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**(2019) 09 CAT CK 0062**  
**In the Central Administrative Tribunal**  
**Case No : Original Application No. 63 Of 2018**

Rashmi Sinha

APPELLANT

Vs

General Manager Northern Railway Head Quarter And Ors

RESPONDENT

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**Date of Decision :** 24-09-2019

**Acts Referred:**

Administrative Tribunals Act, 1985 &mdash Section 19, 20(2)(a),(b) 21(1) (a) (b),  
(2), (3)

Railways Discipline Appeal Rules, 1968 — Rule 6 (VIII)

**Citation :** (2019) 09 CAT CK 0062

**Hon'ble Judges :** Nita Chowdhury, Member (A)

**Bench :** Single Bench

**Advocate :** RK Shukla, Bhawna Massay, Kripa Shankar Prasad

**Final Decision :** Dismissed

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## Judgement

1. The applicant has filed this OA, seeking the following reliefs:-

"A. To quash the communication dated 05.08.2015 as contained in Annexure-1.

B. To direct the opposite parties to produce the alleged letter of removal dated 16.10.2003 of the deceased employee which was allegedly passed in disciplinary proceeding for alleged unauthorised absence, quash the same order of removal on its production with all consequential benefits.

C. To issue an order directing the Respondents to pay salary for the period of suspension, provident fund amount of the deceased employee with statutory interest.

D. To issue an order directing the Respondents to considered the case of the applicant for compassionate appointment."

2. The applicant in this case is aggrieved by the order of the respondents dated 05.08.2015 whereby they had rejected the case of the applicant for appointment on compassionate basis on the ground that deceased husband of the applicant,

Sh. Sanjay Singh was removed from service on 16.10.2003. The applicant had challenged the said order on the ground that she was never supplied the order of removal of her late husband. She has thus submitted that the action of the respondent is unreasonable, arbitrary and discriminatory, as the deceased employee, who was the sole bread earner of the family was removed ex parte during his illness and as such, the order of removal of her late husband is liable to be set aside.

3. The respondents, in their reply, are able to point out that the late husband of the applicant was served with SF-II Chargesheet vide No.98/Const/PF/Sanjay Sinha - AA dated 25.01.2001 showing charges against his unauthorized absence which was converted into SF-5 Vide No.98/Const/PF/Misc/dated 22.5.2001. They have further able to point out that on the basis of the inquiry officer report, the disciplinary authority, vide no.2001/Const/PF/Section (Staff Matter) dated 16.10.2003 had passed the order of removal from service under Rule 6 of (VIII) of Railways Discipline Appeal Rules, 1968 after obtaining the approval of competent authority and the same was dispatched to the address of late husband of the applicant. Even the respondents had published the notification for removal of her late husband in the newspapers in Hindi and English in November, 2003 for appeal/revision and the same enquiry has been closed by the department when no appeal had been filed by the late husband of the applicant within the limitation period. We also do not find merit in the plea of the applicant that she was not supplied the order of removal of her late husband from the service, as she is not supposed to get the same and only her husband, who was removed from the service, was supposed to get his removal order dated 16.10.2003 and only he could have challenged the same at that time but now at this belated stage of about 16 years delay, this cannot be challenged by the applicant, as her late husband had already expired and the same is also barred by limitation as the cause of action had occurred 2003 and almost 16 years had passed since then. It is also noted that the Hon'ble Supreme Court in the case of 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:

4. It is noted that the that the Hon'ble Supreme Court in the case of D.C.S. Negi v. Union of India & others (Civil Appeal No.7956 of 2011) decided on 7.3.2011, viewed that the Tribunal should give due regard to Section 21 of Administrative Tribunals Act, 1985. Relevant portion of said judgment reads thus:-

"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 519 of the Act in complete disregard of the mandate of Section 21, which 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".

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. 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).

In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not

raised by the respondent/non-applicant is not at all relevant."

4. It is also noted that 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 Section 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."

5. In view of the above factual position, we do not find any illegality in the action of the respondents taken in this matter. The OA is accordingly dismissed. No order as to costs.