
(2010) 08 AHC CK 0015
In the Allahabad High Court
Case No : C.M.W.P. No. 50549 of 2000

Abhilakh Chaudhary

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 11-08-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21

Citation : (2010) 127 FLR 842

Hon'ble Judges : Virendra Kumar Dixit, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : D.P. Singh, Indra Raj Singh, Siddhartha Singh, Deo Prakash Singh and Satya Vijay, for the Appellant; Govind Saran and A.K. Shukla, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan and Virendra Kumar Dixit, JJ.—Supplementary affidavit filed today is taken on record.

2. Heard Sri Indra Raj Singh, learned Counsel for the petitioner and learned Standing Counsel.

3. By this writ petition, the petitioner has prayed for quashing the judgment and order dated 8.8.2000 passed by Central Administrative Tribunal, Allahabad. Bench, Allahabad by which O.A. No. 1670 of 1992 has been dismissed as barred by time.

4. Brief facts of the case are that the petitioner who was working as a Fitter in the Eastern Railway, was proceeded with the departmentally and punishment order dated 10.11.1987 was passed after regular departmental proceedings removing him from services. Thereafter an appeal was filed which was rejected by the appellate authority on 13.9.1988. However, the punishment of removal was modified to compulsory retirement and the petitioner filed a review petition on 21.10.1988 before the Chief Bridge Engineer, the eastern railway which was

not disposed of, hence he filed O.A. No. 1670 of 1992 on 17.11.1992 before the Tribunal.

5. The petitioner's case is that the O.A. was admitted and after exchange of pleadings the Tribunal has passed the order dismissing the O.A. as time barred. Sri I.R. Singh, learned Counsel for the petitioner challenging the order contended that the Review Application having not been decided the O.A. was within time. He further submits that in any event u/s 21, sub-section 3 the Tribunal had jurisdiction to condone the delay in filing the O.A. and he further submits that after O.A. having been admitted by Tribunal the same could not have been dismissed on the ground of time barred after 8 years.

6. We have considered the submissions of the learned Counsel for the parties and have perused the record.

7. Sections 20 and 21 of the Administrative Tribunal Act, 1985 are relevant for the present case which are quoted as below:--

Section 20. Application not to be admitted unless other remedies exhausted.--

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,--

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules

"The applicant further declares that the application is within the limitation period as prescribed u/s 21 of the Act No. 13 of the Central Administrative Tribunal, 1985, as the cause of action arose firstly on 21.10.1988 when the applicant filed his review before the respondent No-. 2 and thereafter when the review was not decided by the respondent No. 2 subsequently the applicant sent several reminders firstly on 7.8.1990 and lastly on 22nd February, 1992."

9. A bare perusal of the averment in para 3 of the O.A. indicates that the petitioner's case was that the O.A. is within time. The petitioner having not admitted that the O.A. is beyond time there was no occasion to give any explanation for condonation of delay. The Tribunal cannot be said to have committed any error in not exercising the jurisdiction u/s 21, Sub-section (3), the present case is not a case where the condonation of delay was sought. The petitioner's case further is that the O.A. having been admitted it could not have been dismissed as barred by time. Learned Counsel for the petitioner has placed reliance on the para 9 of the judgment of Hon"ble the Apex Court in N. Balakrishnan Vs. M. Krishnamurthy,

10. In the said case the Court was considering the sufficient cause within the

meaning of section 5 of the Limitation Act. The Court after considering the cause in the said case came to the conclusion that the delay was caused due to failure of Advocate to inform the appellant as well as his failure to take action. The said case was on facts of the case where the Court found cause sufficient which is clearly distinguishable from the present case. The fact that O.A. was admitted leads to the conclusion that the Court was prima facie satisfied that there are substantial issues for consideration, but admission of O.A. does not mean that the question of Limitation was overruled when there is no express order of the Tribunal in that regard. Mere fact that O.A. has been admitted, shall not preclude the Court to consider the questions of limitations or other questions which goes to the root of the matter. Mere fact that O.A. was admitted, does not preclude the consideration of the questions of limitation and the Tribunal being satisfied that the O.A. was barred by time, it was an obligation of the Tribunal to reject the application.

11. In view of the above, we do not find any error in the impugned order dated 8.8.2000, the writ petition is therefore dismissed.