CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.867 of 2013

Orders reserved on : 15.01.2019

Orders pronounced on : 21.01.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Shri Ajmer Singh
Ex.Loco Pilot (Goods),
Under Senior Crew Controller,
Agra Cantonment,
North Central Railway,
Agra.

....Applicant

(By Advocate : Ms. Meenu Mainee)

VERSUS

1. Union of India : Through
Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.

2. General Manager,
North Central Railway,
Allahabad.

3. Divisional Railway Manager,
North Central Railway
Agra Cantonment,
Agra.

.....Respondents

(By Advocate : Shri Shailendra Tiwary)

O R D E R

Ms. Nita Chowdhury, Member (A):

By filing this OA under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following reliefs:-

"8.1 That this Hon'ble Tribunal graciously be pleased to allow this application and direct the respondent No.2

a) consider the review petition of the applicant as per Railway Board's Circular No.E(D&A(/95/RS-6-4 dated 07.6.1995 (Annexure A-8A) as also Railway Board's Circular dated 24.9.1985

8.2 That this Hon'ble Tribunal may also be pleased to give the consequential benefits also.

8.3 Any other or further order/s this Hon'ble Tribunal may deem fit and proper may also be passed.

8.4 That the cost of the proceeding may kindly be granted in favour of Applicant."

2. Brief relevant facts of the case are that the applicant, who was while working as a Loco Pilot Goods under Chief Crew Controller Agra Cantonment, was served a Memorandum of chargesheet of major penalty dated 19.11.2004 on the allegation that on 10.5.2004 while working on TK Special Goods Train, the applicant passed the Red Signal Gate No.556 at level crossing in Z position and again at Gate No.555, he passed the signal in Z position at high speed and the train collided with a train SMET (Spl) which was going ahead and, as such, the applicant has contravened Service conduct rules. The applicant denied the charge leveled against him and accordingly, the respondents appointed inquiry officer to hold the disciplinary enquiry. Inquiry Officer after completion of inquiry held the said charge proved vide report dated 4.8.2005. Thereafter upon receipt of inquiry report, the applicant submitted his

representation against the said inquiry report dated nil. The disciplinary authority after considering the inquiry report and representation of the applicant passed the order dated 21.9.2005 removed the applicant from service. Thereafter applicant submitted his appeal to the appellate authority on 28.10.2005 and the appellate authority vide order dated 20.1.2006 after considering the appeal of the applicant reduced the penalty from removal from service to compulsory retirement.

2.1 Applicant further stated that when the disciplinary proceedings were initiated against him departmentally, a criminal case No.225/15.1.2005 was also lodged against the applicant on the same very charge. The learned Judicial Magistrate First Class Palwal acquitted the applicant vide judgment dated 1.12.2010, the operative part of the said judgment reads as under:-

> "From the entire oral and documentary evidence produce on record by the prosecution identity of the accused being driver of the offender goods train SMET Special cannot be proved on record.
>
> For the foregoing reasons, this court has come to the conclusion that prosecution has failed to prove its case against accused beyond reasonable doubts. Hence, the accused is acquitted of the charge framed against him. His bonds are discharged. File be consigned to the record room after due compliance."

2.2 After the aforesaid judgment, the applicant submitted the review application in accordance with Railway Board's

Circular dated 7.6.1995, which provides that when an employee is exonerated/acquitted in the criminal cases, the departmental case initiated against him may be reviewed after receipt of a representation in this regard. The applicant, therefore, requested the General Manager to withdraw the punishment of compulsory retirement, which was imposed by the Appellate Authority on 20.1.2006, vide his representation dated 30.12.2010. When there was no response to the same, applicant filed OA 4665/2011, which was, however, disposed off as withdrawn with liberty reserve to the applicant to file fresh OA with better particulars.

2.3 The applicant also averred that he had made efforts to send an appeal to the Railway Board endorsing a copy of the General Manager also praying for reviewing the case of the applicant in accordance with Railway Board's instructions issued on 7.6.1995 as also circular dated 24.9.1985. Unfortunately, when there was no response, the applicant has left with no option except to approach this Tribunal for redressal of his grievances.

3. Applicant has also filed Misc. Application not numbered seeking condonation of delay in filing the OA and stating therein that the applicant submitted his revision petition to the GM, North Central Railway Allahabad as well as DRM North Central Railway Agra on 30.12.2010. Although nearly

more than one year has passed but the respondents have failed to decide the Review Petition of the applicant in accordance with the Railway Board instructions and lastly prayed that delay in filing the OA be condoned.

4. Pursuance to notice issued to the respondents, they have filed their reply in which they have stated that on dated 10.5.2004, the applicant, Loco Pilot Goods was working on Train No.TK Special as Loco Pilot Goods. He overshooted red aspects of gate signal of level crossing gate No.556 and thereafter again the red aspect of gate signal of level crossing of gate 555 between signal No.GA 56 and automatic signal No.A 56 A was blocked by SMET special the gate signal No.GA 56 showed red aspect and run past the gate signal displaying red aspet at high speed causing of collision of TK special Goods train in rear of SMET Special Goods Train at Kilometer No.1454/16 on UP line of double line electrified section between Sholaka-Hadal railway stations. As a result of this collision, rear wagon of SMET special goods train capsized and its guards brake van was crashed, causing death of guard. The CRS enquiry has been conducted by NE Circle, Lucknow and examined and fixed primary responsibility on the applicant for violating the rules of GR 9.02 (1), 3.74/1 for passing gate signals no.556 an 555 which caused the rear and collision.

4.1 Based on CRS enquiry, DAR action was taken against the applicant by issuing SF-5 dated 19.11.2004, which was received by the applicant on 1.12.2004 and when the applicant denied the charges framed as per SF-5 by his explanation dated 7.12.2004, vide SF-7 dated 7.2.2005, enquiry officer was nominated and thereafter enquiry officer after completion of inquiry submitted his enquiry report dated 4.8.2005 for violating the rule No.9.02(1) and fixed responsible for rear end collision. The disciplinary authority have given a copy of enquiry report to the applicant vide letter dated 4.8.2005, which was received by the applicant on 5.8.2005 and he submitted his representation against the same on 22.8.2005. After examining the case file and representation of the applicant, disciplinary authority has taken a decision to remove the applicant from service and issued NIP dated 21.9.2005. Thereafter applicant submitted his appeal dated 28.10.2005 to the appellate authority and the appellate authority has referred his case to DRM Agra for decision on the said appeal. After going through CRS enquiry and fact findings on the case file, DRM Agra passed his speaking orders reduced the punishment from removal from service to compulsory retirement vide NIP dated 31.1.2006, which was received by the applicant on 3.2.2006.

4.2 They further stated that the applicant has not submitted any revision appeal in the respondents' office,

whereas the rules are there for revision appeal against order passed by appellate authority in DR Rules, 1968 and in this case applicant has directly filed this OA on 3.12.2012 after a gap of 5 years 11 months.

5. The applicant has also filed his rejoinder reiterating the contents of the OA and denying the averments made by the respondents in their counter reply.

6. During the course of hearing, learned counsel for the applicant submitted that criminal proceedings were also initiated against the applicant in relation to the said allegation which was the subject matter of departmental proceedings and the applicant was honourably acquitted by the learned Judicial Magistrate, 1st Class, Palwal vide order dated 1.12.2010 and as per Para 3 of R.B.E. NO.54/95 dated 7.6.1995 wherein it is provided that "However, if the facts, circumstances and the charges in the Departmental proceedings are exactly identical to those in the criminal case and the employee is exonerated/acquitted in the criminal case on merit (without benefit of doubt or on technical grounds) then the departmental case may be reviewed if the employee concerned makes a representation in this regard", the applicant after the aforesaid judgment, preferred his revision application but the respondents have failed to decide the said revision petition although more than six months

have passed. Since there was no response from the General Manager, the applicant submitted a representation to the Railway Board also to which there was no response.

6.1 Counsel for the applicant also placed reliance on the case of Harpal Singh in which case respondents not only reinstated him but treated the intervening period as spent on duty.

7. Counsel for the respondents raised the preliminary objection that the present OA is barred by limitation as the applicant has not submitted any revision appeal in the respondents' office and rules are there for revision appeal against order passed by appellate authority in DR Rules 1968 and the applicant has filed this OA directly on 3.12.2012 and at this stage, the present OA is hopelessly barred by limitation.

7.1 Counsel for the respondents also submitted that proper procedures have been followed in the disciplinary proceedings initiated against the applicant.

7.2 Counsel further submitted that applicant's case is not covered by Para 3 of R.B.E. NO.54/95 dated 7.6.1995 as the same is not applicable in the case of the applicant as, the purpose of departmental enquiry and prosecution are two different and distinct, therefore, prosecution is launched for offence for violation of duty, the offender owes to the society.

However, crime is an act of omission in violation of law or omission of public duty. The purpose of departmental enquiry is to maintain discipline in service and efficiency of public service and, therefore, acquittal of the applicant by the learned Judicial Magistrate on the ground that prosecution failed to prove its case against accused beyond reasonable doubts would not amount to honourable acquittal and as such the claim of the applicant that his case is required to be reviewed in terms of provisions of para 3 of the RBE 54/95 is not acceptable.

7.3 So far as Harpal Singh's case is concerned, the same is distinguishable on facts.

8. Before dealing this matter on merits, this Court is of the considered view that preliminary objection of limitation as raised by the respondents has to be adjudicated first. Counsel for the respondents argued that no revision petition has been filed by the applicant and has approached this Tribunal directly by filing the instant OA and revision sought to be made of the appellate authority's order which was passed way back in 2006 and as such there is a gap of more than 5 years as the instant OA has been filed on 3.12.2012. On the other hand learned counsel pleaded that applicant preferred his revision petition on 30.12.2010 after the

judgment delivered by learned Judicial Magistrate, Palwal dated 1.12.2010.

9. Section 21 of the Administrative Tribunals Act, 1985 clearly provides as under:-

> "21. Limitation –
>
> (1) A Tribunal shall not admit an application, -
>
> (a) in a case where a final order such as is mentioned in clause (a) of subsection (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;
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> (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
>
> (2) Notwithstanding anything contained in sub-section (1), where –
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> (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
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> (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,
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> the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may

> be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.
>
> (3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

9.1 The Apex Court as well as Hon'ble High Courts while dealing with this issue of limitation and also on the point of delay condonation passed various orders as enumerated below:-

(a) The Hon'ble Apex Court in **D.C.S. Negi** v. **Union of India & others** (Civil Appeal No.7956 of 2011) decided on 7.3.2011, condemned entertaining of the OAs by the Tribunal in disregard of the limitation prescribed under Section 21 of the Administrative Tribunals Act 1985. In the said order, following observations were made:

> "Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21. .....
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> Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed

period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21 (3)."

(b) The Apex Court in the case of ***S.S. Rathore v. State of Madhya Pradesh***, (1989) 4 SCC 582. In the said case, the Hon'ble Supreme Court has held thus:-

"We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was-filed or representation was made, the right to sue shall first accrue."

(c) Recently in ***Chennai Metropolitan Water Supply and Sewerage Board & Ors.*** Vs. ***T.T. Murali Babu***, (2014) 4 SCC 108, the Apex Court has been ruled thus:

> "Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the *lis* at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the *lis*".

(d) "***In A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and others***, (2007) 2 SCC 725 following the earlier judgment in **U. P. Jal Nigam's case**, it was opined as under:

> "40. The benefit of a judgment is not extended to a case automatically. While granting relief in a writ petition, the High Court is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. In doing so, the Court is entitled to take into consideration the fact as to whether the writ petitioner had chosen to sit over the matter and then wake up after the decision of this court. If it is found that the appellant approached the Court after a long delay, the same may disentitle him to obtain a discretionary relief."

(e) In the case of ***State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others,*** 2013(6) SLR 629, Hon'ble the Supreme Court, while considering the issue regarding delay and laches and referring to earlier judgments on the issue, opined that repeated representations made will not keep the issues alive. A stale or a dead issue/dispute cannot be got revived even if such a representation has either been decided by the authority or got decided by getting a direction from the court as the issue regarding delay and laches is to be decided with reference to original cause of action and not with reference to any such order passed. Relevant paragraphs from the aforesaid judgment are extracted below:

> "13. We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983. In C. Jacob v. Director of Geology and Mining and another[1], a two-Judge Bench was dealing with the concept of representations and the directions issued by the court or tribunal to consider the representations and the challenge to the said rejection thereafter. In that context, the court has expressed thus: -

"Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim."

14. In Union of India and others v. M.K. Sarkar[2], this Court, after referring to C. Jacob (supra) has ruled that when a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

15. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action.

The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. In Karnataka Power Corpn. Ltd. through its Chairman & Managing Director v. K. Thangappan and another[3], the Court took note of the factual position and laid down that when nearly for two decades the respondent-workmen therein had remained silent mere making of representations could not justify a belated approach.

16. In State of Orissa v. Pyarimohan Samantaray[4] it has been opined that making of repeated representations is not a satisfactory explanation of

delay. The said principle was reiterated in State of Orissa v. Arun Kumar Patnaik[5].

17. In Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others[6], a three-Judge Bench of this Court reiterated the principle stated in Jagdish Lal v. State of Haryana[7] and proceeded to observe that as the respondents therein preferred to sleep over their rights and approached the tribunal in 1997, they would not get the benefit of the order dated 7.7.1992.

18. In State of T.N. v. Seshachalam[8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: -

> "....filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

9.2 In the light of the above said legal position of the various High Courts and Apex Court and having regard to the provisions of the Act *ibid*, it is clear that in order to get the benefit of limitation, the application has to satisfy this Tribunal that he was diligently pursuing his matter and was prevented by sufficient cause for not filing the OA within the period of limitation. Admittedly, the applicant's in this case is seeking consideration of his revision petition in the light of the Railway Board's Circulars dated 7.6.1995 and 24.9.2015. However, the respondents have denied receipt of any such revision petition but the applicant submitted that he has

moved his revision petition on 30.12.2010. In the absence of any proof of submission of such a revision petition dated 30.12.2010 to the respondents, this Tribunal is unable to accept the contention of the applicant that any such revision petition was ever submitted by the applicant to the respondents. Mere annexing a revision petition without proof of submission of the same to the competent authority is non-est in the eyes of law. It is further relevant to mention that applicant had earlier filed OA 4665/2011 but the same was dismissed as withdrawn with liberty to the applicant to file again with better particulars. In the Misc. Application seeking condonation of delay in filing the OA, the applicant has not explained the reasons to satisfy this Tribunal that he was diligently pursuing his matter and was prevented by sufficient cause for not filing the OA within the period of limitation and the instant OA was filed on 3.12.2012 which is apparently barred by limitation as even if the applicant's contention is presumed to be accepted to have filed his revision petition on 30.12.2010.

10. So far as the contention of the applicant that when the applicant was acquitted from the criminal case, as noted above and the issue of departmental proceedings was also same as that of the criminal case and if there is a provisions for review in the Railways, the applicant's case needs to be considered after his acquittal in the said criminal case is

concerned, this Court is unable to accept the same, since the issue in the said criminal case is relating to offences alleged against the applicant under Sections 304-A (Causing death by negligence), 337 (Causing hurt by act endangering life or personal safety of others), 427 (Mischief causing damage to the amount of fifty rupees) IPC which the prosecution failed to prove before the learned Judicial Magistrate, Palwal against the applicant beyond reasonable doubts, but the departmental proceedings initiated against the applicant is related to the fact that on 10.5.2004 while working on TK Special Goods Train, the applicant passed the Red Signal Gate No.556 at level crossing in Z position and again at Gate No.555, he passed the signal in Z position at high speed and the train collided with a train SMET (Spl) which was going ahead and, this fact has been proved by the enquiry officer after examining the witnesses vide his report dated 4.8.2005 in which the finding are that 'After examining the witnesses and on the basis of the available records, I have come to the conclusion that the Driver of the Diesel Train applied the break belatedly at the result of which, he passed the gate no.555 without stopping in the red position and, therefore, collided with the Train No.SMET from behind. In accordance with Question No.6 from witness no.6 due to defect in the engine, the Driver of the train passed a signal in red position but it does not appear to be correct.' and the applicant was

held for violation of Rule No. Gr.9.02 and accordingly responsible for accident.

11. It is well established in service jurisprudence that criminal proceedings and departmental proceedings operate in two different fields, as elaborated by the Hon'ble Supreme Court in the cases of ***Union of India v Purushottam, (2015) 3 SCC 779, K. Venkateshwarlu v. State of Andhra Pradesh (2012) 8 SCC 73, State of Bikaner and Jaipur v Nemi Chand Nalwaya (2011) 4 SCC 584, Govind Das v. State of Bihar (1997) 11 SCC 361, Noida Entrepreneurs Association v. NOIDA (2007) 10 SCC 385***. The Hon'ble Supreme Court, in the above cases, has held that acquittal of an employee by a Criminal Court would not automatically and conclusively impact departmental proceedings for various reasons including, the disparate degrees of proof in the two, viz. beyond reasonable doubt in criminal prosecution contrasted by preponderant proof in civil or departmental enquiries; the lack of control of the department over the criminal proceedings leading to acquittal being attributable to shoddy investigation or slovenly assimilation of evidence or lackadaisical conduct of the Trial; the probability of preclusion of a contrary conclusion in a departmental enquiry, in the acquittal in criminal prosecution, if the latter is a positive decision in contradistinction to a passive verdict which may be predicated on technical infirmities.

12. However before the Enquiry Officer, he and several other witnesses appeared and deposed against the applicant. The closure of the criminal proceedings in the present case cannot vitiate the departmental proceedings. In the aforesaid back drop, it can be concluded that sufficient material was brought on record before the Inquiry Officer that established that the charge levelled against the applicant stood proved. We find no infirmity in the report of the Inquiry Officer. Further the appellate authority fully considered the grounds raised by the applicant in his appeal and thereafter he significantly reduced the quantum of punishment also. It is further relevant to mention that recently in the case of ***Union of India and Others Vs. P.Gunasekaran*** (2015(2) SCC 610), the Hon'ble Supreme Court has observed as under:-

> "Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no.I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
> b. the enquiry is held according to the procedure prescribed in that behalf;
> c. there is violation of the principles of natural justice in conducting the proceedings;
> d. the authorities have disabled themselves from reaching a fair conclusion by some

considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence."

As such we find no ground to interfere with the disciplinary proceedings or with the quantum of penalty as the appellate authority having regard to the facts and circumstances of the present case himself reduced the punishment from 'dismissal from service' to 'compulsory retirement with all pensionary benefits' and as the Hon'ble Supreme Court in the case of ***B.C. Chaturvedi v. Union of India,*** (1995 (6) SCC 749) held that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the court.

13. In view of the above, and for the foregoing reasons, this Tribunal finds that the applicant has miserably failed to demonstrate sufficient cause for not filing the OA within the period of limitation and further there is no *prima facie* case in

favour of the applicant for condoning the delay in filing the OA. Accordingly, the present OA is dismissed on delay as well as merits. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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