

LIBRARY

1

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.477 of 2011

Reserved on – 07.03.2016
Dated of order: 10.03.2016

PRESENT:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Sri Arun Kumar Chakraborty son of Late Satish Chandra Chakraborty aged about 54 years, Ex- Upper Division Clerk, under Director General, Government of India, Forest Survey of India Central Zone, Nagpur at present residing at 51B, Kasstodanga Road (Sibrampur Battala), Post Office Sarsuna, Kolkata-700 061.

.....Applicant

For the Applicant: Mr. S.K.Dutta, Counsel
-Versus-

1. Union of India service through the Secretary, Ministry of Environment and Forests, Government of India, C.G.O Complex Lodhi Road, New Dehi-110 001.
2. The Director General, Forests Survey of India, Kaulagarh Road, Dhara Dun-248 195.
3. The Regional Director (Formerly Joint Directors) Forest Survey of India, Central Zone, C.G.O Complex, Saminary Hills, Nagpur-440 006.

.....Respondents

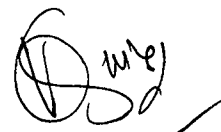
For the Respondents: Ms.M.Bhattacharyya, Counsel

ORDER

JUSTICE V.C.GUPTA, JM:

The Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) To set aside and quash the preliminary enquiry charge Memorandum dated 27.01.2000, enquiry report dated 18.04.2001 punishment order



dated 26.07.2001 and the order dated 30.03.2007 passed by the Revisional Authority (Director General) Forest Survey of India.

(b) To direct the respondents to reinstate your applicant in service with effect from 26.07.2001 in his former post as Upper Division Clerk with all consequential benefits;

(c) To direct the respondents as spent on duty;

(d) Costs or incidental to and arising out of this application;

(e) Any other order or orders as your Lordships may deem fit and proper by way of molding reliefs."

(extracted as such)

2. The brief facts are that the applicant was working as an Upper Division Clerk under the Director General, Government of India, Forest Survey of India, Central Zone, Nagpur. On the basis of some irregularities, during the course of his employment with regard to destruction of record of the accounts section of his own personal file, tampering of record with the advances and loan taken by him and in respect with claims of TA and OT, a preliminary enquiry was ordered which was conducted by the Assistant Director as per the order of the Joint Director, who after enquiry submitted report. Thereafter, the applicant was placed under suspension vide order dated 19.11.1999 passed by the Joint Director. On 27.01.2000, Memorandum of charges was issued to the applicant who submitted his written statement of defence. The matter was duly enquired into and the Inquiry Officer submitted his report on 18.04.2001 which was served on the applicant by the



Disciplinary Authority vide letter dated 25.04.2001. The applicant submitted his written statement of defence to the said report of the Inquiry Officer on 09.05.2001. The Disciplinary Authority, after considering the report of the Inquiry Officer and the reply of the applicant awarded the punishment of 'compulsory retirement' vide order dated 26.7.2001 with effect from the afternoon of 26.7.2001. The appeal preferred by the applicant against the order of punishment imposed by the Disciplinary Authority was considered but the same was rejected vide order dated 04.12.2001, thereby upholding the order of punishment of compulsory retirement imposed by the Disciplinary Authority. The applicant challenged the said orders of the Disciplinary Authority as well as the Appellate Authority before this Bench of the Tribunal in OA No. 615 of 2002 which was disposed of on 20.12.2006. The relevant portion of the order is quoted hereunder for ready reference:

"12. Accordingly, we quash the impugned order dated 04.12.2001 of the Appellate Authority at Annexure-A/12 of the OA and remand the case to the appellate authority to consider the appeal submitted by the applicant in accordance with rules and pass a considered and reasoned order as per Rule 27 of CCS (CCA) Rules. The appellate authority shall consider the grounds urged in the appeal dated 3.9.2001 after giving an opportunity of hearing to the applicant. We make it clear that we are not interfering with the proceedings of the enquiry officer and the orders of the disciplinary authority. The appellate authority shall comply with the directions of this Tribunal within a period of three months from the date of receipt of a copy of this order."



Thereafter, the appellate authority reconsidered the appeal of the applicant and rejected the same by a reasoned order dated 30th March, 2007. After passing fresh order by the Appellate Authority, the applicant preferred another OA No. 984 of 2007 before this Tribunal which was withdrawn on 10.01.2011. The full text of the order dated 10.01.2011 in OA No. 984 of 2007 is extracted hereunder for ready reference:

" Mr. B.C.Sinha, Ld. Counsel for the applicant is present. None appeared for the respondents.

2. Mr.Sinha, Ld. Counsel for the applicant seeks permission to withdraw the OA and to file another OA. Order dated 10.09.2010 shows that the applicant did not bring on record earlier decisions.

3. He is permitted to withdraw the OA. **The same will not mean that delay in filing of OA has been condoned.** No order as to costs."

(emphasis added)

Thereafter, on 20.05.2011, the present OA has been filed seeking the aforesaid reliefs.

3. A detailed reply has been filed by the Respondents. The applicant has also filed his rejoinder.

4. We have heard Mr. S.K.Dutta, the learned counsel for the Applicant and Ms. M.Bhattacharyya, the learned Counsel appearing for the Respondents and perused the records.

5. In this case, at the very outset, it would be necessary to mention that the applicant from the very beginning till the conclusion of the enquiry challenged, almost every orders passed



at different stages of enquiry by filing different OAs, one after the other, at the Circuit Bench of Nagpur. The first OA No. 129/2000 was filed by him challenging the appointment of Inquiry Officer which was dismissed. He filed another OA No. 331/2000 challenging the order refusing to change the Inquiry Officer. Thereafter, he filed another OA No. 870/2000 for providing him defence assistance. He also filed OA No. 751/2000 for supply of the reply of the interrogatories. He filed another OA No. 23 of 2001 but he failed to get the desired results. This shows that the applicant challenged almost every stage of the enquiry to any how to delay the disciplinary proceedings.

6. Before proceeding further, it is very much necessary to see whether this OA is filed by the applicant within the period prescribed in section 21 of the Administrative Tribunals Act, 1985. We find that in the earlier order dated 10.01.2011 this Bench of the Tribunal in OA No. 984 of 2007 while granting the applicant the liberty to withdraw this OA, has made it specifically clear that allowing the OA to be withdrawn **will not mean that delay in filing of subsequent OA has been condoned**. We also find that the impugned order which was passed in appeal, in compliance of the earlier order of this Tribunal was of dated 2007 and the present OA has been filed only on 20.05.2011. As such, admittedly, this OA has been filed after more than 04 (four) years of the impugned order passed in appeal. No application seeking



condonation of delay has been filed. Rather in the application at clause 3 it has been stated by the applicant that this OA is within the limitation period prescribed under section 21 of the A.T. Act, 1985. Clause 3 of the OA relating to LIMITATION is extracted below:

"3. LIMITATION:

The applicants further state that the application is within the limitation period prescribed under section 21 of the Administrative Tribunal Act, 1985."

7. To appreciate the question of limitation going through the Section 20 of the Administrative Tribunals Act, 1985 reads 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 sub-section (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;

(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 -

(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

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, 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."

8. Recently, the Hon'ble Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and others Vrs T.T.Murali Babu**, reported in AIR 2014 SC 1141 have heavily come down on the Courts/Tribunal for entertaining matters without considering the statutory provision of filing application belatedly. The relevant portion of the observations of the Hon'ble Apex Court are quoted herein below:

"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 scrutinize 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 activity 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. In the case at hand, though there has been four y ears delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility and remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings injustice, for it is likely to affect others. Such delay may have impact on others ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with '**Kumbhakarna**' or for that matter '**Rip Van Winkle**'. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold." (paragraph -16)

9. The Hon'ble Supreme Court in another case reported in (2013) 9 SCR 609, **State of Uttaranchal vs Sri Shiv Charan Singh Bhandari and Others** held that the issue of limitation of delay and laches should be considered with reference to the original cause of action and not with reference to the date of order on which an order passed in compliance of Court's direction. Here in this case, while permitting the withdrawal of OA No. 984/2007, this Tribunal in specific terms mentioned that delay in filing of a fresh OA will not be deemed to have been condoned.



10. In absence of any separate application for condonation of delay; especially in view of the order of this Tribunal dated 10.01.2011 in OA No. 984 of 2007 automatic condonation of delay cannot take place. Hence, we are of the considered view that this OA is grossly barred by limitation and is liable to be dismissed on the ground of limitation alone.

11. Even after considering the matter on merit, we do not find any reason to interfere with the order of punishment awarded by the Appellate Authority. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The court does not sit in judgment on merits of the decision. It is not open to this Tribunal or High Court to reappreciate and reappraise the evidence led before the IO and examine the findings recorded by the IO as a court of appeal and reach its own conclusions. We fortified our view with the judgments of the Hon'ble Supreme Court in the cases of **State of UP and another v Man Mohan Nath Sinha and another**, (2009) 2 SCC (L&S) 435 & **State Bank of India and Others vs Narendra Kumar Pandey**, reported in AIR 2013 SC 904.

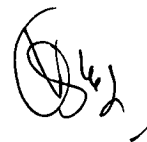
12. In other words, The disciplinary proceedings cannot be set at naught unless it is shown that the authority passing punishment is not competent authority to award the same or the



principles of natural justice has been violated and a reasonable opportunity of being heard has not been provided to the delinquent employee. The reassessment of evidence is not permissible by this Tribunal. If there is evidence to substantiate the charges, the sufficiency of evidence is not within the domain of this Tribunal. The provisions of Evidence Act are not applicable. The finding required to be based on the preponderance of probabilities while awarding the punishment and proof beyond all reasonable doubt is not sine qua non for the same.

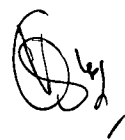
13. It is not the case of the applicant that the authority imposed the punishment was not having the jurisdiction or competence to pass such an order. It is not the case that there is no evidence at all to substantiate the charges.

14. It has been submitted by the learned counsel for the applicant that the proceedings were ex parte against the applicant. The Tribunal on an earlier occasion considering this aspect set aside the order of the appellate authority as the same was cryptic in nature. As these aspects of the matter could only be seen by the appellate authority and, therefore, this Tribunal had rightly on an earlier occasion set aside the cryptic order of the appellate authority and directing to pass a reasoned order after giving an opportunity to the applicant of being heard. Thereafter, reasoned order was passed by the appellate authority. The record also reveals that sufficient opportunity of being heard was afforded to



the applicant. He was permitted to be defended by the defence assistance. When he did not turn up the applicant was allowed to appear in person. The disciplinary proceedings were dragging on by filing several applications, one after the another.

15. The mala fides of the applicant is obvious that he at one pretext or the other delayed the proceedings. The report of the IO, the order of the Disciplinary and the appellate authority leave no room of doubt that the applicant was afforded full opportunity of being heard. All the orders are well reasoned. The Disciplinary Authority gave opportunity to the applicant to make his representation against the extreme proposed punishment of dismissal from service. The applicant submitted his reply and thereafter, the Disciplinary Authority after due application of mind instead of imposing the punishment of dismissal from service imposed the punishment of compulsory retirement which is lesser than the punishment of dismissal. The punishment imposed on the applicant also does not appeal to the judicial conscience warranting interference by this Tribunal. The order of punishment is perfectly commensurate with the proved misconduct of the applicant. We are, therefore, of the considered view that there appears to be no irregularity in the matter of conducting the enquiry or awarding the punishment. Hence, on merit too, this OA deserves to be dismissed.



16. In view of the discussions made above, this OA stands dismissed. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member

knm