the facts and circumstances of the case and in the light of observations made above, we find that the O.A. fails merit and deserves to be rejected. The O.A. also fails on the ground of limitation, res-judicata and concealment of facts by the applicant. Hence, the original Application is accordingly dismissed with no order as to costs.

(Madan Mohan)
Member (Judicial)

(M.F. Singh)
Vice Chairman

/na/

पूरांकन से ओ/न्या.....जबलपुर, दि.....

प तिलिधि अचो दितः—

(1) सचिव, उच्च न्यायालय वार एडमिनिस्ट्रेशन, जबलपुर

(2) आवेदक श्री/श्रीमती/कु.....के काउंसल JP Kushwahra

(3) प्रत्यर्पी श्री/श्रीमती/कु.....के काउंसल P N Kelkar

(4) न्यायालय, के.प्र.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

Bohanna Day
उप सचिव
17.6.04

Report

Filed
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16-6-04