

(1983) 01 GAU CK 0001

Gauhati High Court

Case No: Civil Rule No. 861 of 1981

Sri Arabinda Kalita

APPELLANT

Vs

The Assam Administrative
Tribunal and Others

RESPONDENT

Date of Decision: Jan. 6, 1983

Citation: (1983) 1 GLR 304

Hon'ble Judges: S.M Ali, J; K. Lahiri, J

Bench: Division Bench

Advocate: S.N. Bhulyan and S. Huda, for the Appellant; Sr. Govt. Advocate, for the Respondent

Judgement

K. Lahiri, J.

Without entering into the merits of the case Mr. S.N. Bhuyan, learned Counsel for the Petitioner has urged before us that the learned Administrative Tribunal, Respondent No. 1 acted without jurisdiction in dismissing the appeal preferred by the Petitioner as time-barred, without considering the affidavit filed by him on 16.7.81 along with the memorandum of appeal.

2. The Petitioner preferred the appeal before the learned Tribunal against the order dated 10.3.81 passed by the Addl. Inspector General of Police, Assam. The order was received by the Petitioner only on 20.5.81. Thus he derived the Knowledge of the order only on 20.5.81. Admittedly, the order appealed against is dated 10.3.81. As the Petitioner's wife was ill and undergoing treatment he was at Maligaon to look after his wife. He went home on 20.5.81 and found the letter lying at his residential quarter. The statement was made on solemn affirmation as true to the knowledge of the Petitioner. There was no counter filed against the assertions made by the Petitioner. It is apparent that the learned Tribunal left out of consideration the said affidavit.

3. We find that the statement of fact as to the date of knowledge of the order was supported by an affidavit. There was no counter to the statement made by the Petitioner, the Appellant before the learned Tribunal. It is well settled that the period of limitation commences from the date of knowledge, actual or constructive, of the impugned order. The said view has been expressed by the Supreme Court in [Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, Madan Lal Vs. State of U.P. and Others,](#) and [Assistant Transport Commissioner, Lucknow and Others Vs. Nand Singh,](#)

4. There is nothing to show that any specific date was fixed by the Addl. Inspector General of Police for pronouncing the order. As such, to establish the actual or constructive date of knowledge of the order, it was for the, party communicating the said order to show that the recipient had the knowledge, (sic) actual or constructive, on any date prior to the date of, receipt of the order as claimed by the Petitioner. In Harish chandra (supra) the expressions "from the date of Collector's award" was construed as the date when the award was either communicated to the party or was known by the party either actually Or constructively. Such interpretation was considered to be in consonance with the essential requirement of fair play and natural justice. The Supreme Court has held that it is the fundamental principle of justice that the party whose right has been effected by an order must be granted the opportunity to know about the order, that is, the order must be brought to the notice of the affected party by some effective means of communication. In Kiranmayee v. Assam Board of Revenue, AIR 1980 Gauhati 23, the same view was expressed, heavily relying on the decision of the Supreme Court referred to above. The statement of the Petitioner supported by an affidavit does ring true. The conduct of the Petitioner in preferring the appeal is indicative of the fact that he did never sleep over the matter. Before throwing a person out of Court it is essential for a quasi-judicial Tribunal to consider the case of the Appellant from all perspectives. The impugned order of the learned Tribunal does not contain appropriate fair reasons for the decision. We are of the opinion that the learned Tribunal shall consider the affidavit of the Petitioner, decisions referred above, hear the parties and dispose of the appeal at its earliest possible convenience.

5. For the foregoing reasons, we set aside the impugned order of the learned Tribunal and remit the matter to it for disposal according to law. There will be no order as to costs.