

8

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI-5

O.A. No. 146 of 1994

Date of decision 2.5.1997

Shri Amalendu Krishna Bhattacharjee,

PETITIONER(S)

Mr. J.L.Sarkar, Mr. M.Chanda,
Mr. A.Deb Roy.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. B.K.Sharma, Mr. S.M.Sarkar, Mr. S.Dutta Roy,
Mr. A.K.Roy.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE D.N.BARUAH, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Judgement delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 146 of 1994.

Date of decision : This the 2nd day of May, 1997.

Hon'ble Mr. Justice D.N. Baruah, Vice-Chairman.

Hon'ble Shri G.L.Sanglyine, Administrative Member.

Shri Amalendu Krishna Bhattacharjee,
working as Head Clerk (G) under
Assistant Engineer, N.F.Railway,
Mal,(Alipurduar Division).

Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India,
(Through General Manager,
N.F.Railway,
Maligaon, Guwahati-11).
2. Divisional Railway Manager, (P),
N.F.Railway, Alipurduar,
District-Jalpaiguri
West Bengal.
3. Railway Board,
Through its Secretary,
"Rail Bhawan", New Delhi.
4. Shri Anjan Karmakar,
Head Clerk (G), under Divisional
Railway Manager (W), N.F.Railway,
Alipurduar Jn, P.O. Alipurduar Jn.
District-Jalpaiguri,
West Bengal.
5. Shri Dilip Bondopadhyay,
Head Clerk (G), under Divisional
Railway Manager (W), N.F.Railway,
Alipurduar Jn., Dist-Jalpaiguri,
West Bengal.
6. Shri Bijan Kumar Deb
Head Clerk (G) under Divisional
Railway Manager (W), N.F.Railway,
Alipurduar Jn. P.O. Alipurduar Jn.
District-Jalpaiguri,
West Bengal.
7. Shri Tulsi Charan Seal, Head
Clerk(G), under Inspector of Works,
N.F.Railway, Fakiragram,
P.O. Fakiragram,
District-Kokrajhar,
Assam

Respondents

By Advocate Mr. M.K.Choudhury, learned Railway
counsel.

202

O R D E R

BARUAH J. (V.C.).

In this application the applicant has challenged Annexure IV Office Order dated 3.11.1989 passed by the Divisional Railway Manager (P), N.F.Railway, Alipurduar Junction, cancelling the proforma fixation of pay with effect from 1.10.1980 and also direction to the Respondents to promote the applicant to the post of Senior Clerk. (See para 10, 11, 12).

2. The facts for the purpose of disposal are :

3. In October 1977 the applicant was appointed Junior Clerk in Alipurduar Division, N.F.Railway and he continued to serve till 1984 in the such capacity in various places. In the year 1984 the applicant however was promoted to the post of Senior Clerk. In the year 1980 some persons junior to the applicant namely Respondent Nos. 4 to 7 had been promoted in the said post overlooking the applicant without any reason. According to the applicant this action is arbitrary. By yet another Annexure III Office order dated 10.8.1989 in terms of the office letter dated 18.6.87, the applicant was granted promotion with retrospective effect as Senior Clerk with effect 1.10.1980 with benefit of proforma fixation of pay as Senior Clerk. It may be mentioned here that there were certain grievances of the graduate clerks and for that purpose representations had been made by the concerned Union, to the Railway authorities and the local authorities. By Annexure VII letter dated 8.4.1989 Divisional Railway Manager informed the

....Divisional

Divisional Secretary, NEREU/Alipurdhah Junction that the representation of the applicants have already been referred to the Railway Board and the Railway Board's decision would be communicated as soon as the reply would be received by the local authorities. About 7 months later by Annexure IV the authority held that in terms of Railway Board's letter No. PC III/87/CTC-I/1 dated 30.1.1987 no benefit of proforma fixation of pay from 1.10.1980 would be admissible to the serving graduate clerks and the benefit of restructuring would be effective from the date of shouldering the higher responsibilities. That was the decision taken by the Railway Authorities pursuant to the Railway Board's letter dated 30.1.1987. In consequence of the said decision the benefit of proforma fixation given to the applicant had been cancelled. Thereafter, the impugned Annexure IV officer order was passed on 3.11.1989 cancelling the order dated 10.8.1989. The applicant remained silent and only in September 1994 the present application has been filed. No explanation has been given as to why such delay in filing the present application.

4. The respondent Nos. 1 to 3 have filed written statement controverting the claim. They also have taken up a plea of limitation. The respondents raised this preliminary objection before this Tribunal.

.....5. Mr. Chanda,

5. Mr. Chanda, learned counsel appearing on behalf of the applicant has strraneously argued that though there was delay in approaching the Tribunal but then as the impugned order was void *initio*, this Tribunal may give appropriate direction. Mr. M.K.Choudhury, Railway Standing Counsel oppsosed the submission. It is well settled law that when a statute prescribes a period for filing application, such application should be filed within the said period. However if the applicant fails to file the application within the prescribed period, delay in filing the application beyond the period prescribed may be condoned if the Tribunal is satisfied that the applicant was prevented from filing the application within the prescribed period for sufficient cause. In this case admittedly there had been delay in filing the Original Application. No application has been filed for condonation of delay. If an application is filed after the prescribed period Tribunal gets jurisdiction to consider legality of the order only when delay is condoned, otherwise the Tribunal has no jurisdiction whatsoever to consider the case on merit. The reason for delay in filing the application has not been explained.

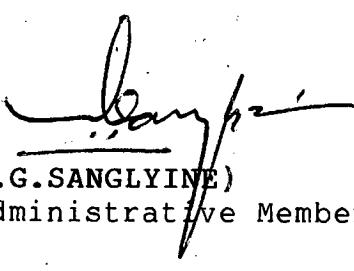
6. It is submitted by Mr. Chanda that as the application had already been admitted the question of limitation cannot be raised now. We disagree with this submission of Mr. Chanda, because the application was admitted *ex-party* without hearing the respondents and the respondents have every right to submit that the application is not maintainable in law as barred by limitation.

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.....7. In view.

7. In view of the facts of the case we find that this application is not maintainable being barred by limitation and deserves to be dismissed. We accordingly do it. As we have dismissed this application on the ground of limitation, we are not inclined to enter into merit of the case.

8 Considering the entire facts and circumstances of the case, however, we make no order as to costs.


(G. S. SANGLYINE)
Administrative Member


(D. N. BARUAH)
Vice-Chairman

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