

Central Administrative Tribunal, Allahabad.

Registration O.A.No.371 of 1986

Govind Narain Saxena ... Applicant

Vs.

Union of India and 4 others ... Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This petition u/s.19 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act) was filed by the applicant on 30.7.1986 for declaring the order dated 23.9.1981 issued by the Sr. Divisional Commercial Superintendent, N.E.Railway Izatnagar- respondent no.4 transferring him from Lalkuan station to Samastipur Division of the N.E.Railway on the ground that the order was not communicated to him. He had further prayed for payment of his salary and allowances due to him from 25.3.1979 to 7.1.1985 and for a further direction to the respondents that they should promote him in accordance with avenue of his promotion chart.

2. The facts stated by the applicant in his petition are very much in brief though the history of his case is very much chequered. It appears from the material placed before the Tribunal that the applicant while posted as Travelling Ticket Examiner (for short TTE) in the N.E.Railway at Kanpur remained under suspension from 9.5.72 to 10.5.72 on the charge of certain misconduct and in the long drawn disciplinary proceedings initiated against him, he was removed from service on 26.3.1979. The order of his removal from service was, however, set aside in appeal by the Divisional Railway Manager (for short DRM) Izatnagar-respondent no.2 on 17.7.1979 and in its place the punishment of reversion to the post of Ticket

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Collector for a period of one year with loss of seniority was substituted. The intervening period of absence was ordered to be treated as leave due and the applicant was posted at Lalkuan. He was again suspended on 10.10.79 in connection with a criminal charge against him. Though the said suspension was revoked on 21.4.80, the applicant did not resume his duty. The appellate order dated 17.7.79 was quashed by the High Court of Judicature at Allahabad on 1.8.83 in Writ Petition No. 8336 of 1979 filed by the applicant and it was held that the petitioner was denied the reasonable opportunity of his defence contemplated by Art.311 of the Constitution.

3. It is alleged that after the disposal of the writ petition, the applicant made an application on 16.11.1983 to the Divisional Superintendent (C) Izatnagar, copy annexure 3 to the petition, for allowing him duty as TTE at Bareilly City with retrospective effect from 26.3.1979. Being unsuccessful in getting his posting at Bareilly, the applicant made a representation on 21.1.1984, copy annexure 4, to the respondent no.3 for taking him on duty with retrospective effect. It was stated in the representation that he had already met the DRM on 14.12.1983, 21.12.83 and 4.1.84 with the same request but no heed was paid. On 23.9.81, the applicant was transferred from Izatnagar Division to Samastipur Division of N.E.Railway vide copy of order annexure 5 but he did not join the duty there and again approached the High Court by filing a contempt petition (no.159 of 1984) for disobeying its order in the earlier petition. The said petition was dismissed on 12.11.84 vide copy annexure 12 with the observation that the petitioner should approach the railway authorities at Samastipur to join his duty as TTE. After this order, the applicant resumed his duty for the first time on 8.1.85 after his suspension.

4. The allegation of the applicant is that he was placed under suspension even from 9.5.1972 to 5.10.1972 and after ^{the} setting aside of the order dated 26.3.1979 of his removal from service he had joined his duty at Lalkuan on 31.7.1979 but he was suspended again w.e.f. 10.10.1979 and he was paid subsistence allowance only upto April 1980 and since then nothing was paid upto 8.1.1985, the date of resumption of his duty. It is alleged that the applicant had made an application on 21.1.1984 for paying him the arrears of pay but when no reply was received, he represented to the respondent no.3 on 7.5.1985, copy annexure 7, for implementing the judgment dated 1.8.1983 of the High Court in the Writ Petition and to give him posting and arrears of pay. As the applicant could get only the posting and not the arrears of pay, the present petition was filed for the reliefs stated above.

5. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Asstt. Personnel Officer Izatnagar, it has been stated that after revocation of the suspension of the applicant on 21.4.1980, he did not report for duty and simply sent applications for the enhancement of his subsistence allowance. Even after the decision of the writ petition of the applicant by the High Court, the applicant did not report for duty and only after the dismissal of his contempt petition, he had reported for duty at Samastipur on 8.1.1985. The applicant is, therefore, not entitled to any salary for the period in which he did not do any work. It was admitted that after the revocation

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of his suspension on 21.4.1980 till he resumed his duties at Samastipur in January 1985, no wages were paid to the applicant on the ground that under the law he is not entitled to claim any wages for this period on account of his not doing any work. The applicant did not exhaust departmental remedies before approaching this Tribunal and his claim is highly belated and is barred by law of limitation prescribed by S.21 of the Act. It was also stated that the applicant was not available at his headquarters and he had avoided the service of various orders of revocation of suspension and his posting etc., as he was simply interested in creating the ground for getting salary without doing any work.

6. The case of the applicant pleaded in his rejoinder is that the order of revocation was never served on him and he remained under suspension upto 8.1.1985. The application/representation made by him for posting and payment of his dues remained undisposed of. As he was reinstated only on 8.1.1985, the question of his joining the duty earlier did not arise. The respondents should not be allowed to take the technical pleas and his petition is maintainable and is well within time.

7. Before considering the case of the applicant on merits, we will like to examine the question of limitation raised on behalf of the respondents. S.21 of the Act states that a Tribunal shall not admit an application /

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unless it is made within ~~the~~ period prescribed by this Section. For the sake of convenience, we will like to reproduce below S.21 of the Act :-

"21. Limitation.- (1) A Tribunal shall not admit an application,-

- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made ;
- (b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(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 this 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."

8. Section 3 of the Limitation Act (36 of 1963) which has indisputably no application to the

cases instituted before the Tribunal, provides that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence. Thus, according to this section, no relief can be granted by a Civil Court in any suit, appeal or other cases instituted after the prescribed period of limitation.

The same intention of the law makers follows from a reading of section 21 of the Act which clearly provides that the Tribunal shall not admit an application unless made within the prescribed time. In other words, an application made u/s.19 of the Act after the prescribed period of limitation has to be dismissed at the admission stage and the Tribunal is not required to examine the merits of the claim made therein. Of course, in proper cases, the power of condonation can be exercised by the Courts u/s.5 of the Limitation Act and the Tribunal under sub-section (3) of section 21 of the Act.

In the present case, as the applicant has not made any request for condonation of delay, the question of condonation is not to be gone into. The various parts of the Schedule to Limitation Act (No.36 of 1963) prescribe the periods of limitation and ~~the~~ column no.3 of the Schedule prescribes the time from which the period begins to run. In most of the cases, the period of limitation prescribed under the Schedule is to run from the date the cause of action accrues and in other cases from the dates of certain events. On the other hand, under the provisions of S.21 of the Act, the limitation has to run from the date of the final order

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and in other cases when there is no final order, the applicant is first required to make a departmental appeal, if provided, or a representation in case no such appeal is provided, and the limitation will then start running after the expiry of 6 months from the date of the making of the appeal or representation unless the appeal or representation is disposed of in the meantime.

9. There appears to be one basic difference between the provisions of Limitation Act and the limitation prescribed u/s.21 of the Act. Under the provisions of the Limitation Act, a cause of action may accrue without any final order or without making any appeal or representation, for example, the cause of action for salary will accrue to each employee on the expiry of every calender month and in case the salary is not paid and the proper legal step is not taken within the statutory period prescribed under the relevant law, the remedy will be barred by limitation. This is not so in the cases governed by Act XIII of 1985 and if an employee is not paid his salary or any other allowances on the due date and no final order debarring him from getting such payment is made, the cause of action for filing an application u/s.19 will not accrue or the limitation will not start running unless he makes a representation or appeal, if provided, for the same. Thus, even after the expiry of several years, the claim to be preferred u/s.19 of the Act will not be time barred in the absence of any final order or representation made therefor and the aggrieved person can approach the Tribunal at any time within ^{the statutory period &} ~~18 months~~ after making a represen-

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tation and the only exception to this rule is that in case the claim had already become time barred under the Limitation Act (no.36 of 1963) before the establishment of the Tribunal, the same will not revive after its establishment. This intention of the legislature is clear from the non obseute clause used in sub-section (2) of S.21, which specifically covers clauses (a) and (b) both of sub-section (1). We are further of the view that though it is generally complained that S.21 is not happily worded, it cannot be properly appreciated without keeping the provisions of S.20 in mind. An aggrieved person is expected to approach the Tribunal only against ^{some &} final order and if a statutory appeal lies even against such order, he should first file the appeal and wait for six months for its decision. In case no appeal lies he is under no obligation to file a representation. On the other hand, if there is no final or other order at all and ^{omission 1} the employee is aggrieved by the negligence, or inaction of his departmental authorities, he must make a representation inviting the attention of the authorities to the consequences or the likely hardships suffered by him and should wait for six months for its outcome. In case his grievance is not redressed during this period, he acquires a right to file an application before the Tribunal for suitable relief. It is not correct to say that the representation contemplated by S.20 means a statutory representation provided under some laws or rules. In our opinion, this representation, when necessary, is ^{as discussed above &} ^{by way of} a substitute for the legal notice provided ^{envisaged} u/s.80 of the Code of Civil Procedure and is necessary to move the official machinery before dragging the department

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to the Tribunal and the cause of action to approach the Tribunal will not accrue in the absence of a final order unless a representation provided by cl.(b) of sub-section (2) of S.20 of the Act is made. We will further like to make clear that repeated representations are not contemplated under the law and if an aggrieved person after waiting for six months of his making the representation does not file the application u/s.19 within a year and indulges in sending reminders and/or representation to the same or even higher authorities, he runs the risk of his claim becoming time barred.

10. We find support in coming to this conclusion from the decisions of certain other Benches of the Tribunal. In B.A.Sanjave Vs. State(1987(1) C.A.T.-158) where the applicant had sought implementation of 40 point roster from 27.11.72 with consequential reliefs, it was held by the Jabalpur Bench that when during the long period of over 14 years promotion of juniors are taking place, changes are made and a person does not take matter to Court for redress, there is no justification for condoning delay. It was further held that under the specific provisions of S.20 read with S.21(2) of the Act the petition did not lie within limitation as the cause of action arose before 1.11.82. In that case, the applicant had made several representations before approaching the Tribunal. Similar view was taken by the Jabalpur Bench in V.P.Rego Vs. Union of India (1987) 4 A.T.C.-346 relying on a Supreme Court decision in Jagdish Narain Vs. State of Bihar (A.I.R. 1973 S.C.- 1343), in which it was held that if an aggrieved applicant has already allowed his remedy to become time barred, he cannot get a fresh lease of life merely by filing repeated or successive representations.

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11. In V.K.Mehra Vs. The Secretary (A.T.R. 1986 CAT-203) the Principal Bench of this Tribunal had held that the Tribunal has no jurisdiction in respect of orders made three years before the constitution of the Tribunal. The Bench had placed its reliance on its own earlier unreported decision in Reg.No. T-34/85 Capt. Lachman Singh Vs. Secretary, Ministry of Personnel and Training quoting the following observations therefrom:-

" The period of three years laid down under sub-section (2) of S.21 would have to be computed with reference to any order made on such a representation and not with reference to the earlier order.... the Tribunal would have jurisdiction under sub-section (2) of S.21 to entertain an application in respect of "any order" made between 1.11.1982 and 1.11.1985."

12. It was held by the Madras Bench of the Tribunal in V.S.Raghavan Vs. Secretary to the Ministry of Defence [(1987)3 A.T.C.-602] that when the cause of action arose long before three years prior to the date on which the Act came into force any representation could not extend the period of limitation and in no case a representation made seven years after the accrual of the cause of action, though it was disposed of only on 3.10.1985. The application was accordingly dismissed as time barred. In A.Mohammad Ismail Vs. Union of India [(1988)6 A.T.C.-795], the same Bench had held the application claiming pension from 1973 time barred ignoring the representation made to the President on 21.5.1984. Placing its reliance on the views expressed by the Principal and Madras Benches, the Bangalore Bench of the Tribunal in Thimma Vs. Divisional Railway Manager [(1987) 4 A.T.C.-328] has also held that the Act does not empower the Tribun-

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al to take cognizance of a grievance arising out of an order made prior to 1.11.1982.

13. The case of the applicant has to be decided in the light of the law discussed above. As stated above, the applicant was removed from service by way of punishment on 25.3.1979. The order of removal was set aside in appeal on 17.7.1979 but the applicant was reverted as Ticket Collector for a period of one year. In contemplation of another enquiry against the applicant he was placed under suspension on 9.10.79 and despite the revocation of his suspension on 21.4.80 and setting aside of his earlier order of removal from service on 17.7.79, the applicant did not report for duty presumably because he had filed a writ petition in 1979 itself challenging the order of reversion. The order of reversion was set aside on 1.8.1983 but as in the meantime, the applicant was transferred to Samastipur Division on 23.9.1981, he again did not join his duty there and insisted for giving him a posting as TTE at Bareilly, which was naturally not possible due to transfer and only when the applicant could not succeed in the contempt petition moved against the respondents for getting a posting at Bareilly, he joined at Samastipur on 8.1.1985. In this way, he remained without duty from 26.3.79 to 7.1.85 and undisputedly, was not paid any salary or other allowances during this period.

14. The claim of the applicant for his wages for the period aforesaid has to be split up into two parts. The first part will comprise his claim for wages falling due prior to 3 years immediately preceding the date on which the Tribunal was established

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i.e. the claim for wages from 25.3.79 to 31.10.1982. The second part will comprise of his claim for wages from 1.11.1982 to 31.10.1985. The applicant has not produced any final order passed by the respondents depriving him of his wages for any period. His case is that he had made representations on 16.11.1983, 21.1.1984 and 7.5.1985 and had given a statutory notice u/s.80 CPC through his counsel on 1.3.1986 but the same did not bear any fruit. The claim of the applicant thus does not fall under clause (a) of s.21 (1) of the Act and he has tried to bring his case under clause (b) thereof. The provisions of sub-section (1) of section 21 are, however, subject to the provisions of its sub-section (2) which provides the period of limitation of 6 months (or one year, whichever period expires later) only for such claims which had not already become time barred under the general law of limitation prescribed by Limitation Act (no.36 of 1963) and in respect of which a final order was passed within 3 years preceding the establishment of the Tribunal. It will, thus, follow that a claim which had already become time barred before the establishment of the Tribunal can be filed under the provisions of section 21 and the claim of the applicant for his wages falling due before 1.11.1982 is, thus, time barred.

15. Regarding his claim for wages from 1.11.1982 to 7.1.1985, the prescribed period of limitation could start running only after the expiry of 6 months from the date of his making representation. The applicant is shown to have made his earliest

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representation on 16.11.1983 and then on 21.1.1984 for his wages. This statement is not correct as appears from the copies of his representations annexures 3 and 4. In his representation dated 16.11.1983, the applicant had requested the Divisional Superintendent (C), Izatnagar for giving him duty as TTE at Barielly City with retrospective effect. This representation does not contain any request for payment of any wages or allowances. The representation dated 21.1.1984 to the DRM Izatnagar also contains a request for giving him the duty and for implementing the judgment dated 1.8.1983 of the High Court and it too does not contain any request for payment of wages though it makes a mention that the applicant is out of job without salary from April 1979 and his family is starving. By making these two representations, the applicant simply requested for giving him the charge of a post and as he did not make any request in these representations for payment of his wages, the limitation for recovery of wages did not start running. The first ^{such} representation made by the applicant was only on 7.5.85 to the DRM Izatnagar, copy annexure 7, in which a request was made that the order of the High Court be implemented and the orders for payment of all his arrears with interest be passed. Thus, the period of limitation started running from the date of this representation and the petition u/s.19 could be presented within 18 months from its date and the petition having been filed on 30.7.1986 is, thus, within time for the second part of the claim.

1.6. The next question which now arises for consideration is ~~this~~ whether the applicant is entitled to the wages claimed by him without doing any work during this period.? The applicant has tried to plead his ignorance even about the order dated 21.4.1980 of the revocation of his suspension and even after this order, he had sent applications for enhancing his subsistence allowance. On the other hand, the respondents have shown by reliable documentary evidence on record that not only the order of revocation of his suspension but even the orders of his postings thereafter were sent to the applicant repeatedly, but he was not found at the address given by him. Even orders sent by registered post could not be delivered on the applicant as he was evading the service and ultimately, the same along with the copy of charge sheet was pasted on the Notice Board of the Lal Kuan Railway Station where the applicant was last posted. Before moving the contempt petition against the respondents, the applicant could very well know about the revocation of his suspension as well as the order of his transfer but he did not report at Samastimpur unless directed by the High Court while rejecting his contempt petition. Admittedly, the applicant received the subsistence allowance upto April 1980 and from the fact that the respondents had stopped the payment of the subsistence allowance, the applicant could easily know that he was no more under suspension but he neither filed any suit nor a claim under Payment of Wages Act for his subsistence allowance or pay after the date of revocation of the suspension order. Thus, circumstances clearly support the contention of the respondents that the applicant was fully aware

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of the revocation of the suspension as well as the order of his transfer and as he himself was not interested in resuming his duty, he did not report for duty at the station to which he was transferred. We, therefore, find nothing wrong in the stand of the respondents in not paying him any dues for the period in which he did not do any work. In this way, the applicant is not entitled to any wages even for the period for which his claim is within the limitation prescribed by the Act.

17. The applicant has sought a declaration that as he was not informed of his transfer, the same is void and inoperative. We have already discussed above that the applicant himself had avoided the service of the orders of transfer and postings. In any case, he knew about his transfer during the pendency of the contempt proceedings initiated by him against the respondents in the High Court which ended on 12.11.84 and thereafter instead of making any representation against his transfer, he proceeded to join his duty at Samastipur. No illegality of any kind has been pointed out in the order of his transfer and the transfer order cannot be held to be void or illegal on the grounds alleged by the applicant.

18. The applicant has also claimed his promotion to the post of Chief TTI according to A.V.C of the Ticket Checking Staff. No foundation for this promotion has been laid by the applicant in this petition and there is no allegation in the petition as to how and from which date the applicant became entitled to get this promotion. It is also not alleged that any junior to the applicant was promoted to this post and the claim of the applicant was wrongly ignored at any stage. The question of granting any promotion to him, thus, does not arise.

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19. In view of the above considerations,
the applicant is not entitled to any relief and his
petition is dismissed without any order as to costs.

Sharma
MEMBER(J)

Sharma
MEMBER(A)

Dated: August 31, 1988
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