

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.14698 of 2017
Date of Decision: July 12, 2017

Balwinder Kumar

...Petitioner

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.D.R.Sharma, Advocate,
for the petitioner.

AMIT RAWAL, J.

Petitioner-Balwinder Kumar has approached this Court under Article 226/227 of the Constitution of India seeking quashing of the order dated 24.2.2015 (Annexure P-6) passed by the Central Administrative Tribunal, Chandigarh (for short "CAT") dismissing the Original Application No.060/00483/2014 filed for challenging the following orders:-

- a) Enquiry report supplied vide letter dated 17.3.2006 (Annexure A-10);
- b) Punishment order dated 15.9.2006 (Annexure A-9), whereby the petitioner was removed from service;
- c) Order of the Appellate Authority dated 20.3.2007 (Annexure A-7), whereby the appeal preferred against the removal order has been dismissed;
- d) Order dated 3.5.2007 (Annexure A-5) passed by the

Reviewing Authority dismissing the review application;

e) Office orders dated 28.8.2007, 31.12.2011 and 25.1.2014 (Annexures A-1, A-2 and A-3).

Mr.D.R.Sharma, learned counsel representing the petitioner submitted that the petitioner, on account of death of his father, vide appointment letter dated 7.1.2000, was appointed on compassionate ground as DSL-Cleaner (Elec) On 9.9.2005, he submitted an application for leave of three days, but could not attend the office owing to the unavoidable and compelling circumstances as his wife had fallen sick. On 24.11.2005, he was charge-sheeted under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The petitioner duly replied the aforementioned charge-sheet giving reasons beyond his control and also submitted the documents pertaining to the illness of his wife, like medical certificate etc. He was allowed to join duties w.e.f. 8.12.2005, thus, the total absent period came to be 86 days, i.e., from 13.9.2005 to 24.11.2005 and 25.11.2005 to 7.12.2005. However, vide order dated 27.1.2006, an Enquiry Officer was appointed and enquiry was conducted. The petitioner again submitted reply/reasons of having remained absent with a prayer for dropping the charge-sheet/enquiry, but the Enquiry Officer found that the petitioner is habitual absentee and the Disciplinary Authority, vide order dated 15.9.2006 (Annexure A-9), imposed a punishment of removal from service.

The petitioner is stated to have submitted an appeal before the respondents on 14.3.2007 (Annexure A-8), which was, vide letter dated 20.3.2007 (Annexure A-7), dismissed being time barred. He then preferred a review petition before the respondents on 27.3.2007 (Annexure A-6).

However, vide letter dated 3.5.2007 (Annexure A-5), the petitioner was

informed that the review petition has been rejected by respondent No.2. The petitioner is stated to have moved a mercy appeal dated 9.7.2007 and as per the averments made in the writ petition, vide letters dated 28.8.2007, 31.12.2011 and 25.1.2014 (Annexures A-1, A-2 and A-3), the petitioner was informed that there is no provision of filing the mercy appeal in the Discipline and Appeal Rules. It is on account of receipt of the letter dated 25.1.2014 (Annexure A-1), cause of action accrued to the petitioner to assail all the orders. He preferred Original Application, which was accompanied by an application seeking condonation of delay of 2097 days. Detailed reasons have been given in the application seeking condonation of delay to establish that the delay was neither intentional nor willful.

He submitted that the CAT ought not to have dismissed the Original Application on account of limitation, but should have adjudicated on merits. The order dated 24.2.2015 (Annexure P-6) rejecting the Original Application is, thus, not sustainable and liable to be set-aside.

We have heard the learned counsel for the petitioner, appraised the paper book and of the view that the order under challenge is perfectly legal and justified and does not call for interference, for, the contents of letters dated 25.1.2014, 31.12.2011 and 28.8.2007 (Annexures A-1, A-2 and A-3) read thus:-

Annexure A-1

NORTHERN RAILWAY

No.577-M/D&AR/DSL/851

Diesel Shed

Dated:-25.01.2014

Ludhiana

Sh.Balwinder Kumar

S/o Sh.Pawan Kumar

H.No.307, Avtar Nagar,

Guru Nanak Pura, Jalandhar City Pin-144001

Sub:-Mercy appeal against the punishment.

Ref:-Your appeal dated 26.12.13.

In reference to the above you have been removed from service w.e.f.15.09.2006 AN by the ADME/DSL/LDH. Further your appeal & revision has been rejected by DME/DSL and Sr.DME/DSL/LDH.

As above, in this case the entire channel has been exhausted except review petition which lies to Hon'ble President of India.

Sd/-

Sr.DME/DSL/LDH

Annexure A-2

No.577-M/D&AR/DSL/851

Dated:-31.12.11

Sh.Balwinder Kumar

S/o Sh.Pawan Kumar

H.No.307, Avtar Nagar,

Guru Nanak Pura, Jalandhar City Pin-144001

Sub:-Review petition against the punishment.

Ref:-Your appeal dated 20.5.09.

In reference to the above you have been removed from service w.e.f.15.9.06 AN by the ADME/DSL/LDH. Further your appeal & revision has been rejected by DME/DSL/ Sr.DME/DSL/LDH.

In this case your review petition is lies pending to Hon'ble President of India. So you are hereby asked to submit review petition to Hon'ble President of India at earliest.

Sd/-

Sr.DME/DSL/LDH

Annexure A-3

NORTHERN RAILWAY

No.577M/DAR/DSL/851

Dated:-28.07.07

Sh.Balwinder Kumar

Ex-D/C,T.No.993

LDH

Sub:-Your mercy appeal to ADRM/FZR. Dated 09.7.07

Ref:-SF-5 No.577M/DAR/DSL/851 dated 24.11.05.

In reference to the above, it is informed that there is no provision of mercy appeal in Discipline and Appeal Rules, hence your appeal cannot be forwarded to ADRM/FZR.

In this case, Review petition lies to the President. If you desire, you may submit your review petition to the President.

Sd/-

Balwinder Kumar

29.8.07”

Sd/-

Sr.DME/DSL/LDH

On perusal of the contents of letter Annexure A-3, the petitioner was duly informed way back in the month of July, 2007 that there is no provision of filing the mercy appeal, yet remained silent and mum and did not avail the remedy, i.e., by filing Original Application after the gap of 2097 days. Ignorance of law is no bliss. The petitioner though availed remedy of an appeal which was also belated. It appears that the petitioner had not been diligent and intended to follow any discipline in the service career. Under these circumstances, he faced the wrath of removal from service, after following the procedure, in accordance with law.

The petitioner has not been able to establish his absence for a period of 86 days without any proof. The approach of the petitioner had not been only tardy but lackadaisical and, therefore, cannot be permitted to seek vindication of grievance by taking the cause of action from the contents of the letter dated 25.1.2014, in view of the letter dated 28.8.2007.

No explanation has come forth either in the writ petition or in the

application seeking condonation of delay as to what the petitioner had been doing from July, 2007 till December,2011 when he had asked for reminder and then in 2014. Such litigant cannot be given leverage by any Court for entertaining the petition, rather the petition should have been dismissed by imposing the costs for wasting the time of the Court.

For the foregoing reasons, we do not differ with the reasons given by the CAT while dismissing the Original Application on the ground of delay.

Resultantly, the writ petition stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 12, 2017
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No