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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.2458/91

New Delhi: this the 10th day of April, 1997.

HON'BLE MR.S.R.ADIGE, MEMBER(A).

HON'BLE DR.A.VEDAVALLI, MEMBER(J).

Ashok Kumar,
S/o Sh.Puran Mal,
Ex. Warder,
Central Jail,
Tihar,
New Delhi

..... Applicant.

(By Advocate: Shri G.D.Bhandari).

Versus

1. Inspector General of Prisons,
Central Jail,
Tihar,
Delhi.

2. Lt. Governor,
Union Territory of Delhi,
Raj Niwas,
Delhi

..... Respondents.

(By Advocate: Shri Arun Bhardwaj).

JUDGMENT

BY HON'BLE MR.S.R.ADIGE, MEMBER(A).

In this OA filed on 21.10.91, applicant impugns respondents' order dated 29.10.97 (Annexure-A1) terminating his services under Rule 5(1) CCS(T.S) Rules, 1965.

2. Respondents have taken the initial plea of limitation pointing out that no sufficient cause has been shown by applicant to condone the delay in filing the OA. Applicant in para 3 of the OA claims that the OA is within the limitation period prescribed under Section 21 A.T.Act and a MiscPetition for condonation of delay has been filed by him for any delay caused in filing the OA, in which while admitting that bar of

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limitation does apply, it has been contended that as applicant is seeking benefit of judgments in O.A.No.1868/87 G. Gochait Vs. UOI and O.A.No.1641/87 Satyabir Singh Vs. UOI decided on 23.11.90 and 15.2.91 respectively, no limitation is applicable (if same relief granted in other judgments is sought) as has been held in 1990(1) SLJ 212; 1990(1) ATL 225 and 1990 (1) ATR 22. In the rejoinder also applicant has sought to rebut respondents' challenge to the OA being barred by limitation, by arguing that applicant is seeking the benefit of judgment orders in O.A.No.1869/87 G. Gochait Vs. UOI and others decided on 23.11.90 and O.A.No.1641/87 Satyavir Singh Vs. UOI & others decided on 15.2.91 and the bar of limitation does not apply if benefit of judgment orders is prayed.

3. This OA came up for hearing on 26.8.96. Shri G.D.Bhandari appeared for applicants. None appeared for respondents although we waited till 3.35 p.m. that day, and despite that date being fixed for hearing in presence of both sides on the previous date (8.8.96). Accordingly, Shri Bhandari was heard and orders were reserved. Thereafter respondents filed M.A.No.2449/96 on 7.10.96 stating that respondents' counsel was suddenly taken ill when the case was called out for hearing on 26.8.96 and since the case involved important points and related to termination of service of applicant, they sought one last chance for presenting their case.

4. Notice was ordered to be issued to the applicant on the MA and learned counsel for applicant as well as for respondents were heard on the M.A. on 23.12.96.

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5. Firstly we shall address ourselves to the preliminary objection raised by respondents that the OA is hit by limitation u/s 21 A.T. Act. We note that against impugned order dated 29.10.97 applicant represented on 1.12.97 (Annexure-A5). Under Sec.20 (2)(b) A.T. Act applicant should have waited six months for disposal of that representation i.e. upto 1.5.88, and upon its non-disposal, filed the present OA within 1 year of 1.5.88 i.e. on or before 1.5.89 in accordance with Section 21(1)(b) A.T. Act. This O.A. has however been filed on 21.10.91 and is therefore clearly time barred and hit by limitation under section 21 A.T. Act more so in the absence of any cogent reasons to explain the delay.

6. In so far as applicant's contention that limitation does not apply if benefit of a judgment order is prayed is concerned, the Hon'ble Supreme Court's judgment in Bhoop Singh Vs. UOI JT 1992 (3) SC 322 is clear on the point that judgments and orders of Courts in other cases do not give cause of action, and the cause of action has to be reckoned from the actual date. Hence rulings relied upon by applicant do not help him.

7. Applicant also cannot contend that his subsequent representation dated 19.9.91 (Annexure-A6) gives him fresh cause of action, because in S.S. Rathore Vs. State of M.P. AIR 1990 SC 10, the Hon'ble Supreme Court has held that repeated unsuccessful representations do not enlarge the period of limitation. In the present case therefore limitation has ^{to} be reckoned from applicant's representation dated 1.12.87.

8. In the present case therefore respondents'

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preliminary objection is sustained that the OA is hit by limitation under sec.21 A.T.Act.

9. There may have been a case for condoning the delay if the case was otherwise unassailable on merits. The respondents in their reply have stated that applicant was not maintaining proper discipline in as much as he was coming late for duties, absenting himself from duty; was not attending the alarm; and on many occasions was found asleep with his belt and shirt off. They state that he was given an opportunity by issuance of memos from time to time to improve his conduct and perform better, but he failed to maintain the requisite discipline and they were therefore compelled to dispense with his services by impugned order under Rule 5(1).

10. Applicant has denied these allegations in rejoinder but we notice that on 18.4.87 applicant was found to have been absenting himself from duty since 14.4.87 (Annexure-A7); on 30.7.87 a memo was issued to him for coming late on duty on 15/16.7.87 (Annexure-A4) and on 19.8.87 he was issued a Memo (Annexure-A2) that on 9.8.87 at 10-30 a.m. when the alarm was sounded he did not present himself in the jail as per Jail Manual.

11. In State of U.P. Vs. K.K.Shukla 1991(1) SCC 691 the Hon'ble Supreme Court has held

"A temporary Govt. servant has no right to hold the post. Whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Govt. servant. If the services of a temporary Govt.

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servant is terminated in accordance with terms and conditions of service, it will not visit him with any evil consequences."

12. Again in Governing Council of Kidwai Memorial Institute of Oncology Bangalore Vs. Dr. Pandurang Godwalkar and another -1992 (4) Supreme Court Cases 719 after noticing their judgment in Anoop Jaiswal Vs. GOI 1984 (2) SCC 369, the Hon'ble Supreme Court have held:

"If an employee who is on p-robatation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment."

13. Nothing has been shown to establish that the applicant was not a temporary employee. The impugned order terminating the services of the applicant u/R 5(1) was an order simpliciter which casts no stigma upon him. It is also clear that the applicant's services over a period of time were found unsatisfactory owing to unauthorised absence from duties; late coming; failure to attend to alarm etc. Applicant has alleged that he was being harassed because he

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refused to submit to illegal commands of his superiors and because he refused to carry out certain unofficial services which he was asked to perform, but there is nothing on record to show that he made any complaint to the higher authorities on this score to substantiate this allegation. Similarly his contention that he was not provided any accommodation in the jail complex, cannot be termed as a valid reason for failing to perform his duties when required to in the jail premises.

14. Under the circumstance, we have no reason to doubt that the applicant, by his general lack of devotion of duty, rendered himself unsuitable for continuance in service in the public interest. It is clear from Godwalkar's case (Supra) that the principles of tearing of the veil which the applicant's counsel asks to do, would arise only where the court is satisfied that there were direct nexus between the charge levelled and the action taken. In the present case, no specific charge has been levelled against the applicant, and the memos issued to him from time to time with respect to various acts of omission and commission on his part, were serious warnings to him to display more devotion on duty, but despite these memos, his general conduct over a period of time did not show improvement.

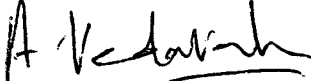
15. Applicant has relied on Gochait's case (Supra) and Satyabir's case (Supra). In Satyabir's case (Supra) the Tribunal has categorically held that he was terminated because of specific act of misconduct of being in possession of smack while


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on duty on 1.7.87, and instead of initiating a departmental enquiry against him for specific misconduct, the respondents had resorted to the shortcut method of terminating his services under Rule 5(1). Clearly therefore, the present case before us is distinguishable on facts on Satyabir's case (Supra) and hence the ratio of that judgment would not be applicable to the facts of this case. Copy of the judgment in Gochait's case (Supra) has not been annexed and it has been stated whether the said case is a reported one.

16. In the result, apart from the OA being barred by limitation, even on merits we see no good ground to interfere with the impugned order. The OA is therefore, dismissed. No costs.


(DR.A.VEDAVALLI)
MEMBER(J).


(S.R.ADIGE)
MEMBER(A).

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