

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.55/2017 with MA No.47/2017

This the 31st day of August, 2018

Shri Manohar G. Parmar
S/o. Girdharbhai Parmar
Aged 46 years
Worked as Ex-Table Boy (RR)/ PRTN
Residing at : AT & P.O.Malvan, Taluka: Gadteswar,
District : Kheda. Applicant

(By Advocate : Ms. S.S.Chaturvedi)

VERSUS

1. Union of India,
Notice to be served through
The General Manager
Western Railway, Churchgatge
Mumbai 400 020.
2. Additional Divisional Railway Manager
Western Railway, Pratapnagar
Baroda 390 004.
3. Senior Divisional Engineer (E)
Western Railway, Pratapnagar
Baroda 390 004.

4. Additional Divisional Engineer (E)
Western Railway, Pratapnagar
Baroda 390 004. Respondents

(By Advocate : Shri M.J.Patel)

O R D E R – ORAL

Per : Hon'ble Shri M.C.Verma, Member (J)

Learned counsel, Ms. S.S.Chaturvedi, who is appearing for applicant while pressing the application for condonation of delay submits that there is a delay only of six months and that applicant has preferred Revision Petition, was awaiting outcome of Revision Petition and hence is the delay. She also submits that applicant has been removed from service, so taking the matter in its entirety, delay may be condoned.

2. Learned counsel Shri M.J.Patel, who appeared for respondents submitted that it is not a case of six months delay and pointed out that Order which was assailed is of 07.07.2015 and 23.12.2014. He also urged that application preferred for condonation of delay does not disclose any reasons much less cogent and convincing and therefore, application for condonation of delay deserve dismissal.

3. Considered the submissions made at Bar. It is true that there is delay and sufficient reasons for condonation of delay have not been given in the application, however, taking in view that it is a matter of removal from service and it would be in interest of justice to dispose off the matter on merits, rather than on technical grounds of limitation the MA No.47/2017, for condonation of delay is allowed and delay in approaching the Tribunal is condoned. Parties thus were directed to adduce argument on merit of O.A..

4. The applicant, who was the employee of respondents was removed from service on the basis of allegations of unauthorized absence from duty. The case of the applicant, as has been put forward through the pending OA is that he was appointed to the post of W/man on compassionate ground on 17.06.1997, charge sheet for unauthorized absence of 62 days was issued on 18.01.2013, applicant made representation explaining the circumstances for not attending duty but on 11.04.2014 (Vide Annexure A-3) penalty of removal from service was inflicted. That applicant preferred appeal on 16/17.04.2014 which was not accepted and applicant was communicated its result vide Memo dated 23.12.2014 (Annexure A-2), which was received by

applicant in month of April. That, thereafter, on 21.5.2015 applicant preferred Revision Petition which was dismissed, as time barred, on 07.07.2015 (Annexure A-I). Applicant then made Review Application on 13.04.2016 with petition for condonation of delay. It has pleaded that the absence was not willful but was because of compelling reasons, that charge sheet was issued but not by competent authority, that charge sheet was for 62 days absence but Order of removal shows that unauthorized absence period was 281 days. That the enquiry was not conducted in fair way and punishment was inflicted mechanically. That Appellate and Revisionary Authorities also did not apply their judicious mind and dealt the appeal and Revision mechanically. The OA was preferred after expiry of period of limitation and hence, MA No.47/2017 for condonation of delay was also preferred along with it.

5. Respondents in their reply refuted the allegations of arbitrariness and asserted that everything was done in fair way and according to rules.

6. Learned counsel Shri M.J.Patel, embarking on merit of OA urged that this OA is not maintainable, that one of the essential grounds for maintainability of the OA in Tribunal is

that applicant have exhausted all remedies prior to filing of OA. He referred Section 20 of the A.T.Acts, 1985 and contended that applicant has also preferred Revision Petition against the Order, Annexure A-I, which has been assailed in this OA and said Revision Petition is still pending and therefore, this OA cannot be entertained. He requested to pass necessary order/orders.

7. Learned counsel for applicant submits that Revision Petition was preferred prior to filing of this OA and when Revision Petition was not decided on merit by the Authority, this OA was preferred. Learned counsel, however, urged that she is having no grievance if this OA is disposed of with direction to the respondents to dispose off the Revision Petition of the applicant in a stipulated period, deemed appropriate to the Tribunal.

8. In view of aforesaid submissions made at Bar and having perused the record, we find that it would be appropriate to dispose off this OA with direction to the respondents to pass final order on petition of applicant which is stated to be lying pending with the respondents. It needs at this stage to note that there is some ambiguity vis-à-vis whether Revision or Review Application of applicant is pending. However, whatever that is

same needs to be decided on merits rather than on technical ground.

9. This OA is thus disposed off with direction to respondents to decide petition preferred by Applicant on 13.4.2016 (Annexure A-9) on merits within two months with effect from the date of receipt of copy of this order.

10. With aforesaid observations and directions, this OA stands disposed off.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

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