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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1932/2004

New Delhi this the 22nd day of March, 2005

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.K. Naik, Member (A)**

Baisakhi Ram
S/o late Shri Ram Pratap
R/o Bhagwati Garden, Siddhartha Place
House No. 321, Near Kala Pathar Mandir,
Near Kakrola More, Jain Road,
New Delhi.

-Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India
Through its Secretary
Ministry of Defence,
South Block, New Delhi.
2. Director General, EME (Civil)
B Block, Army Head Quarter
DHQ, PO-New Delhi-110011
3. Commanding Officer,
Station Workshop EME,
Delhi Cantt., New Delhi-110010.

-Respondents

(By Advocate: Shri R.P. Aggarwal with Shri Ravinder Sharma)

O R D E R

Hon'ble Shri Shanker Raju, Member (J)

Applicant impugns respondents' reply to the legal notice dated 24.7.2004 whereby his request for re-consideration of matter in quashing the punishment has been turned down. Applicant seeks stepping up of pay notionally with all consequential benefits with payments of arrears for a period of three years prior to filing of the OA.

2. Applicant who was civilian in defence was imposed a punishment of reduction in rank by an order dated 17.6.63. As a consequence thereof one Som Pal and Guru Charan Singh became senior to him.

3. Applicant earlier approached this Court in OA-1940/98 wherein despite his absence, matter was proceeded ex-parte. MA-2758/99 for bringing an amendment to assail penalty of reduction in rank was turned down on the ground that whereas applicant has admitted his guilt vide his representation dated 14.6.63 and in pursuance of penalty order dated 17.6.63, he made a representation to withdraw the punishment and as the punishment was entered in a service book which he had on inspection signed on 16.7.73 & 2.7.79. It was held that the punishment was within his knowledge and has tried to mislead the Court. OA-1940/98 was dismissed on 24.10.2000. Against the aforesaid order, applicant preferred CW No.3610/2001 before the High Court of Delhi and by an order dated 31.3.2003 on the ground that a proposal on punishment under Rule 15 of the Civilian in Defence Service (Classification, Control & Appeal) Rules 1952 was not followed. The punishment is a nullity and void ab initio. As such, W.P. was withdrawn on 31.3.2003 with liberty to prefer an application. Hence the present OA.

4. Learned counsel of the applicant states that though second show cause notice on penalty has been dispensed with, in the light of Constitution Bench decision of the Apex Court in **Managing Director, ECIL Vs. B. Karunakar**, JT 1993 (6) SC 1 yet Rule-15 ibid which was in vogue was not followed when order of punishment was passed is a nullity and such an order needs declaration and no limitation is attracted. Reliance has been placed on five judges Bench decision of the Apex Court in **State of Madhya Pradesh Vs. Syed Qamarali** 1967 (1) SLR (S.C.) 288.

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5. On the other hand, respondents' counsel vehemently opposed the contention and stated that the OA is not only barred by limitation but also by res-judicata and liberty sought in CWP(supra) cannot be de hors the rules. It is also stated that applicant was aware of the punishment and as he was reduced in lower post on 16.7.63 and as such he lost his seniority. Whereas others were promoted, no revision of pay can be sustainable.

6. On careful consideration of the rival contentions of the parties and perusal of the material on record, limitation is regulated under Section 21 of the Administrative Tribunals Act 1985. Section 21 (2&3) provides as follows:-

"2. Notwithstanding anything contained in sub-section (1), where-

- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) No proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period".

7. If one has regard to the above, any cause of action which has arisen during the period of three years immediately preceding the date, application can be entertained if it is within a period of six months of a maximum time limit of one year from the date of making a representation against such order but the aforesaid section bars cognizance to be taken by the Tribunal of the matter which has arisen beyond three years of its inception, i.e., beyond 29.11.1982.

8. A Constitution Bench of the Apex Court consisting of seven judges Bench in **S.S. Rathore Vs. State of Madhya Pradesh** 1990 SCC (L&S) 50 that in so far as limitation under A.T. Act is concerned, Article 58 of the Limitation Act, 1963 would apply which provides declaration to be sought within three years when a right to sue first accrues. In this view of the matter, the Apex Court has come to a conclusion that regarding limitation under Section 21 of the AT Act prescribed a period of one year and Article 58 may not be revocable in view of such limitation.

9. The decision in Syed Qamarali's case (supra) pertains to a suit filed before the Court and in that prospectus it was held that the decision in nullity would not attract limitation. The same has no application in the conspectus of the present OA.

10. On careful consideration of rival contention of the parties, we are of the considered view that when a specific provision provides for limitation, a general observation which is by a Bench of lesser corum would not be applicable and rather the decision in S.S. Rathore (supra) shall hold the field. It is no more res integra that the applicant on knowledge of the punishment imposed upon him on 17.6.63 as Section 21 (2) of the AT Act clearly bars taking cognizance by the Tribunal where a cause of action arisen beyond preceding three years of its establishment and in the light of the fact that there is no application for condonation of delay. The grievance raised by the applicant is beyond jurisdiction of this Court and the claim highly belated.

11. In the result, OA is dismissed but without any order as to costs.

S.K. Naik
(S.K. Naik)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

cc.