BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT NEW BOMBAY.

Present: Hon'ble Shri P. Srinivasan, Member (A)

and

Hon'ble Shri M. B. Mujumdar, Member (J).

DATED THIS THE FIFTEENTH DAY OF APRIL, NINETEEN EIGHTY SEVEN.

Stamp No. 115 of 1987.
O.A. 258/87.

S.R. Chinchwadkar ....Applicant.

vs.

Union of India & others. ....Respondents.

Appearance:

1. Shri D.V. Gangal, Advocate for the applicant.

ORAL JUDGMENT: (Per Hon'ble Shri P. Srinivasan, Member (A).

This application has come up before us for admission. Earlier, the applicant had pleaded that he should be exempted from payment of Court Fee because he had no means to pay the said fee. An order was passed by this Tribunal on 30.3.1987 exempting the applicant from payment of court fee, and thereafter the matter was fixed for admission today.

2. Shri D.V. Gangal, learned counsel for the applicant, strongly pleaded that this application should be admitted. Since we felt that the question of limitation had to be gone into before the application could be admitted, we heard extensive arguments from Shri Gangal as to why limitation does not apply to this case.

3. We may briefly set out the salient facts of this case. The applicant was working as a Luggage Clerk in the Central Railway ('CR') at Bombay V.T. from 1943 to 1962. In 1962, as a result of disciplinary proceedings initiated against him, he was dismissed from service, after having been found guilty of the charges levelled against him, by an order dated 28.2.1962 passed by the Divisional Commercial Superintendent ('the Superintendent'), CR. He filed an appeal against this order of dismissal but that was dismissed. His review petition also failed, and the order of dismissal has become final. Thereafter, the applicant again appealed to the Railway authorities to give him a fresh appointment as he was without means of livelihood. As a result of his appeal, the Superintendent, CR, Bombay, offered him a Class-IV post, though before dismissal, he was in a Class III post. The applicant initially demurred, but eventually accepted the offer, and joined as a Class IV official in 1969. It is admitted by the learned counsel for the applicant that this was a fresh appointment on compassionate grounds and not a continuation of the old appointment. Thereafter, the applicant attained the age of superannuation in 1976, and retired from service on 30.4.1976. Since he had

completed only 7 years' service in the second spell, he was not given any pension. He made several representations for condonation of break in service between 1962 and 1969, so that he could get pensionary benefits. These applications were addressed to various authorities, including the General Manager and the Minister for Railways. By letter dated 7.1.1981 (Annexure D-1), page 27 of the application), the Chief Personnel Officer, Central Railway, communicated the decision of the authorities not to accede to his request for condonation of break in service. This letter addressed referred to the applicant's appeal dated 1.8.1979 and reminders thereafter addressed to the Railway Minister. The applicant persisted in his representations again to the Chairman, Railway Board, and other railway authorities, and also to the Railway Minister, calling them mercy appeals. He received a letter dated 6.2.1986 issued by the Divisional Manager, Railways, stating that his representation had been examined and that nothing could be done in this regard.

4. Shri Gangal, on behalf of the applicant, contended that the final rejection of the applicant's representation for condonation of break in service, and for resultant pensionary benefits, was communicated only in the letter dated 6.2.1986 issued by

the office of the Divisional Railway Manager (Annexure-L at page 54 of the application), and since this letter has given rise to the grievance in this application, and since the application was filed on 20.2.1987, it should be taken as having been filed within time and should be admitted. He further pointed out that since the applicant had received no replies to his earlier representations, there was no specific order from which limitation could start running. He cited the ruling of the Supreme Court in 1967(1) SLR 228 (STATE OF MADHYA PRADESH v. SAYYAD QAMARALI) to the effect that where an invalid or void order was passed, the question of limitation for seeking remedy against that order did not arise, because there was no starting point for calculating limitation. Further referring to 1974(1) SLR 470 (RAMACHANDRA SANKAR DAVDHAR v. STATE OF MAHARASHTRA), Shri Gangal contended that there was no provision in the Constitution setting a bar of limitation for challenging an unconstitutional order and that the doctrine of laches had been evolved by Courts only as a rule of practice and not as a rule of law. Therefore, in cases where grave injustice is caused, limitation or laches should not stand in the way of giving relief. He further contended that the provisions of the Administrative Tribunals Act, 1985 ('the Act') relating to limitation cannot overrule the powers of this Tribunal,

which are coeval with those of a High Court comprehending Articles 226 and 227 of the Constitution. This Tribunal ~~xhxxxxx~~, therefore, should not feel itself bound by the limitation set out in Section 21(2) of the Act. Finally, Shri Gangal contended that even assuming that the bar of limitation applied here, this Tribunal has unlimited power to condone delay in filing applications under Section 21(3) of the Act, which makes specific reference to both Sub-section (1) and sub-section (2) of that section.

5. We have given very careful consideration to the points raised by Shri Gangal. We are unable to agree with him that it was the letter dated 6.2.1986 (Annexure-L) which gave rise to the grievance agitated in this application. As we have narrated earlier, the applicant was making representations right from 1976 onwards, and in 1981, he received a final reply from the highest authority, i.e., the Railway Minister, that his request for condonation of break in service and for consequent retirement benefits could not be acceded to. Merely because repetitive representations were made thereafter, it cannot be said that the cause of action was postponed to a later date. Now according to sub-section(2) of Section 21 of the Act, if the grievance in respect of which an application is made has 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 the Tribunal, became exercisable under the Act in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application can be entertained by the Tribunal if it is made within the period specified in that sub-section. In respect of grievances arising out of orders passed prior to the said period of three years, no application can be made to this Tribunal at all. Thus, the principle of laches which has been adopted by the courts as a practical measure in regard to writ petitions has been incorporated in the statute itself to avoid stale applications being entertained by this Tribunal. When an application cannot be filed in respect of a cause of action under the provisions of the Act, because it had arisen long ago, there is no question of this Tribunal exercising its discretion to condone delay. The entire matter is out of the jurisdiction of the Tribunal, as the Statute itself ~~does~~ contemplates that such matters should not be brought before this Tribunal. ~~was established~~. The Bombay, Delhi and Bangalore Benches of this Tribunal have come to the same conclusion. One of us was a party to such a decision, both at Bombay and at Bangalore. We see no reason to differ from that view. In view of this, this application cannot be admitted. The grievance raised therein arose

out of a final order passed on 7.1.1981.

6. The ruling of the Supreme Court cited by Shri Gangal, dealing with an invalid or void order which cannot form a starting point for limitation, is not applicable here. The order dated 7.1.1981 by which the applicant's request for condonation of break in service was turned down, can, by no stretch of imagination, be called a void or invalid order. It was within the discretion of the railway authorities either to accept his request, or to reject it, and they were well within their power to reject it. Therefore, it was not a void order. The other case referred to by Shri Gangal is in the context of writ petitions under Article 32 of the Constitution, and it was in that context that the Supreme Court said that there is no rule of law laying down limitation, but only a rule of practice adopted by the court. Here, we are concerned with limitation laid down in the statute and we cannot ignore that limitation. We do not agree with Shri Gangal that because the Tribunal is a substitute for the High Court, having taken over the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, we can ignore the provision relating to limitation found in the Act. As we have clarified earlier, it is not just a question of limitation, but of jurisdiction, and ~~that~~ our jurisdiction itself is barred in respect of grievances arising more than three years prior to the formation of this Tribunal.

Moreover, the Act setting up this Tribunal was passed by Parliament in pursuance of Article 323-A of the Constitution of India. The provision therein excluding grievances arising more than 3 years prior to the setting up of this Tribunal from its jurisdiction, is therefore itself a constitutional mandate. Therefore, this application has to be rejected at the stage of admission itself as incompetent. Incidentally, we find that even on merits, this application does not deserves to be admitted. As we have stated earlier, the applicant was dismissed from service in 1962 and freshly employed in 1969, admittedly on the condition that his earlier service would not be counted. The railway authorities had the discretion in such a case to condone the break in service or to grant him pensionary benefits on compassionate grounds. They exercised their discretion against the applicant. We find nothing arbitrary or illegal in this decision. The applicant was dismissed as he was found guilty of charges, which included making alterations in luggage tickets issued by him, something which casts serious reflection on his conduct and integrity. The order of dismissal having become final, his conviction on the charges levelled against him had also become final. In such a case of dismissal for reasons amounting to moral turpitude, we see nothing arbitrary in the

respondents' refusal to condone the break in service. In fact, it was due to compassion that they offered him fresh employment, after he was dismissed and he could not ask for more. Therefore, even on merits, we do not think that the application has any legs to stand upon.

7. In the result, we reject the application summarily at the stage of admission itself for reasons stated above, under Section 19(3) of the Act as not fit for adjudication by us.

15/4/87

MEMBER (A)

MEMBER (J)

dms/150487.