

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 896 of 1998

Jabalpur, this the 31st day of July, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member  
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Krishan Gopal Soni s/o Shri Nanalal  
Soni, aged about 48 years, Senior  
Attendant (Retd.), Bank Note  
Press, Dewas.

APPLICANT

(By Advocate - Shri S.R. Tamrakar holding brief of  
Shri M. Shrivastava)

VERSUS

1. Union of India  
Through : Secretary,  
Ministry of Finance,  
New Delhi.
2. The Bank Note Press, Dewas  
Through : its General Manager.
3. The Deputy General Manager,  
Bank Note Press, Dewas.
4. The Chief Engineer-cum-  
Disciplinary Authority,  
Bank Note Press, Dewas.
5. The Deputy Works Manager,  
Bank Note Press, Dewas.

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari holding brief of  
Shri S.C. Sharma)

O R D E R (ORAL)

By J.K. Kaushik, Judicial Member -

**Krishan Gopal Soni has filed this Original  
mainly  
Application and has sought/the following reliefs-**

- (i) to call for the entire records leading to  
issuance of the impugned orders dated 2-4-1996  
and 15-4-1997 as also enquiry report from the  
possession of the respondents, for its kind  
perusal;
- (ii) to issue a writ in the nature of certiorari  
quashing the impugned orders dated 2-4-1996  
(Annexure A/9) and 15-4-1997 (Annexure A/11)
- (iii) to direct the respondents to reinstate the  
applicant with all consequential benefits.

2. The material facts necessary for adjudication of  
the controversy involved in this case are that the applicant  
was initially appointed as a Store Attendant in the Bank

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Contd.....2/-

Note Press, Dewas on 27.10.1994. He has served the department with utmost dedication and to the best of satisfaction of his superiors without any complaint. He got married with one Parwatibai in the year 1973. On account of difference of opinion, the relations could not be continued and resulted in the divorce in the year 1974 as per the customary rights. The Panchayat made a settlement and the declaration was made in writing on 10.4.1974. The further case of the applicant is that at the time of his appointment he furnished certain information in the prescribed format in the attestation form as required at the time of appointment. The attestation form was duly filled on 16.3.1974 wherein he mentioned the name of his wife as Smt. Parwati Soni. In the month of October, 1974 he performed second marriage with one Ushabai since he had already divorced his first wife Smt. Parwati Bai and there was no obstruction or statutory bar for solemnizing the second marriage. From 1974 till 1990 the applicant performed his duties with dedication without any complaint. However, his first wife Smt. Parwati Bai made a complaint alleging that the applicant without furnishing the true and correct information to the department has concealed that she was not legally wedded wife at the time of joining the service. It was also complained that without obtaining the divorce he had performed the second marriage which is illegal and also bad in law. Pursuant to the complaint, a departmental enquiry was instituted against him vide charge sheet dated 26.9.1993. The allegations were that the applicant did not furnish correct information to the department and accordingly he violated the provisions of CCS (Conduct) Rules, 1964. Thereafter, a detailed oral enquiry was conducted and the enquiry officer held the alleged charges as baseless and without any substance and submitted his report giving finding of exoneration of the applicant from the charges.

3. The disciplinary authority- respondent no. 4 did not agree with the findings of the enquiry officer and

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found the applicant guilty of suppression of facts and thereafter issued a notice to the applicant on the point of disagreement. He submitted the explanation but the same was not acceptable to the disciplinary authority and the disciplinary proceedings were culminated into imposition of the penalty of removal from service vide order dated 2.4.1996. An appeal was preferred before respondent no.2. The appellate authority cancelled the impugned removal order and in stead of that imposed the penalty of compulsory retirement vide order dated 15.4.1997. The charge-sheet which was issued to the applicant did not contain any charge regarding mention of the name of the children in the attestation form. As such, the charge, which was never framed against him, cannot be the basis for impugned penalty, for want of reasonable opportunity to explain the charge. It is also averred that as per the Pension Rules, such an information could be submitted subsequently and would not amount to any kind of misconduct. The alleged misconduct has no relation with the performance of duties of the employee after appointment. The Original Application has been filed on number of grounds mentioned therein which we propose to examine in the later part of this order, if need be.

4. The respondents have filed a very exhaustive and detailed reply and have also placed on records various documents relating to the enquiry proceedings. They have taken a preliminary objection as regards the maintainability of the very Original Application and have submitted that as per Section 21 of the Administrative Tribunals Act the OA is required to be filed within a period of one year from the date on which the final order has been made. In the present case the final order was passed by the appellate authority on 15.4.1997 and the Original Application has been filed on 13.12.1996. Thus, the same is barred by limitation and deserves to be dismissed on this count alone.

5. As regards the facts, the respondents have controverted the facts and grounds raised in the Original

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Application and have submitted that the disciplinary authority has passed a reasoned order and the charges levelled against the applicant have been proved and merely performing the duties satisfactorily does not deprive the authority to initiate disciplinary proceeding on such type of misconduct i.e. suppression of material facts while seeking an employment, inasmuch as had he not suppressed the facts, he would not have got service in the Government organization. However, a lenient view has been taken and the penalty has been reduced from that of removal to the compulsory retirement. Thus, the action of the respondents is legal and justified and the Original Application deserves to be dismissed accordingly.

6. A short rejoinder has been filed to the reply and there is no specific contravention to the plea of preliminary objection in the rejoinder regarding limitation. However, facts mentioned in the reply have been controverted.

7. We have heard the elaborate arguments laid on behalf of the parties and have very carefully considered the records of this case.

8. The learned counsel of the applicant has reiterated the facts and grounds raised in his pleadings. He has primarily submitted that the applicant had divorced the earlier wife and the second marriage was valid. However, by mistake the details of the family members were wrongly mentioned in subsequent dates. He has submitted that at one place his statement is being taken as true as regards the second marriage as per the approved custom of the society but on the other side the declaration regarding the divorce is being disbelieved. He has submitted that the applicant has been penalised on a different charge than the one which was levelled against him and thus no opportunity was given to him on the new charge. He also submitted that the charge alleged against him had no relation with his functioning in the department. He has also submitted that this is not a misconduct as per the

CCS(Pension)Rules. The next submission of the applicant has been that the penalty imposed is excessive and disproportionate to the alleged misconduct. On the other hand, the learned counsel of the respondents has reiterated his pleadings and has submitted that the application is time barred as per the preliminary objection raised in the reply.

9. At the very outset we are required to examine and settle the preliminary objection which has been specifically raised in the reply of the respondents in the following terms:-

"That in accordance with the provisions of sub-section(1)(a) of Section 21 of the Administrative Tribunals Act, 1985, an application should be filed before the Hon'ble Tribunal within one year from the date on which the final order has been made. In the instant case the final order No. B N P/Vig/Vika/42/93 was passed by the Respondent No. 2 on 15.4.97 and the application was filed only on 13.12.98. Thus the application is time barred and deserves to be dismissed."

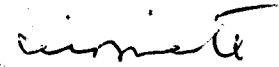
The same has not been controverted in the rejoinder, wherein no reply has been submitted to the preliminary objection.

10. It is true that as per Section 21 <sup>the limitation</sup> ~~ibid~~/for filing the Original Application before this Tribunal is one year from the date the final order has been passed. Admittedly, in the present case the final order has been passed by the appellate authority on 15.4.1997 and thereafter no revision-petition has been preferred in the matter. It is also admitted position of this case that the Original Application was filed on 18.12.1998. As per Section 21 ~~ibid~~ this Original Application ought to have been filed by 15.4.1998. Thus, there is a delay of 8 months in filing of the Original Application. From the records and pleadings of the parties it is clear that no application for condonation of delay has been filed. As per para 5 of the OA at page 2, it has been clearly indicated that the application is within limitation. Thus, we reached to inescapable conclusion that the Original Application has not been filed within the time prescribed by Section 21 ~~ibid~~ and the same

is belated and the contentions of the respondents in this regard are true.

10. Now, we have to see the effect of filing of the application which is not within the time prescribed in the Administrative Tribunals Act, 1985. The law position on this is also stands concluded by the Hon'ble Supreme Court in the case of Ramesh Chand Sharma etc. Vs. Udhin Singh Kamal and others, 2000 (1) A.T.J. 178 wherein their Lordships were dealing with the case of promotion. In that case the Original Application was entertained on merits by the Tribunal despite the fact that there was no application for condonation of delay. Their Lordships of the Supreme Court turned down the judgment of the Tribunal holding that until and unless there is an application for condonation of delay and the delay is condoned, the Tribunal should not examine the merits of the case. Applying the statement of law laid down by the Hon'ble Supreme Court in the instant case, we are left with no option except to reject this Original Application on the ground of limitation, since the same is barred by limitation and no application for condonation of delay has been filed and question of considering and condoning the delay for good and sufficient reasons does not arise. If that be so, we do not think there is any necessity to examine this case on merits and, therefore, we pass the order as under :-

The Original Application is barred by limitation as per provisions of Section 21 ibid and deserves to be dismissed on the ground of limitation alone without going on merits. The Original Application stands dismissed accordingly. However, there shall be no order as to costs.

  
(Anand Kumar Bhatt)  
Administrative Member

  
(J.K. Kaushik)  
Judicial Member