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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

O.A.No. 2033/93

Date of decision: 1.10.1993.

Shri Vipin Kumar

Petitioner

vs

Delhi Administration  
(through Commissioner of Police)  
Police Headquarters, MSO Building  
New Delhi.

Respondents

Coram: Hon'ble Mr. J.P. Sharma, Member (J)  
Hon'ble Mr. S.R. Adige, Member (A)

For the petitioner:

Shri Shanker Raju, Counsel

For the respondents:

None

JUDGEMENT

Delivered by Hon'ble Mr. J.P. Sharma, Member (J)

This is an application under Section 19 of the Administrative Tribunal Act 1985 by which the services of the applicant Shri Vipin Kumar were terminated by an order simpliciter dated May 10, 1990 passed under Section 5(1) of CCS (Temporary Service) Rules, 1965. The applicant made a representation against the same to the Commissioner of Police, Delhi, which was rejected by the Order dated July 27, 1990.

The application under Section 19 has been filed on September 24, 1993 praying for quashing of these orders of May 10, 1990 and May 27, 1990 Annexure A1, Annexure A 3. The applicant has also prayed that the communication which was made by Joint Secretary, Union Territory Shri R.R. Shah in the Ministry of Home Affairs to Shri Shanti Tyagi, Member of Parliament, dated March 10, 1993 (Annexure A-6) be also quashed.

We have heard the learned counsel on limitation. Under Section 21 of the Administrative Tribunal Act 1985 an aggrieved party has to approach the

Tribunal within one year from the date of the order of which he is aggrieved. In the present case the Order was passed against the applicant of termination of service on May 10, 1990 and his representation against the same was dismissed by Commissioner of Police in July 27, 1990. The applicant, therefore, should have filed this application before July 1991. The applicant cannot get any benefit of the communication between a Member of Parliament and Joint Secretary of Union Territory, Delhi dated March 10, 1993 informing Shri Tyagi that the appeal/memorial preferred by the official was rejected by the Commissioner of Police/Lt. Governor, Delhi. This does not give any cause of action to the applicant nor it goes to show whether any Order was passed on any of the representation made to the Minister of State (Home) as revealed by the said letter.

The learned counsel for the applicant argued that an Order of Termination under Rule 5(1) of the CCS (Temporary Service) Rule 1965 give the right to the person to make a representation to the Administrator of the Union Territory. He has referred to the Swamy Compilation of the aforesaid rules and pointed to commentary in note 8. The case of the applicant was already considered by the Commissioner of Police. There is no provision under the said rules to make any further representation as in the present case the procedure adopted by the applicant of submitting a memorial to the President of India. This memorial also was submitted in September 1991. The Impugned Order challenged is of July 1990. It was not open to the applicant to wait for a period more than one year to prefer this memorial if at all there was any supposed provision available to file the same. Even it is

to be guaranteed that a memorial was preferred to the President in September 1991 then the applicant after waiting for six months should have filed this application within one year thereafter. In any case the said one and a half year was in March 1993 which the present application was filed on September 24, 1993 and that too not accompanied by any prayer to condone the delay in assailing the Order of termination of service of May 1990 upheld by the Commissioner of Police in July 1990.

In the case of SS Rathore Vs. State of Madhya Pradesh AIR 1990 SC P 10 the Hon'ble Supreme Court held that the cause of action shall be taken to arise not from the date of the original adverse order, but from the date when the order of the higher authority, where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made though the remedy has been availed of, a six month period from the date of preferring of the appeal, or making of the representation, shall be taken to be the date when the cause of action shall be taken could have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Further it has been provided in Para 22 that in every case until the appeal or representation provided by law is disposed of accrual of cause of action shall first arise when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the Establishment shall not be taken into

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consideration in the matter of fixing limitation. In view of the above authority the contention of the learned counsel that the cause of action started when the MP was informed by the Joint Secretary, Union Territory in the Ministry of Home Affairs. The above reply given in March 1993 would not cover the matter to treat the present application within a period of limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

Again the Hon'ble Supreme Court in the case of State of Punjab Vs. Gurdev Singh reported in (1991) 4 SCC P 1 it has been held that the party aggrieved by an order has to approach the court for relief for declaration, that the order against him is inoperative and not binding upon him, within the prescribed period of limitation, since after the expiry of the statutory time limit the court cannot give the declaration sought for. Thus the present application is hopelessly barred by time.

The learned counsel for the applicant was also asked whether any application for condonation of delay of application has been moved but it has been argued that the application has been filed within limitation.

The learned counsel, however, referred to the authority that if the representation is considered in a time barred case the limitation is revived [1989 (11) ATC 743 Adit Harne Shwaran Vs. Union of India]. This is not the case here. The learned counsel has also referred to B.R. Anand Vs. Union of India 1991 Vol 15 ATC P 45. This authority also does not apply to the present case as

there was no memorial provided under law. The learned counsel has also cited certain authorities\* which do not help the case of the applicant.

In view of the above facts and circumstances we find that the present application is barred by time and is, therefore, dismissed at the admission stage itself. No costs.

*Arfaque*  
(S.R. Adige)

\*Mittal\*

Member (A)

*Sharma*

(J.P. Sharma)

Member (J)

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\* Collector Vs. Mst. Katiji AIR 1987 SC 1353 "Court should adopt liberal approach in condonation of delay".

1989(10) ATC 506 (AT K. Thimmapa Vs. Chief Engineer "Delay in filing application is to be condoned in a termination case, due to poor financial condition of application".

1991 (16) ATC 658 Bankim Chaudhary Vs. Union of India "Application against illegal order - Delay to be condoned".

1992 (3) SLJ CAT 543 Nand Lal Vs. Union of India, Application to be considered on merits".