

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI.

O.A.210/00683/2017

Dated this Friday the 1st day of March, 2019

Coram: Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).

Shri Bhimrao Lakshmanrao Waghmare,
Driver (Retired),
O/o Field Publicity Office,
Ministry of Information and
Broadcasting,
Ghodajkar Complex,
Gandhi Nagar, Nanded-431605.
R/o.Behind Rupa Guest House,
Vasant Nagar,
Nanded - 431 602. .. Applicant.

(By Advocate Shri C.S. Tembhurnikar).

Versus

1. Government of India, through
the Director,
Directorate of Field Publicity,
Ministry of Information and
Broadcasting,
Regional Office:
Maharashtra and Goa,
O/o. 'B' Wing, 3rd Floor,
Kendriya Sadan,
Opp. Akurdi Railway Station,
Pradhikaran Akurdi,
Pune - 411 044.
2. The Director General
(Pradhan Mahanideshak),
Director of Field Publicity,
Ministry of Information and
Broadcasting,
O/o. 5th Floor, Soochana Bhavan,
CGO Complex, Lodhi Road,
New Delhi - 110 003. .. Respondents.

(By Advocate Shri D.A. Dube).

Order reserved on : 06.02.2019
Order delivered on : 01.03.2019.

O R D E R
Per : Dr.Bhagwan Sahai, Member (A)

Shri. Bhimrao Lakshmanrao Waghmare has filed this O.A. on 16.08.2017. He seeks quashing and setting aside of order dated 22.05.2017 passed by Respondent No.2 i.e. Director General, Directorate of Field Publicity, Ministry of Information & Broadcasting, New Delhi and release of his pay which was reduced by two steps from Rs.3425/- to Rs.3275/- from 08.12.1997 with consequential benefits. He also seeks cost of this O.A.

2. Brief facts of the case:

2(a). The applicant is a retired Driver, was appointed on 15.10.1990 and till his retirement on 30.11.2015, he worked with Field Publicity Office, Ministry of Information and Broadcasting, Ghodajkar Complex, Gandhi Nagar, Nanded. Respondent No.1 is the controlling authority of the Regional Office, Pune of the Department of Information and Broadcasting. Respondent No.2 i.e. Director General, Directorate of Field Publicity, Ministry of Information and Broadcasting, CGO Complex, New Delhi has the overall administrative control of the Department.

2(b). The applicant states that during the

period of his service, he made some mistakes because of which disciplinary proceedings were conducted against him and he was awarded punishment by order of 08.12.1997 by Respondent No.1 reducing his pay by 2 steps from Rs.3425/- to Rs.3275/- for a period of two years (Annex-A-2, page 15). The applicant filed an appeal against that order on 27.02.1998 (page 17-18 of the OA) but it has not been decided in spite of his many reminders from 1999 to 2015.

2(c). He further claims that during pendency of his appeal, he got some oral assurances that his increments would be released if his Confidential Report (CR) continuously remains 'Good'. From 1998 to 2015, his CR has been 'Good' and 'Very Good' and, therefore, he feels that it is necessary to release his two withheld increments. This relief has also been recommended by Assistant Director, Directorate of Field Publicity, Regional Office, Pune on 12.05.2014.

2(d). On 20.09.2016, the applicant again submitted a detailed representation to Respondents No.1 and 2, and in O.A.132/2017 this Tribunal by its order dated 06.03.2017 directed the Respondent No.2 to decide his pending representation. After directions of the Tribunal dated 06.03.2017, the

impugned order dated 22.05.2017 has been issued by Respondent No.2. Hence this O.A.

3. Contentions of the parties:

The applicant contends that -

3(a). non-consideration of his representations / appeal by the respondents is unjust, he had honestly accepted his mistake and asked to be forgiven but he was transferred to Chandrapur district as punishment and again the departmental proceedings were conducted against him leading to the punishment of reducing his pay by two steps. This is double punishment to him for the same mistake and it is against the provisions of Constitution. There is no delay or error in filing the OA in view of his continuous correspondence from 1998 to 2016, and no decision by the respondents on his representations and appeal;

3(b). the Respondent No.2 is not serious to decide his representations and the delay of 20 years mentioned by him in the impugned order is baseless and vague, and not deciding the appeal of the applicant is his fault. The reason of weeding out of documents is illogical and vague as it is the responsibility of the respondents to preserve important documents pertaining to the case of the applicant. The reason given by Respondent No.2 in

the impugned order that the Regional Office has not provided any additional material to review the order of 08.12.1997 is baseless as Respondent No.2 has already recommended his case for releasing his increments;

3(c). the excuse given by the respondents in the impugned order is wrong that in none of the appeals, the applicant had mentioned any injustice done to him. The appeal and representations were filed to challenge the decision of the Inquiry Officer; and

3(d). the applicant claims that there has not been any delay in filing the O.A. and, therefore, he has neither sought condonation of delay in the O.A. nor has specifically filed any M.A. for this purpose.

The respondents have contended that -

3(e). the actual cause of action for the applicant arose from the order dated 08.12.1997 by which his pay was reduced by 2 steps. However, the delay of 20 years cannot be condoned merely at the discretion of the Court, and therefore, the O.A. deserves to be dismissed at the admission stage itself;

3(f). with reference to his representation and as per direction of the Tribunal dated 06.03.2017,

a detailed and reasoned order has been passed by the respondents on 22.05.2017 (Annex-A-1, page 13).

In support of their contention, the respondents have also listed following caselaws:-

(i). P.S. Sadasivaswamy Vs. S/o Tamil Nadu, AIR 1974 SC 2271,

(ii). Jacob Abraham and others, A.T. Full Bench Judgements, 1994-96,

(iii). Ram Chandra Samanta Vs. UOI 1994 (26) ATC 228,

(iv). S.S. Rathore Vs. S/o. M.P., 1989(2) ATC 521,

(v). UOI Vs. M.K. Sarkar reported in (2010) 1 SCC (L&S) 1126,

(vi). State of Karnataka Vs. S.M. Katrayya & Ors., 1996 SCC (L&S) 1126,

(vii). Jagdish Prasad Vs. UOI & Ors., 2003(1) AISLS 406 (HC Delhi),

(viii). Regional Manager APSRTC Vs. N. Satya Narayan.

(ix). C. Jacob Vs. Director of Geology & Amp mining, 2009(10) SCC 115,

(x). Brij Mohan Lal Vs. UOI, 2012 (2) SCC (L&S) 177;

3(g). the applicant was initially appointed as Chowkidar in Nanded office from 09.03.1982 and then

was promoted as Driver from 15.10.1990. The claim of the applicant that since his appointment he had worked honestly, sincerely with full devotion is not correct as he himself had admitted in his letters dated 27.02.1998 and 10.07.1998 (page 45, 48-49) that he had been transferred to Wardha and Chandrapur due to his misconduct on previous occasions;

3(h). as admitted by the applicant himself for the mistakes made by him, departmental proceedings were conducted against him which culminated in awarding of punishment by reducing his pay by two steps;

3(i). the applicant did not file appeal through proper channel to the Appellate Authority within 45 days of his punishment order and even his representation to Joint Director/Director, Directorate of Field Publicity, Pune on 27.02.1998 was after expiry of the period of 45 days. The Regional Office, Pune had also advised him vide letter dated 24.03.1998 to send his appeal/grievance to the Appellate Authority i.e. Director General, Directorate of Field Publicity, Ministry of Information and Broadcasting, New Delhi;

3(j). thereafter the applicant sent his

application on 27.10.1998, but by then the prescribed time limit of 45 days had already expired. His all subsequent applications were sent to the Regional Office i.e. Joint Director/Director, Pune which was his Disciplinary Authority. However, because of his retirement, his application was forwarded to the Head Office by the Pune Regional Office only on humanitarian grounds;

3(k). even in the CR of 1999-2000, the Reporting Officer had mentioned that the applicant tends to be argumentative, this remark was also agreed to by the Reviewing Officer. In CR of 2003-04, the Reporting Officer mentioned that the applicant was irregular and unpunctual, because of this the official work always remained unattended.

Even in the CR of 2005-06, the Reviewing Officer conveyed to the applicant that he did not have too many redeeming features except the fact that he drives the vehicle and that the applicant is habitual late comer to the office. The punishment awarded to him for his earlier misconduct cannot be set aside because of subsequent 'Good' or 'Very Good' Confidential Report. Based on his subsequent assessment, he was granted financial upgradation/promotions;

3(l). the applicant's case was reviewed by the

headquarters but it was not found possible to accede to his request. Based on the gravity of charges proved against him during the departmental enquiry, the Disciplinary Authority recorded the view that the applicant was liable for imposing major penalty such as removal from service or compulsory retirement. But on humanitarian grounds he was awarded the lower penalty of reduction of pay by two increments.

In view of these facts of the case, the O.A. be dismissed.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, reply filed by the respondents, various caselaws cited by the parties and considered the arguments advanced by both of them.

4(a). This is second round of litigation by the applicant before the Tribunal. His earlier O.A.No.132/2017 was decided by this Tribunal on 06.03.2017 after going through the details of the punishment order dated 08.12.1997 and the correspondence made by the applicant with the respondents in this regard, including the recommendation made by the Regional Office of Respondent No.1 to Respondent No.2. By the order dated 06.03.2017 the Tribunal directed Respondent

No.2 to consider recommendation of Respondent No.1 in his letter of 19.10.2016 and pass a reasoned and detailed order within 12 weeks. A copy of that letter of 19.10.2016 submitted by Respondent No.1 to Respondent No.2 has also been enclosed by the applicant with this O.A. as Annex-A-7 (page 26-A - 27-A). In view of the direction of the Tribunal as above, the Respondent No.2 has passed the impugned order dated 22.05.2017.

4(b). In their reply, the respondents have also contended that the present O.A. is against the cause of action which arose vide order dated 08.12.1997 by which the applicant's pay was reduced by 2 steps (increments) and, therefore, because of unjustified long delay, this O.A. should be dismissed as being time-barred. This contention has merit. But the order under challenge in the present O.A. now is the order of Respondent No.2 dated 22.05.2017.

4(c). The applicant's main contention is that his earlier appeal and representations were not considered by the respondents. The same contention had also been raised by the applicant in the earlier O.A. However, the respondents' contention in the impugned order and in Para 10 of their reply (page 36) is correct that the applicant had filed

his appeal after expiry of the allowed period of time for this purpose. It is also true that he had also been appropriately advised in this regard by Respondent No.1 vide letter dated 24.03.1998.

4(d). We note that in the earlier O.A.132/2017 the issue of delayed filing of the O.A. and limitation was not discussed. However, the fact is that after the main cause of action having arisen from the punishment order dated 08.12.1997, the applicant ought to have approached the Tribunal in time when his appeal of 27.02.1998 and subsequent first representation were not decided by the respondents as being claimed by him. Also repeated representations submitted by him cannot help him in justifying in any manner the long delay of 20 years in filing this O.A.

4(e). We further note that the applicant has not mentioned any deficiency or flaw in the departmental proceedings and the punishment order dated 18.12.1997. With reference to his representation dated 28.09.2016, forwarded by Respondent No.1 to Respondent No.2 on 19.10.2016, it was stated that in view of retirement of the applicant on 30.11.2015, his earlier withheld two increments should be released along with all consequential benefits. However, as pointed out by

the respondents, even after the punishment in 1997, the applicant's performance in subsequent years 1999-2000, 2003-2004 and 2005-2006 was also not good. In view of this we find no merit in the recommendation of the respondent No.1 dated 19.10.2016 for releasing the earlier withheld increments as part of punishment following disciplinary proceedings. That punishment cannot get evaporated just because the applicant has retired.

4(f). The contention of the respondents that this recommendation was made by Respondent No.1 not because of any flaw in the punishment order or the disciplinary proceedings conducted against the applicant but it was purely on humanitarian grounds. This is correct. In the details mentioned in the impugned order of 22.05.2017, the respondents have clearly stated that the case was of 1997, the applicant had not filed appeal against it within 45 days and, therefore, the delay of 20 years is not tenable, the applicant had not mentioned any injustice done to him and also the Regional Office had not provided any additional material to review the order dated 08.12.1997. In view of these facts, it was not possible to accede to the request of the applicant for granting the

two increments.

4(g). The reasons mentioned by Respondent No.2 in the order of 22.05.2017, although in brief, are reasonable and justified. This order has been passed after due application of mind and consideration of background facts of the case. Hence we find that the applicant has not been able to justify the long delay in seeking the relief and on merits in the O.A. Hence our interference with the impugned order is not warranted. In fact it is a wasteful litigation carried out by the applicant deserving imposition of cost. But in view of his retirement on 30.11.2015, we are restraining ourselves in imposing it. So the O.A. deserves to be dismissed.

5. Decision:

The O.A. is dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

