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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 602/92
M.A. NO. 661/94

New Delhi this the 21st day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri Jai Kishan
House No. 49, Vill. Gargi
Jharia Maria, Lajpat Nagar,
New Delhi.

... Applicant

By Advocate Shri J. P. Verghese

Versus

1. Union of India,
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.

2. Director General,
Health Services,
Ministry of Health and
Family Welfare,
Nirman Bhawan,
New Delhi.

3. Medical Superintendent,
Lady Hardinge Medical College,
New Delhi.

... Respondents

None for the Respondents

O R D E R (CRAL)

Hon'ble Mr. Justice V. S. Malimath -

The petitioner was a temporary employee who came to be placed under suspension vide order dated 11.9.1980 (Annexure-III) on the ground that a criminal case was pending against him. In exercise of the powers conferred by sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 his services were terminated by order dated 5.11.1980 (Annexure-I). The appeal against the said order

was also dismissed on 28.1.1981. He, however, went on making representations to the Minister who has on more than one occasions conveyed to the petitioner that his representation is under examination. The petitioner submitted before the Minister that he has been acquitted from the criminal charge and, therefore, should be reinstated. The petitioner was asked to furnish a copy of the judgment. He says that he had furnished the same. As no reply was given by the Minister, he ultimately moved the authorities for making a reference under Section 10 of the Industrial Disputes Act. That application of the petitioner was dismissed on the ground that it was highly belated request the dispute having arisen nearly ten years back. The said order was made on 9.11.1990. The present application has been filed on 5.3.1992 in which he has prayed for quashing of the order of termination dated 6.10.1980 and for consequential benefits.

2. The narration of the above facts is sufficient to hold that we have no jurisdiction to entertain this application primarily for the reason that the cause of action for quashing the order of termination dated 6.10.1980 accrued more than three years prior to the establishment of the Central Administrative Tribunal. The petitioner cannot call in aid the representations which he went on making to the Minister or the attempt he made for getting the dispute referred to the Industrial Disputes Tribunal invoking Section 10 of the Industrial Disputes Act. We say so because this is not a case in which the petitioner is seeking a mandamus to refer his case under Section 10 of the Industrial Disputes Act to the Industrial Disputes Tribunal.

The question as to the correctness of the orders of the authorities declining the petitioner's case being referred to the Industrial Disputes Tribunal does not arise in this case. Even assuming that he could have made such a request, it is obvious that that is hopelessly time barred.

3. The principal contention put forward by the petitioner on merits is about his acquittal by the criminal court. The respondents have stated that the petitioner has not been acquitted. They have stated that the petitioner was let off on probation under the Probation of Offenders Act. Letting off under the provisions of the said Act is only when there is a conviction. A person who is held guilty by a criminal court is under certain circumstances let off on probation instead of making suffer imprisonment, by the criminal court. Hence, it is asserted by the respondents, that as the petitioner was let off on probation would only show that he was convicted but instead of making him undergo sentence of imprisonment, he was let off on probation. Hence, it is not possible to agree on the pleadings that the petitioner is right in his assertion that he was acquitted by the criminal court. The respondents having denied that the petitioner was acquitted, the burden was entirely on the petitioner of establishing the case pleaded by him that he was duly acquitted. He has not produced even the copy of the judgment of the criminal court. Learned counsel for the petitioner submitted that in the light of the

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pleadings he would proceed on the basis that the petitioner has been let off on probation and not acquitted. If that is so, the fact that he was convicted remains unchallenged. In that case the very basis for the petitioner's case for reinstatement on the ground that he was acquitted of the criminal charge disappears.

4. Looked at from any angle, there is no case for the petitioner's reinstatement. This petition, therefore, fails and is dismissed. No costs.

Adige
(S. R. Adige)

Member (A)

Malimath
(V. S. Malimath)
Chairman

/as/