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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.
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Date of Order: 10.02.1993

RA 346/92 in
OA 2397/91

B.D. ARYA VS. UNION OF INDIA & ORS.

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The applicant of the above OA filed the Review against the judgement dated 15th October, 1992, by which the reliefs claimed in the OA for quashing of the order of dismissal dated 22.7.82 as well as the consequential relief that the applicant be reinstated in the service and be awarded arrears of pay and allowances for the period for which the applicant was out of job were disallowed. The Bench held that the claim of the applicant is barred by limitation and only allowed the relief to the applicant with respect to the retention of the allotted railway quarter for a period of three months from the date of the order i.e. 15.10.92 and at the same time disallowing the relief for quashing the notice dated 8.8.91.

A notice was issued to the parties for hearing of the Review Petition and the same was heard at length on 5.2.93.

The first contention of the learned counsel for the applicant is that he has moved an application for condonation of delay and the same has not been disposed

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of while disposing of the O.A. Though it is a fact but at the same time by implication the MP for condonation of delay stands disposed of by the said judgement, In view of the fact that the applicant in para-3 of the OA has specifically mentioned that the OA is within limitation. It is obvious, therefore, that the aforesaid MP was not pressed by the applicant at the time of the hearing of the OA. Even otherwise the contention of the learned counsel during the course of the hearing of the Review Petition has been that the reliefs claimed in para 8.1 to 8.3 are barred by limitation and for that the MP for condonation of delay has been moved. It is further contended that relief claimed for arrear of salary, pay and allowances is not barred by limitation because the order of dismissal from service dated 22.7.82 is a void order.

The learned counsel for the applicant placed reliance on the Full Bench decision of CAT in Dheeru Mohan Vs. UOI (1991 (2) 283 ATJ), which held that an application claiming arrears of salary or an appropriate relief without assailing a void order cannot be dismissed as barred by limitation. We have given careful consideration to the above contention and find that there is no force in the same. The law laid down in the case of State of Punjab Vs. Gurdev Singh (ATC (1) 297 SC) clearly goes to show that even the void order required a declaration to be declared as such. Secondly,

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the violation of the rule of Procedure does not make the resultant order as void. In the present case, the applicant's counsel has argued that after conviction of the applicant by the Criminal Court the applicant should not have been dismissed until the result of the first appeal against the conviction filed by the applicant is known or when the appeal itself was not filed against the conviction within the period of limitation and has become barred by time.

Reliance has been placed by the learned counsel on the Railway Board Circular No.E(50)RG/6/9 dated 30.10.50. The above circular provides that the dismissal from service of a Govt. servant on account of conviction by a court of law should be issued by the Competant Authority as soon as possible after the first appeal has become time barred or it has been preferred and dismissed. The Hon'ble Supreme Court, in the case of Sunil Kumar Vs. State (1980 (3) SCC 304) held that the violation of the rule of Procedure does not vitiate the inquiry proceedings. However, there is a circular of Railway Board No.E-50-RG/6-6 dated 7.7.52, which lays down that each case should be examined on its merit and order imposing the appropriate penalty passed, only where the charges against the employee shows that he was guilty or moral turpitude or of grave misconduct, which is likely to render his further retention in service undesirable or contrary to public interest. The applicant was involved

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in a criminal case under Section 161 of the IPC and Section 5(2) read with Section 5(1)(D) of Prevention of Corruption Act, and was sentenced to R.I. for one year under Section 161 I.P.C. and for two years under Section-5(2) read with Section 5(1)(D) of the said Act. Though the applicant has filed an appeal against the said judgement but the fact remains that he has not assailed the order of dismissal from service dated 22.7.82 and it was only for the first time in the present OA though his departmental appeal was rejected as far back as on 8.11.82. In the judgement under review all these points have been considered at length. During the course of the hearing all these arguments have been heard. The learned counsel for the applicant only reiterated the same arguments which he advanced earlier. The main emphasis of the learned counsel for the applicant has been that the relief claimed in para 8.4 of the OA was for pay and salary on the assumption that the order of dismissal from service dated 22.7.82 is a void order. In fact, the relief claimed in para 8.4 of the OA is only consequential to the main relief of reinstatement, as prayed in para 8.3, which was dependent on the relief as claimed in para 8.2 of the OA. Thus, no separate finding, in the circumstances of the case, was required to be given in respect of claim in para 8.4 of the OA.

From another angle also it is apparent from the averments made in the OA that the main relief claimed by the applicant was for quashing the order of dismissal

dated 22.7.82. The position which existed on that day still continues and it is informed that the appeal against the conviction before the Delhi High Court is still pending. Thus, there is no change in the circumstances and no fresh cause of action has arisen to the applicant. Nor it is alleged anywhere in the Review Application or in the OA.

In view of the above facts and circumstances, we find that there is no force in this Review Application and the same is dismissed leaving the parties to bear their own costs.

J.P. Sharma
(J.P. SHARMA) 10/2/93
MEMBER (J)

P.C. Jain
(P.C. JAIN)
MEMBER (A)