
(1984) 12 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 792 of 1984

Shri Santi Ram Bora

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 17-12-1984

Acts Referred:

Assam Administrative Tribunal Act, 1977 — Section 3, 4, 4(2), 5, 5(1)
Assam Services (Discipline and Appeal) Rules, 1964 — Rule 15
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 302

Citation : (1985) 1 GLR 510

Hon'ble Judges : K.M. Lahiri, Acting C.J.; T.C. Das, J

Bench : Division Bench

Advocate : S.N. Medhi, D.K. Mahanta and P. Sutradhar, for the Appellant; A.S. Bhattacharjee, Addl. Sr. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Lahiri, A.C.J.

1. This is an application under Article 226 of the Constitution of India directed against an order dated 26.5.84 passed by the Assam Administrative Tribunal, Gauhati in Case No. 84 ATA/83 rejecting the appeal of the Petitioner as barred by limitation.

2. It may be recalled that the Assam Administrative Tribunal is a creature of Statute. The State Government has constituted the Tribunal to hear and dispose of the appeals of some classes of Civil Servants. The allegation against the Petitioner was found to be very serious by the District and Sessions Judge, Lakhimpur, North Lakhimpur. It appears that while the Petitioner was working as Bench Assistant of the then Chief Judicial Magistrate at North Lakhimpur, he lost the records of a case in which the charges levelled against the accused persons were u/s 302 I.P.C. Although, the charge against the Petitioner was found to have been fully established and he was found to be negligent in performing his

duties, yet, considering his services rendered for 30 years, the then District and Sessions Judge, imposed a lesser penalty of compulsory retirement. The impugned order imposing the penalty of compulsory retirement from service was made on 19.9.81 and issued on 21.9.81. The order was rendered by the disciplinary authority after holding full and detailed enquiry. Against the impugned order the Petitioner preferred an appeal to the Government of Assam under Rule 15 of the Assam Services (Discipline and Appeal) Rules, 1964. On threadbare discussions of the materials the State Government by its order dated 15.2.82 dismissed the appeal. Against the appellate order of the Government, the Petitioner preferred an application for review. It has been contended at the Bar that the said review is a statutory review. Without deciding the question as to whether the Petitioner had a statutory right of review, we accept the contention of the learned Counsel for the Petitioner that it was so. However, the review application was also dismissed by the Government on 26.8.1982. The order was sent to the Petitioner on 29.8.1982. Thereafter, the Petitioner filed another application to the Government for re-considering his case which was also turned down by the Government by its order dated July 8, 1983. Learned Counsel for the Petitioner fairly concedes that this representation was not a statutory right or remedy available to the Petitioner under the service rules, executive instructions or orders. This application, according to the Petitioner, was a representation to the Chief Minister, Assam, to consider his case, vide page 96 Annexure XII to the petition.

3. It is, thus, seen that the Petitioner pursued his legal remedies available to him until 26.8.82. The representation made by the Petitioner after disposal of the review petition was not a statutory remedy available to the Petitioner under the service rules, executive instructions or orders. This position is not disputed at the Bar.

4. Thereafter, the Petitioner preferred the appeal on 11.10.1983 to the Assam Administrative Tribunal constituted u/s 3 of the Assam Administrative Tribunal Act, 1977, "the Act" for short. The Petitioner also filed an application u/s 5 of "the Act" stating that he had been prevented by sufficient causes from preferring the appeal within the period of 60 days from the date of the order appealed against. Learned Tribunal held that the appeal had been preferred well over one year beyond the period of limitation. The Tribunal was not satisfied with the causes shown by the Appellant that he had been prevented by sufficient causes from preferring the appeal within the period of limitation. Learned Tribunal also held that there was no reason for condoning the delay, and, accordingly, by its order dated 26.5.84 dismissed the appeal.

5. The sole question for determination is whether the appeal was in fact barred by limitation, and/or whether the Petitioner-Appellant had sufficient causes for not preferring the appeal within the period of limitation? Section 5 of "the Act" provides that no appeal shall lie to the Tribunal after the expiry of 60 days from the date of the order appealed against. However, proviso to Section 5 empowers

the Tribunal to entertain an appeal even after the expiry of sixty days from the date of passing the order, if it is satisfied that the civil servant was prevented by any sufficient cause from preferring the appeal within the period of 60 days. In the instant case, the impugned order was rendered on 19.9.81 and the appeal before the Tribunal was filed on 11.10.83, As such, it appears that the appeal was preferred after about two years from the date of the impugned order. But the Petitioner was entitled to 60 days to prefer an appeal u/s 5 of "the Act". However, Section 4(2) of "the Act" debars the Tribunal to entertain appeal unless the civil servant has exhausted all the remedies available to him under the service rules, executive instructions or orders. It is, thus, seen that a civil servant must exhaust his remedies available to him under the service rules, executive instructions or orders before he can prefer an appeal to the Tribunal. Early, the Tribunal cannot entertain an appeal unless the civil servant exhausts his remedies available to him under the relevant service rules, executive instructions or orders against an order passed by a competent authority in respect of any condition of service. However, if the proceedings in the appeal, revision or representation filed by a civil servant under the relevant service rules pends before the competent authority for a period of over six months from the date of filing of the appeal, revision petition or representation, the Tribunal may entertain the appeal.

6. In the instant case, the Petitioner preferred a statutory appeal against the impugned order and the same was dismissed on 15.2.1982. In our opinion, the Petitioner is entitled to the period spent by him in the appeal proceedings as it was a statutory appeal which he had to avail before preferring an appeal before the Tribunal u/s 4 of "the Act", Similarly, the review or the revision petition being a statutory right available to the Petitioner under the service rules as claimed by learned Counsel for the Petitioner, the Petitioner is also entitled to the period spent by him. However, we do not decide it to whether it is a statutory right or not. We merely assume that the review or revision preferred by the Petitioner was a statutory review/revision. It was dismissed on 26.8.82. As such, the Petitioner, may at best be entitled to the period upto 26.8.82, as he had a right to continue with the proceedings before preferring an appeal under "the Act". However, the revision/review was dismissed on 26.8.82 and time commenced to run against the Petitioner on and from 27.8.82. The present appeal before the Tribunal was filed on 11.10.83. As such, the appeal was preferred after 11 months and odd days, even after giving allowance of 60 days time to which the Petitioner was entitled u/s 5(1) of "the Act". After the review/revision application was dismissed on 26.8.82 the Petitioner made a petition, which according to learned Counsel for the Petitioner was mercy petition. This was not a revision, appeal or representation under any service rules, executive instructions or orders. As such, the Petitioner had no right to prefer the same before availing his right to appeal to the Tribunal. We are of the firm opinion that the representation made to the Chief Minister was a right available, to the Petitioner under any service rules, executive instruction or orders. The Petitioner was, therefore, not

entitled to exclude the period during which the proceedings continued and disposed of on 8.7.83. As such, we are of the opinion that the Petitioner was not entitled to the period commencing from 26.8.82 to 8.7.83 as it was not a representation under the service rules, executive instructions or orders. Under these circumstances we are constrained to hold that the appeal was palpably barred by limitation when it was presented to the Tribunal on 11.10.83.

7. The Petitioner however filed an application u/s 5 of "the Act" to extend the period of limitation allegedly on the ground that he had sufficient causes for not preferring the appeal within the period of 60 days. Indeed, the petition is entitled to 60 days from 26.8.82. However, there is no explanation which satisfied the mind of the Tribunal for explaining the period of limitation from October, 1982 to 10.10.93.

8. The application for condonation of the delay from October, 1982 to 11.10.83 contained very vague and general statements. Indeed, every day's delay must be clearly explained by the Petitioner. The Petitioner stated that he was mentally disturbed. He was short of fund and due to disruption of communication on account of flood in July/August, 1983, he could not prefer the appeal in time. There is no inkling in the application as to what was that mental disturbance nor do we find the period during which the Petitioner suffered from such disturbances. Under these circumstances, it was difficult for the Tribunal to condone any specific period on the ground of the mental disturbance of the Appellant. Further, it is too vague. The second cause relates to the financial stringency of the Petitioner. However, all these attempts to hear up sufficient causes do not even appeal to us, as notwithstanding these difficulties the Petitioner could prefer a representation/revision petition to the Chief Minister, Assam. When he could prefer the revision or representation notwithstanding his difficulties, he could have certainly preferred the appeal within the period of limitation which commenced from 26.8.82. No reason has been attributed as to why he could not prefer the appeal when he was in a position to file a similar representation to the Chief Minister. In our opinion, the twin grounds are too vague and insufficient to permit the Tribunal to enlarge the period of limitation. The next cause was disruption of communication in July/August, 1983 due to flood and heavy rain. According to the Petitioner he could not come down to Gauhati to prefer the appeal. No exact period has been stated in the petition or in the writ application before us. Even if the whole period of July and August is excluded, the appeal was barred by limitation. There is no inkling in the petition to show what communication had been disrupted or where was the disruption. In any view of the matter, the vague statement is insufficient to allow extension of time. Even if the months of July and August are excluded, the appeal was positively barred by limitation.

9. We, therefore, reach the conclusion that even after granting 60 days time to the Petitioner to which he was entitled to u/s 5 of the Act and even after granting grace to him for the months of July and August, 1993, we find no explanation for

the rest of the period, that is, for 9 months. As such, we are not satisfied that sufficient causes existed for which the Petitioner was entitled to condonation of the delay u/s 5 of "the Act".

10. In our opinion, the provisions of the proviso to Section 5 of the Act provide that the party is to satisfy "the Tribunal" as to the existence of sufficient cause. When on the facts and circumstances of the case, the Tribunal was not satisfied that there was sufficient cause to extend the period of limitation, it is well-nigh impossible for the High Court to disturb the findings of fact reached by the Tribunal in exercise of the power under Article 226 of the Constitution, when the findings of the Tribunal are just, proper and based on materials.

11. For the foregoing reasons, we hold that there is no merit in the application, and accordingly, the petition is dismissed *limine*.