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Reserved

Central Administrative Tribunal, Allahabad.
Registration T.A.No.1643 of 1986 (Misc.Case No.58/1984)

Mahi Lal ... Applicant
Vs.
Union of India ... Respondent.

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

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

This transferred application is a regular suit which was registered as a miscellaneous case in the Court of Munsif Hardwar and has been received under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The relevant facts of this case are that the applicant Mahi Lal (hereinafter referred to as the plaintiff) was appointed as Porter in the Northern Railway at Hardwar by Asstt. Personnel Officer, Moradabad on 26.12.1956. It is alleged that he fell ill on 4.6.74 and thereafter his wife fell ill and when he attended his duty on 7.10.1974 he was not allowed to join his duty by the Station Master Hardwar. On 12.8.1974, the plaintiff was issued a privilege pass for journey upto 10.11.1974. The plaintiff had submitted medical certificates of private doctor in support of his own illness and the illness of his wife but he was served with a charge sheet dated 20.5.1975 for major punishment but without conducting any inquiry, he was removed from service in violation of the provisions of law and the principles of natural justice on 22.2.1979. The appeal preferred by him was dismissed by the appellate

authority as intimated to him on 27.7.1979. The plaintiff thereafter sent a notice u/s.80 CPC to the defendant on 30.7.1980 and filed the present suit on 17.8.1984 for a declaration that the order of his removal from service as well as the order rejecting his appeal are void, unconstitutional and without jurisdiction and he is entitled to be reinstated in service with all consequential benefits. As the suit was filed after the statutory period of more than 3 years, it was registered as a misc. case and was thereafter transferred to this Tribunal under the changed law.

3. The case has been contested on behalf of the defendant - respondent and in the written statement /objection filed on its behalf, it has been stated that the plaintiff was appointed as Token Porter at Hardwar on 3.1.57. He was a habitual defaulter and used to remain absent from duty. The plaintiff took sick memo from the Station Master Hardwar on 4.6.1974 but he failed to attend the Railway doctor ^dHarwar and unauthorisedly absented from duty. The plaintiff appeared before the Station Master Hardwar on 7.10.1974 with a medical certificate of a private medical attendant in connection with his sickness. As the period of his absence exceeded 21 days, the Station Master had directed him to appear in the Divisional Office Moradabad for obtaining the orders of competent authority for the resumption of his duty. The plaintiff, however, did not appear at Moradabad office till 1.7.1975. The plaintiff had succeeded in obtaining the privilege pass by concealment of fact of his unauthorised absence from duty. The plaintiff was served with a charge sheet for major penalty on 2.7.1975 but he failed to submit any statement of his defence and

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did not attend the inquiry. The inquiry, therefore, proceeded ex-parte and a show cause notice dated 14.6.1978 was issued to him on 25.1.1979. The disciplinary authority considered the reply submitted by the plaintiff and decided to remove him from service by way of punishment by his order dated 22.2.1979. The appeal preferred by the plaintiff against his removal was rejected by the competent authority on 13.7.1979. The suit having been filed by the plaintiff on 16.8.1984 is grossly time barred. The penalty was awarded to the plaintiff in accordance with law and there has been no violation of principles of natural justice and his suit is liable to be dismissed.

4. The plaintiff filed rejoinder/replication stating therein that the plaintiff had presented himself on 7.10.1984 with medical certificates from private doctor and the Station Master was supposed to issue covering letter to the Railway doctor for further examination. The Station Master committed illegality and issued special duty pass directing the plaintiff to see the Divisional Office Moradabad where nobody paid any attention to this wrong step of the Station Master, Hardwar. There was no inquiry at all and only the charge sheet and punishment orders were issued to the plaintiff. The Tribunal has jurisdiction to grant appropriate relief to be plaintiff as it has more powers than the ordinary Civil Courts.

5. It is apparent from the facts of this case, as narrated above, that the plaintiff was removed from service by the disciplinary authority vide his order dated 22.2.1979, paper no.12-A on record. The appeal preferred by him was rejected by the appellate authority and communicated to the plaintiff vide order d
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13.7.1979, paper no. 13-A on record. The suit was filed by the plaintiff much after the statutory period of 3 years from the date of the service of the appellate order on him and as such, it was barred by time and was not registered as a suit by the trial Court. The plaintiff had moved an application under Section 5 of the Limitation Act to condone the delay in filing the suit. The very wordings of S.5 of the Limitation Act show that it does not cover the suits and the delay committed in filing the regular suits cannot be condoned by the Courts u/s, 5 of the Limitation Act. As the suit was filed before the trial Court after the expiry of the statutory period, the same could not be transferred to this Tribunal u/s. 29 of the Act XIII of 1985.

6. It was contended on behalf of the plaintiff that no regular disciplinary proceedings were taken against the plaintiff and he was removed from service without affording him an opportunity of hearing and even the order of his removal from service as well as the order rejecting his appeal are not speaking orders and as such, they are illegal and void and this Tribunal can ignore these orders. In support of this contention, reliance was placed on his behalf on State of Himachal Pradesh Vs. Jai Dev Ram (1984(2) Service Law Journal-41) in which it was held that the suit for declaration that an order of dismissal or removal is in violation of Art.311 of the Constitution is not hit by bar of limitation. We have considered the contentions raised on behalf of the plaintiff and are of the view that the plaintiff was duly served with a charge sheet for major punishment in respect of the charge of misconduct pertaining to his unauthorised absence from duty. The plaintiff does not seem to have filed any statement of defence in reply to the charge sheet

to explain his absence and the disciplinary authority after considering the necessary circumstances, found him guilty and awarded the punishment of removal from service. It is, therefore, not correct to say that the plaintiff was not given any opportunity of hearing. The fact is that the plaintiff himself did not avail of the opportunity given to him to explain his conduct. The appellate order shows that the appeal was dismissed after considering the grounds taken by the plaintiff in his appeal. It is true that the appellate order is not a detailed order but the limited question arising in appeal of the plaintiff was whether he could explain the unauthorised delay for which he was charge sheeted and after considering the same the appellate authority had rejected it. In this way, we find that there was an application of mind of the appellate authority in the disposal of the appeal filed by the plaintiff and it cannot be said that the order passed in appeal is void or illegal for want of a detailed speaking order. The case law cited by the plaintiff is not applicable to his case and we are of the view that the impugned orders passed against the plaintiff are not void ab initio or otherwise illegal and as such, no relief can be granted to him due to the bar of limitation.

7. The suit of the plaintiff is accordingly dismissed without any order as to costs.

कल्याणी

MEMBER (A)

द. नारायण

MEMBER (J)

Dated: 20th May 1988
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