

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

MP 1428/87

O.A. No. 1654

1987.

T.A. No.

DATE OF DECISION April 15, 1988.

Dr. Zachariah Mathew **Petitioner**

Ms. Lily Thomas, **Advocate for the Petitioner(s)**

Versus

Union of India & Anr. **Respondent^s.**


Shri M.L. Verma, **Advocate for the Respondent(s)**

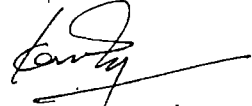
CORAM:

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. Whether to be circulated to other Benches? No.


(Kaushal Kumar)
Member
15.4.1988.


(K. Madhava Reddy)
Chairman
15.4.1988.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

7

MP 1428/87

CA 1654/87.

April 15, 1988.

Dr. Zachariah Mathew. ... Applicant.

Vs.

Union of India & Anr. ... Respondents.

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

Hon'ble Mr. Kaushal Kumar, Member.

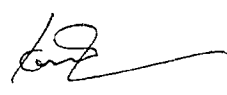
For the applicant ... Ms. Lily Thomas, Advocate.

For the respondents ... Shri M.L. Verma, counsel.

(Judgment of the Bench delivered by Hon'ble

Mr. Justice K.Madhava Reddy, Chairman).

This is an application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'The Act') calling in question the order of dismissal dated 12.10.1983 (Annexure A-I) made by the President in exercise of the powers vested in him under Rule 19(ii) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 and the order dated 22.12.1983 (Annexure I-C) dismissing the review petition under Rule 29 of the said Rules. Challenging these orders, the applicant had filed a writ petition No.1211/84 in the High Court of Delhi. After arguing the matter for some time, the learned counsel for the petitioner withdrew the writ petition. A Division Bench of the High Court on August 30, 1984 allowed that writ.



petition to be withdrawn in the following words (Annexure-13)

" CW No.1211/84.

After arguing for some time learned counsel for the petitioner wishes to withdraw the writ petition. She is allowed to do so. Civil Writ No.1211 of 1984 is accordingly dismissed as withdrawn. The counsel fee is assessed at Rs.330/-."

Nearly three years after the Writ Petition was withdrawn and two years after this Tribunal was constituted, present application under Section 19 of the Act was filed on 2.11.1987 calling in question the very same order of dismissal which formed the subject matter of the aforesaid writ petition. This application cannot be entertained for more than one reason- firstly because the earlier writ petition was withdrawn without leave to file a fresh writ petition and secondly because it is barred by time. From the order extracted above, it is clear that the applicant did not withdraw the writ petition with leave to file a fresh writ petition. Such leave was neither prayed for nor was ^{it} granted.

The Supreme Court in SARGUJA TRANSPORT SERVICE Vs. STATE TRANSPORT APPELLATE TRIBUNAL, GWALIOR AND OTHERS (1) considered this very question. The question posed by the Supreme Court was whether a petitioner after withdrawing a writ petition filed in the High Court under Art.226 without the permission to institute a fresh petition can file a fresh writ petition in respect



of the same cause of action in the High Court under that Article. The Supreme Court declared:

"we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again."

Earlier in the judgment, the Supreme Court observed:

"The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in

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10

which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court."

This dicta squarely applies to the present case and, therefore, his application is barred. Ms. Lily Thomas, learned counsel for the applicant, however, argues that while a fresh petition under Art.226 of the Constitution may be barred, an application under Section 19 of the Act is not. We are unable to agree with this contention for the simple reason that the Central Administrative Tribunal as laid down by the Supreme Court in S.P.SAMPATH KUMAR Vs. U.O.I. & Ors(2) is a substitute for the High Court. In SHRI SURINDER NATH & OTHERS Vs. UNION OF INDIA (3) this Tribunal held that it exercises the same jurisdiction as the High Court under Arts.226 and 227 of the Constitution. If a petition under Art.226 filed in the High Court


2. ATR 1987 (1) SC 34.

3. ATR 1986 (2) CAT 418.

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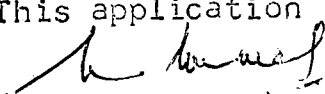
was barred because the petitioner withdrew an earlier petition without obtaining leave of the High Court to file a fresh petition, equally, a fresh application under Section 19 of the Act would be barred before the substituted forum which this Tribunal is.


Even on the question of limitation, this application is clearly time-barred. While the impugned order is one passed within 3 years of ^{the} constitution of this Tribunal i.e. 1.11.1985, an application challenging such an order ought to have been filed as laid down in sub-Section(2) of Section 21 of the Act within 6 months of the constitution of this Tribunal. This Tribunal having been constituted under Section 4 of the Act on 1.11.1985, the application ought to have been filed on or before 30.4.1986. But it was filed on 2.11.1987 i.e. more than two years after its constitution. It is, therefore, clearly barred by time. The learned counsel for the applicant alternatively contends that there are valid grounds for condoning the delay in filing this application. A petition for condonation of delay has been filed stating that the applicant consulted several lawyers regarding filing the application before this Tribunal and all of them advised that the application is belated and that the impugned order cannot be challenged. "My present counsel



advised me to file this application relying on the decision of the Supreme Court in Union of India Vs. Tulsi Ram Patel (4) and, therefore, this application is filed". Assuming that this is a valid ground, ^{was} Tulsi Ram Patel's case/decided as early as on 11.7.1985 and it was reported in AIR 1985 SC 1416. This judgment ~~which~~ received wide publicity in the Press also. A diligent party and counsel could not have ~~been~~ missed this Ruling which declared that even an appellate or revisional authority was bound to consider if it was now reasonably practicable to make an enquiry and if feasible direct an enquiry. The applicant had in fact made representations earlier and those were rejected by the appellate authorities and it is these orders that were questioned before the High Court. Hence the fact that Tulsiram Patel's case gave a right of further representation/appeal ^{the} ^{was bound} and/Appellate Authority/to consider whether it was subsequently reasonably practicable to hold an inquiry or not is no ground for condoning the delay in filing this application. Misc. Petition for condoning the delay is also rejected.

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As discussed above, this application is barred not/ because of the withdrawal of the earlier petition without obtaining leave to file a fresh petition but also because it is filed beyond the prescribed period of limitation. This application is accordingly dismissed.


(Kaushal Kumar)
Member.


(K. Madhava Reddy)
Chairman.