

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 278/1998

Jabalpur : this the 6th day of August, 2003.

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

S.G.Tamhankar,
S/o Late Sh.G.K.Gamhankar,
aged about 50 years,
Executive Engineer (Headquarter)
Telecom Civil Wing M.H.Zone,
CTO Compound, Juhu Road,
Shantakruj (West) Mumbai.

(By Advocate : Mr. Komal Patel holding brief for)
Mr. B.K. Rawal

..... Applicant.

versus

1. The Union of India
through the Secretary,
Telecommunication Department,
New Delhi.
2. Chief Engineer,
Telecom Civil Wing,
M.P. Zone, Bhopal.
3. Shri P.Khan, Member (Production),
Telecom Commission, Government of India,
Ministry of Communication,
West Block No.1,
Wing No.2, Ground Floor, R.K.Puram,
New-delhi.
4. The Superintending Engineer (HQ),
Telecom Civil Mumbai.

(By Advocate : Mr. P.Shankaran holding brief for)
Mr. S.C. Sharma

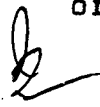
..... Respondents.

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ORDER (ORAL)

BY J.K.KAUSHIK :

Shri S.G.Tamhankar has filed this O.A. assailing the impugned order of penalty dated 12.8.96 (Annex.A/12) through which the



applicant has been imposed a penalty of Censure. He has also prayed for awarding an exemplary cost/compensation of Rs.4,52,000/- for harassment, mental agony and withholding of promotion etc. by issuance of frivolous charge-sheet, conduct of departmental inquiry etc. for about 13 years.

2. The brief facts of the case are that applicant was appointed as Junior Engineer and was further promoted as Assistant Engineer w.e.f. 4.4.78. He was due to cross the E.B. on 1.4.84, but, he was not permitted so due to the adverse entry reflected in his ACR. Thereafter, applicant submitted an application for opening the sealed envelope wherein the DPC proceedings regarding the crossing of the EB were kept. Due to non crossing of the EB he has been fixed at a lower stage as on 1.1.96 after the Recommendations of the IV Pay Commission and has suffered an enormous loss.

It is also averred that the OA 609/93 was moved before this Tribunal which came to be disposed of on 23.8.94 observing that the sealed cover can be only opened after completion of inquiry. Thereafter, departmental inquiry had been completed on 18.4.95 and the report was submitted by the inquiry officer to the disciplinary authority. The applicant submitted a representation in the matter and thereafter he also filed a D.A. 676/95 followed by a C.P. 16/96 in the matter. The respondents took some time for finalising the proceedings, and finally, applicant has been permitted to cross the EB from 1.4.84 vide order dated 22.8.97. However, his case for promotion as Divisional Engineer has not yet been considered from a retrospective date.


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3. The disciplinary authority disagreeing with the report of the inquiry had directed the applicant to submit representation as to why further action may not be initiated against him. Applicant submitted his reply on 25.3.1996. On this, the respondent No.3 the disciplinary authority had awarded a penalty of Censure on the applicant. It is mentioned that applicant has suffered ^{not only} mental injury and harassment but also financial loss to the tune of Rs. 4,52,000/-

4. The Respondents have contested the application by filing a detailed reply. In para 3, it is stated that punishment of censure was awarded to the applicant in 1996 and the O.A. does not deserve to be considered at this belated stage. They have also averred that after decision in OA 676/95 on 2.1.96 the applicant was not exonerated and a penalty of censure was imposed upon him, however, the competent authority allowed him to cross the EB and granted him the increment w.e.f. 1.4.84 which specifically shows that applicant has not been discriminated at all. It is submitted that there were irregularities in transaction against him and there is also no provision to grant applicant promotion from a back date. It has also been averred that the Tribunal is not the correct forum for claiming an amount towards mental agony, harassment etc. Hence, the OA be dismissed with costs.

5. The applicant has also filed a rejoinder which is almost a repetition of his case contended in the O.A.

6. We have heard the learned counsel for the parties and carefully perused the records of the case.



7. The learned counsel for applicant while arguing the matter reiterated the facts and grounds and striking regarding release of EB from a back date. On the contrary, learned counsel for respondents argued that EB in respect of applicant had already been released well in time. He has stressed on the point that the O.A. is not in limitation as per Section 21 of the Administrative Tribunals Act and the same deserves to be dismissed on the ground of limitation alone inasmuch as no application for condonation of delay has been filed.

The learned counsel for respondents has next submitted that on merits also, the applicant has no case and the grounds which have been raised in the OA are contrary to the relief sought to be claimed. The power of judicial review to this Tribunal is very limited and no ground for interference in the matter has been made out on behalf of the applicant.

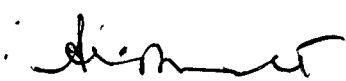
8. Before advertng to facts, we would like to first settle the issue regarding preliminary objection of limitation raised by the learned brief holder Shri P.Shankaran, for respondents. The impugned order Annex.A/12 had been passed on 12.8.1996 and no appeal has been preferred in the matter. As per Sec.21 of the Administrative Tribunals Act, the O.A. ought to have been filed latest by 12.8.1997 whereas it has been filed only on 13.4.1998, thus there is a delay of about six months in filing this application. No application for condonation of delay has been filed. The contention of the learned counsel for respondents that O.A. is barred by limitation is well-founded and in view of the judgement of the Apex Court in R.C. Sharma Versus Udham Singh *Kamal* reported in ATJ 2000 (1) SC 178, we cannot proceed in this matter on merits.

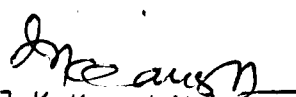
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The Apex Court has observed that until and unless delay in such matters is condoned, the Tribunal has no power to examine the merits of the case and turned down the case regarding promotion which was allowed by the Tribunal by condoning the delay in filing O.A. without there being any application. Similar is the position here. Thus, we are of firm opinion that O.A. is not maintainable as it is hit by the law of limitation.

9. However, to meet the ends of justice, we would also examine merits of the case. The law regarding judicial review in disciplinary proceedings is well settled and this Tribunal has no power to re-appreciate the evidence or to examine the decision. It has limited power to examine the decision process and can interfere only in case there is no evidence in support of the allegation or there is other kind of perversity in the proceedings. Thus, we are of the opinion that applicant has not been able to make out a case for our interference and we subscribe to the views of learned counsel for respondents that no interference is required from this Tribunal in this case. Otherwise also, the grounds raised in the O.A. have no relevance with the reliefs sought. In fact, the very application is not having any ground in support of the reliefs which claimed in the O.A.

10. In view of what has been said and discussed above, the OA fails on all counts and the same stands dismissed. However, in the facts and circumstances of the case, we make no order as to costs.


(Anand Kumar Bhatt)
Administrative Member


(J.K. Kaushik)
Judicial Member