

(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

...

OA 1539/90

Date of decision: 3-8-1990

AMAR SINGH

... APPLICANT

VERSUS

UNION OF INDIA & OTHERS

... RESPONDENTS

ADVOCATES:

Shri Rishi Prakash

.. for the applicant.

CORAM:

Hon'ble Shri P.K. Kartha, Vice-Chairman (J)

Hon'ble Shri P. Srinivasan, Administrative Member.

ORAL J U D G E M E N T

(Judgement of this Bench delivered by  
Hon'ble Shri P. Srinivasan, Member (A) )

This application has been listed before us for admission today. Shri Rishi Prakash, learned counsel for the applicant has been heard. We feel that this application can be disposed of at the stage of admission itself. We proceed to do so.

The applicant who was working as a Constable (Driver) in the Delhi Police, was dismissed from service by an order dated 24-3-1975 after holding a departmental enquiry. The applicant filed an appeal challenging his dismissal and the appeal was dismissed on 7-5-1975. A revision application filed by him, was also rejected on 6-8-1975. It appears that thereafter the applicant made a representation on 8-12-1989 addressed to the Commissioner of Police, New Delhi challenging the various orders mentioned above on different grounds and praying that he be reinstated in service with all consequential reliefs. Having received no reply to this representation, the

*P. Srinivasan*

contd...

applicant has approached this Tribunal with the present application filed on 27.7.1990.

When the matter came up for hearing, we enquired of Shri Rishi Prakash how this application could be entertained at all, particularly since the matter of the applicant's dismissal had become final as early as on 6.8.1975 when his revision application was rejected. Shri Rishi Prakash submitted that according to him the original order of dismissal was a void order, without jurisdiction and in respect of <sup>H a</sup> void order, the question of limitation does not arise. He relied in this connection, on the judgment of the Supreme Court in Kiran Singh & Ors. Vs. Chava Pasvan & Ors. AIR 1954 SC 340, where it was held that an order without jurisdiction is non est and it need not even be challenged in a Court of Law. Being a void order, it can have no effect at all. For contending that the original order of dismissal in this case was a void order, Shri Rishi Prakash submitted that the appointing authority in respect of the applicant was the Deputy Inspector-General of Police (DIG), Delhi while the order of dismissal had been passed by the then Commandant, Delhi Armed Police, who was a lower authority. Since the authority who passed the order of dismissal was lower in rank than the appointing authority, the order of dismissal was straightway void, being in violation of Article 311 of the Constitution. Shri Rishi Prakash also referred to a judgment of the Punjab and Haryana High Court in Kulbhushan & Ors. Vs. Faquira & Ors. AIR 1976 Punjab & Haryana 341 where it was observed that when the order in question was non est in law, it was ~~absolutely~~ <sup>H</sup> ab initio void and it was <sup>H not</sup> ~~neither~~ necessary for the plaintiff to have the order set aside. Finally, Shri Rishi Prakash

P. f. k.

drew our attention to the judgement of the Supreme Court in Jaichand Sahni Vs. U.O.I. 1969(3) SCC 642. In that case, the order removing the petitioner from service had been set aside many years earlier and he was claiming arrears of salary. The question was of limitation, whether it should be calculated from the date of the order by which his removal from service was set aside. The Supreme Court held that once the order of dismissal or removal had been set aside, the public servant concerned was unlawfully prevented from rendering service. That being so, salary due to the public servant must be deemed to have accrued from month to month. The period of limitation commences to run when the wages became payable to him and not when the order setting aside his removal was passed. In view of this, the Supreme Court substantially upheld the decision of the High Court, awarding wages for 3 years prior to the date of the suit as being within the period of limitation. Shri Rishi Prakash, therefore, submitted that the present application should not be rejected on the ground of limitation or laches.

We have considered the matter very carefully. There it can be no dispute about the proposition that an ab initio void order can have no affect whatsoever. But it has to appear on the face of it to be an void order. In the present case, it is contended that the order of dismissal was passed by an Authority lower than the authority which appointed the applicant. In order to determine whether this contention is right, it is necessary to go into the facts in detail. It is a matter to be adjudicated upon after hearing arguments on both sides. It is not evident on the face of the <sup>if order that the</sup> authority who passed the order of removal

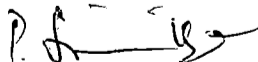
P. S. Singh

M

was lower in rank from the appointing authority. <sup>who</sup> the appointing authority is in this case <sup>has</sup> itself to be ascertained.

In this connection, we are of the view that the judgments <sup>H</sup> in Kulbhushan's case or in the other case<sup>s</sup> cited above, have no bearing on the facts of this case. In Kulbhushan's case, the jurisdiction of Civil Courts was specifically barred by Statute and so there was no difficulty in <sup>holding</sup> ~~ascertaining~~ <sup>H</sup> that the Civil Court judgment was ab initio void. In Jai Chand Sahney's case, the order of removal had actually been set aside and had ceased to exist. Once the order of removal had been set aside, what remained was only payment of wages to the Government servant concerned and for that purpose the High Court and the Supreme Court took the starting point of limitation as the date on which salary became payable to him and was not paid. It was in this manner that the petitioner was allowed wages for three years. That decision has, therefore no application here.

On the other hand, a person who wants to pursue his rights has to be <sup>H</sup> diligent and has to seek his remedy in Court within a reasonable time. If he fails to pursue his rights diligently and in time, the Courts cannot take up for adjudication a stale matter and reopen things which have become settled many years earlier. The Administrative Tribunals Act, 1985 prescribes a period of limitation for filing applications before this Tribunal. Several Benches of this Tribunal have held that no application can be entertained by this Tribunal, in respect of a cause of action that arose more than 3 years prior to the date on which it was established. In other words, causes of action that arose prior to 1.11.1982 do not lie within the jurisdiction of this Tribunal. From what we have stated earlier, the cause of action in this case


P. S. 

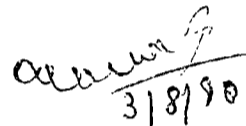
...5/-

5

arose as early as in 1975. Merely because a representation -  
and that too not a statutory representation -was made by  
the applicant to the Commissioner of Police in 1989, it cannot  
be said that the cause of action remained <sup>alive</sup> till that date.  
We are supported in this finding by the judgment of the  
Supreme Court in S.S. Rathore Vs. State of M.P. AIR 1990 SC  
1055. Thus, the cause of action sought to be raised in this  
application is so stale that it cannot be considered by  
us and moreover it falls outside the jurisdiction of this  
Tribunal having arisen more than three years prior to the  
date of establishment of this Tribunal.

In view of the above, the application is rejected  
at the stage of admission itself.

  
( P. Srinivasan )  
Member(A)

  
( P.K. Kartha )  
Vice-Chairman

03.8.90.