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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

**Original Application No. 238/2006 &
Misc. Application No. 118/2006.**

Date of decision: 06.11.2006

Bhera Ram

: Applicant.

Mr. S.K. Malik,

: Counsel for the applicant.

VERSUS

UOI and Others.

: Respondents.

None :

: Counsel for the respondents

CORAM:

**Hon'ble Mr. J K Kaushik, Judicial Member &
Hon'ble Mr. R R Bhandari, Administrative Member.**

1. Whether the local reporters may be allowed to see the judgement? X

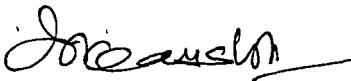
2. To be referred to the reporter or not? yes

3. Whether their Lordships wish to see the fair copy of the judgement? X

4. Whether it needs to be circulated to other Benches of the Tribunal? yes


(R R Bhandari)

Administrative Member


(J K Kaushik)
Judicial Member.



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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH,
JODHPUR.**

O.A. No. 238 of 2006 & M.A. No. 118/2006

November 6, 2006

CORAM:

**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER AND
HON'BLE MR. R R BHANDARI, ADMINISTRATIVE MEMBER**

Bheru Ram S/o Sh. Jamuna Ram by caste Bheel, aged about 46 years, resident of Bilon Ka Baas Opposite PS: Pokhran, Distt. Jaisalmer (Raj) and presently working on the post of Sub Post Master at PO Pokhran City, Distt. Jaisalmer (Raj).

... Applicant

By: Mr. S.K. Malik, Advocate.

Versus



1. Union of India through the Secretary, Ministry of Communication, Deptt of Post, Dak Bhavan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Office, Jodhpur Division, Jodhpur (Raj).

... Respondents

ORDER

HON'BLE MR. J.K. KAUSHIK, JM

Shri Bheru Ram has filed this Original Application assailing the order dated 12.11.1992 (Annexure A-1) order dated 29.12.1992 (Annexure A-2) and order dated 18.7.2006 (Annexure A-3), and has prayed for setting aside the same with a direction to the respondents to make payment of the stoppage of one increment for a period of six months and also for treating the period of absence from 12.9.1992 to 14.9.1992 as spent on duty for all the purposes.

2. We have heard the learned counsel for the applicant at considerable length regarding admission of this case and have also carefully perused the pleadings, as well as record of the case.

[Signature]

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3. The brief facts of the case are that the applicant who was working as Sub Postmaster Pokhran City, was issued a minor penalty charge under rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short "Rules") alleging that he remained absent from duty from 12.9.1992 to 14.9.1992. He submitted a statement of defence mentioning therein that the applicant was on four days sanctioned leave w.e.f. 9.9.1992 to 12.9.1992 but he fell sick and reported to Government Hospital. He also submitted a medical certificate in this regard. However, without following the procedure under the Rules, an order imposing penalty of stoppage of increment without cumulative effect for a period of six months and declaring the period from 12.9.1992 to 14.9.1992 as dies-non was issued on 29.12.1992. He submitted a revision petition on 4.9.2004 and the same has been turned down on the pretext of being barred by time. Hence this Application has been preferred on numerous grounds mentioned in para 5 and its sub paras.

4. A Miscellaneous Application No.118 of 2006 has been filed for condonation of delay. The application contains the grounds for delay, such as, that impugned orders are not in accordance with statutory provisions and the same are virtually void and have no legal existence and hence law of limitation would not apply. The mandatory provisions of imposition of penalty under rule 14 of the rules have not been followed and therefore, the impugned orders do not have any existence in the eyes of law. The void orders being contrary to the provisions of law do not have any existence and are not even required to be challenged. Serious questions of law have been raised before the respondent No.2, which ought to have been considered and decided on merits, rather than rejecting on the point of delay.

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5. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the pleadings of the applicant as noticed above. He has submitted that the order of the penalty is without jurisdiction and such penalty could not have been imposed. Regarding the point of condonation of delay, he has repeated the grounds mentioned in the Miscellaneous Application. He has cited numerous judgments in support of his contentions, which we would be dealing with in the later part of this order.

6. The admitted position in this case is that the applicant was inflicted upon the penalty vide order dated 29.12.1992 and he did not prefer any appeal. The revision petition came to be filed only on 4.9.2004 i.e. after a lapse of about 12 years. The application for condonation of delay does not contain even a word which can be termed to be good and sufficient reason for condonation of delay. Only certain legal provisions have been pleaded. Before proceeding further in the matter we would ascertain the legal position with regard to applicability or otherwise of law of limitation in case of challenge to void orders. We make it clear that we are not satisfied that the impugned orders could be construed to mean void order. The due procedure for imposition of penalty as prescribed in rule 16 of the Rules has been followed. We are not impressed with the contention that mandatory procedure as laid down in rule 14 of Rules were to be followed in the instant case. The penalty order has also issued by a competent authority. However, this question may not be required to be even examined in detail in view of our findings in subsequent paras.

7. The legal position as to whether a void order if challenged, would attract the law of limitation or not, has been exhaustively dealt with by a Full Bench of this Tribunal at Ahmedabad in the case of Dhiru Mohan Vs. Union of India & Others, Full Bench Judgments of C.A.T.



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1989-91, Vol. II, Page 498. The Hon'ble Bench has also examined the judgment of the Apex Court in the case of State of M.P. Vs. Syed Quamarali 1967 SLR, 228 which has also been very heavily relied by the learned counsel for the applicant in this case. The Hon'ble Full Bench has been pleased to hold that challenge to a void order under section 19 of the A.T. Act, 1985 would attract law of limitation. Paras 26, 27 and 28 of the said judgment being relevant, are extracted as under:

"26. It cannot indeed be questioned that a void order has no existence in the eyes of law and as such is a nullity. However, this authority cannot be used as an authority in support of the proposition that there is no period of limitation for an Application assailing a void order filed under Section 19 of the Act. The provisions of the Act could not be considered by the High Court as these were not even on statute book.

27. In view of the dictum of the Supreme Court in Syed Quamarali (*supra*), and the reasons set out herein above, we would hold that as a void order has not existence in the eyes of law and as such is a nullity, the same need not be got quashed or set aside. We would further hold that an Application claiming arrears of salary or other appropriate relief without assailing a void order cannot be defeated by a plea on behalf of the respondents to the effect that the applicant had not filed and application to get the order quashed or set aside within the period of limitation. We may also add that it is difficult to subscribe to the view that the failure to challenge a void order within the period of limitation would render the same impregnable. Such a view has been expressed by Shri De Smith at page 153 of his Treaties on "Judicial Review of Administrative Action". Fourth Edition, by J.M. Evans. We are unable to find ourselves in agreement with the aforesaid view. This is so for the reason that an order which is a nullity i.e. A void order cannot conceivably become impregnable by mere lapse of time.

Story, J. in his *Conflict of Laws*, has also expressed the view that the statutes of limitation proceed upon the presumption that claims are extinguished or ought to be held extinguished, whenever they are not litigated in the proper forum within the prescribed period. It is equally difficult to subscribe to the view held by Story, J. This view falls foul of the well settled basic principle of the law of limitation to the effect that limitation bars remedy but (does not) extinguish a right.

28. To sum up, we hold that an Application impugning a void order under Section 19 of the Administrative Tribunals Act, 1985 is also governed by the period of limitation prescribed by Section 21 of the Act. The question falling for our consideration is answered accordingly".

From the aforesaid decision, it is evident that the various orders, even if these are termed as void, having been challenged, shall be regulated by the period of limitation provided under section 21 of A T Act 1985. That being so, this Original Application cannot be said to be



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within the period of limitation prescribed under section 21 of the Administrative Tribunals Act, 1985.

8. Now we would examine as to whether there are good and sufficient grounds for condonation of delay in filing this case. From the perusal of the grounds put forth in application for condonation of delay, we find that there are some grounds relating to the concept of void order which fall to the ground having no substance, in view of our findings recorded above. As regards the other grounds, it has been pleaded that when a serious question of law is involved, the case should be heard on merits. There is no doubt about the principles of law but unfortunately that is not attracted to the facts of this case. Therefore, the ratio of the law laid down in Divisional Manager, Plantation Division, Andaman & Nicobar Islands Vs. Munny Barrick and Others, 2005 SCC (L&S), Page 200, has no application to the facts of this case.



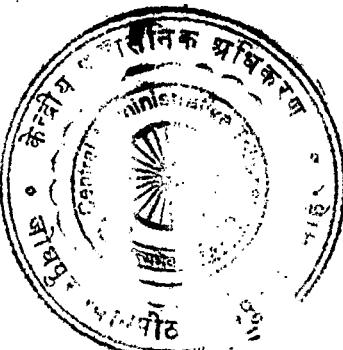
9. In the case of Apangashu Mohan Loh & Others Vs. State of Tripura & Others, 2004 SCC (L&S), Page 10, it has been down that power to condone the delay is discretionary and is to be liberally construed. We fully agree with the principle of law laid down in the said case, but it does not support the case of the applicant particularly when there is no ground, what to talk of good and sufficient ground for condonation of delay. If there be some good and sufficient grounds, then definitely the Court can exercise its discretion. We find ourselves helpless in using our discretion to condone delay as there is no material for exercise of such discretion.

10. The other case of N. Balakrishnan Vs. M. Krishnamurthy, AIR 1998 SC 3228, was regarding delay caused due to failure of advocate to inform appellant as well as to take appropriate action. This

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situation is not in existence in the instant case. Thus, even this authority is of no avail to the applicant and is distinguishable.

11. The next authority cited on behalf of the applicant is in the case of **State Of Bihar And Others, V. Kameshwar Prasad Singh And Another** 2000-(033)-LIC -2379 -SC = 2000 (4) SLR SC 8, wherein their Lordships of Apex Court have reiterated the principles of law to be applied while considering a case for condonation of delay, as elaborately discussed in case of **Collector, Land Acquisition, Anantnag v. Mst. Katiji**, (1987) 2 SCR 387: (AIR 1987 SC 1353). The facts of the case in hand are dissimilar in as much as no reason, what so ever, has been disclosed nor any plausible explanation for such delay is forthcoming, for condonation of delay.



9. The rules relating to filing of revision petition do not provide for any specific period of limitation except in case of suo moto exercise of powers under rule 29(v) of rules wherein six months period is prescribed, but that does not mean that the revision petition can be entertained at any point of time. The reasonable period may be taken as six months whereas in this case, the revision petition was preferred after a huge gap of about 12 long years. We therefore do find any fault with the action of respondents in not entertaining the revision petition on the ground of limitation.

10. In view of the aforesaid discussion, we do not find any force in the Miscellaneous Application as there is absolutely no ground least to say good and sufficient grounds for condonation of delay. It is, therefore, rejected. It is well settled that an OA cannot be entertained on merits, as held the Apex

[Signature]

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Court in the case of Ramesh Chand Sharma Vs. Udhamp Singh



Kamal and Others AIR 2000(1) SC 178, that until and unless the preliminary point of delay is decided, the Tribunal cannot proceed to examine the case on merits. Thus, the merits of this O.A. are not being examined.

11. In the result, the Original Application is hereby dismissed on the ground of limitation without going into merits, in limine.

R. R. Bhandari
(R.R. BHANDARI)

Administrative Member

J. K. Kaushik
(J.K. KAUSHIK)
Judicial Member

HC*

R/C

en 22/11/08

for

copy of order with set of OA
sent to R100 R3 under G70 no. 98-1104
11/08/12

Revised R100 R2 & R3
Best
98-11