CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

NEW BOMBAY BENCH

O.A. No. 8/88 198

~~T.A.No.~~

DATE OF DECISION 10-3-1988

Dr.(Kum)K.Padmavally Petitioner

Shri D.V.Gangal Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Shri J.D.Desai(for Shri M.I.Sethna) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G.Rajadhyaksha,Member(A)

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

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND—12 CAT/86—3-12-86—15,000

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.8/88

Dr.(Kum)K.Padmavally,
C/o.Shri D.V.Gangal,
Advocate,
211,Sai Vihar,2nd Floor,
Shivaji Path, New Stn.Road,
Kalyan - 421 301. ... Applicant.

vs.

1. Union of India,
through
Secretary,
Ministry of Water Resources,
Shram Shakti Bhavan,
Rafi Marg,
New Delhi - 110 001.

2. Director,
Central Water and Power
Research Station,
Khadakwasla,
Pune - 24. ... Respondents.

Coram:Hon'ble Member(A)J.G.Rajadhyaksha

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

Appearances:

1. Shri D.V.Gangal
Advocate for the
Applicant.

2. Shri J.D.Desai(For
Shri M.I.Sethna)
Advocate for the
Respondents.

JUDGMENT Date: 10-3-1988

(Per M.B.Mujumdar,Member(J)

The applicant Dr.(Kum)K.Padmavally of Pune has filed this application on 22-12-1987 under Section 19 of the Administrative Tribunals Act challenging an order dtd. 25-2-1983 by which she is removed from service. She has also filed Misc.Petition No.68/88 for condoning the delay in filing the application.

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2. The essential facts for the purpose of this judgment are these: The applicant was appointed as Research Officer in the Central Water and Power Research Station, Khadakwasla, Pune(CWPRS) in 1960. Along with memorandum dtd. 10-6-1980 four articles of charge were served upon her. The first charge was for consistently disobeying the orders of the superiors. The second charge was for showing lack of devotion to duty and for neither possessing the will to do any official work nor any temperament to get along with colleagues. The third charge was for violating the procedure laid down for redressal of personal grievances, by making direct representations to higher authorities, outside agencies and for inspiring news items and letters printed in newspapers with the intention of bringing CWPRS in disrepute. The last charge was for refusing to draw her salary since March,1970. A statement of imputations of misconduct or misbehaviour in support of articles of charges was attached to the charges explaining the charges in detail. By the memorandum the applicant was directed to submit written statement of her defence within 10 days of receipt of the memorandum. The memorandum was signed by Shri Mukesh Chand, Under Secretary to the Govt. of India, Ministry of Energy and Irrigation in the name of the President.

3. On 3-9-1980 Shri N.V.Prahlad,Chief Research Officer of the CWPRS was appointed as Inquiry Officer. On 19-3-1981 the applicant sent a communication stating that the Inquiry Committee

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comprising of CWPRS Officers had demonstrated that they were not capable of rational conduct and unbiassed judgment and hence she was completely disassociating herself with the inquiry. She also pointed out that she had replied to the charges to Shri Mukesh Chand and to the President on 21-6-1980,16-7-1980 and 19-3-1981. As the applicant did not take any part in the enquiry the Inquiry Officer held ex-parte enquiry against her. After considering the oral and documentary evidence laid before him as well as the points raised by the applicant in the reply sent to the department, the Inquiry Officer by his report dtd. 3-7-1981 held that charges Nos.1,2 and 3 were proved, but charge No.4 was proved to a limited extent only, viz., that by her refusal to accept salary she had brought the department and the CWPRS in disrepute. The report is of 93 pages. The Director(Administration), mentioning that on a careful consideration of the report of the Inquiry Officer the President was satisfied that good and sufficient reasons exist for impossing a major penalty on Dr.(Kum)K.Padmavally, in the name of the President passed an order on 25-2-1983 impossing the penalty of removal from service on the applicant. By an order passed on the next day the applicant was removed from service with effect from 28-2-1983.

4. In para 9 of the application the applicant has requested for a declaration that the order of penalty dtd. 25-6-1983 is bad in law, illegal and she continues to be in the service of the Government of India. She has also prayed for some consequential reliefs.

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5. Along with the application the applicant has filed Misc.Petition No.68/88 for condonation of delay.

6. We have heard Shri Gangal, the learned Advocate, for the applicant and Shri J.D.Desai(for Shri M.I.Sethna) the learned Counsel, for the respondents on the point of condonation of delay and admission. Section 21 of the Administrative Tribunals Act,1985 deserves to be quoted here. It reads as follows:-

> "S.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 the 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,

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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.

(3) Notwithstanding anything contained in sub-section(1) or sub-section(2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section(1)or, as the case may be,the period of six months specified in sub-section(2),if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

7. The Central Administrative Tribunal started functioning ~~on and~~ from 1-11-1985. As the impugned order in this case was passed on 25-2-1983 i.e. within 3 years preceding the constitution of the Tribunal, the applicant should have filed this application within six months from the constitution of the Tribunal i.e. from 1-11-1985, but the applicant has filed this application on 22-12-1987. As the applicant has filed the application after the limitation period was over she has filed a separate application for condonation of delay. It may be noted that though the impugned order was passed on 25-2-1983 she did not challenge that order in any Court for a period of about 4 years and 10months. In the application for condonation of delay, she has stated that she was corresponding with the respondents and she had also approached the Minister in charge. She has not produced copies of the letters of representations which she has made, except one letter sent by her mother on 22-1-1985

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to the President. She has also stated in the application that she has received some replies in writing but she has not attached any copy of the reply. During the course of the arguments Shri Gangal showed us a letter dtd. 1-9-1984 from Shri P.C.Sethi, Minister for Irrigation,Govt. of India, written to Shri Bahuguna,Member of the Parliament. It appears from the letter that Shri Bahuguna had written a letter on 11-6-1984 to the predecessor of Shri P.C.Sethi. The applicant in her letter to Shri Bahuguna seems to have made some allegations about the management of CWPRS at Pune. About this, Shri Sethi has written that the applicant was given full opportunity to plead her case during the disciplinary proceedings in which she did not participate and hence the enquiry had to be held ex-parte. It was on 11-9-1984 that a photo copy of Shri P.C. Sethi's letter was sent to the applicant by Shri Bahuguna. But even thereafter she did not approach any Court of Law within a reasonable time.

8. In the application for condonation of delay the applicant has given some reasons but we are of the view that these reasons are neither legal nor relevant. For example she has stated that she was not receiving her salary in protest against some of her grievances which is a very typical Japanese model of working. According to her in Japan if the grievances of the employees are not solved the employees

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do work and not strike the work, but refuse to accept payment. To say the least this has nothing to do with the condonation of delay. Then it is mentioned by the applicant in the application that some well-wishers and friends of the applicant compelled her to approach this Tribunal so that the services of a great Mathematician and Scholar like the applicant can be available in resolving the Nation's problems. This shows that the applicant was not even at this stage interested in filing the application for setting aside the order of penalty.

9. The applicant has not taken her salary since March, 1970. She has also not taken the amounts due to her after she is removed from service such as Provident Fund. Shri Gangal the learned Advocate for the applicant stated before us that the applicant is not interested in these amounts but she is more interested in dispelling the views taken by the respondents regarding her conduct.

10. Then Shri Gangal submitted that the impugned order is void ab-initio because the applicant had disassociated herself from the enquiry as the Inquiry Committee comprising of some CW&PRS Officers had demonstrated that they were not capable of rational conduct and unbiassed judgment. This has reference to the

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communication dtd. 19-3-1981 sent by the applicant, which we have referred to earlier. But we may point out that no allegations of bias were made personally against the Inquiry Officer,Shri Prahlad. Moreover, if the applicant had any grievance she should have taken part in the enquiry and put forth her grievances, which she did not do. Hence we are not inclined to accept the submission of Shri Gangal that the order of penalty passed by the Director in the name of the President is ab-initio void.

11. Shri Gangal,in this connection, ~~has~~ relied on a judgment of the Supreme Court in "State of Madhya Pradesh vs. Syed Qamarali", 1967(1) Services Law Reporter 228. In that case a Sub Inspector had filed the suit seven years after his dismissal for pay and allowances for three years immediately preceding the date of institution of suit. The trial Judge dismissed the suit as barred by limitation. Syed Qamarali preferred an appeal in the District Court but that was also dismissed. In second appeal the Nagpur High Court was of opinion that in view of the order of acquittal passed by the Magistrate, the charge framed in the departmental enquiry could not at all be framed and that the order of dismissal was void and inoperative. In appeal preferred by the State of Madhya Pradesh the Supreme Court held that the order of dismissal had no legal existence and it was not necessary for the respondents to have the order set aside and hence the defence of limitation was rejected.

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12. It may be noted that one of the contentions raised before the Supreme Court was that para 241 of the Central Provinces and Berar Police Regulations was not applicable to the facts of the case. Para 241 is quoted by the Supreme Court in para 11 of its judgment. According to para 241, when a Police Officer has been tried and acquitted by a Criminal Court,he must as a rule be reinstated and he may not be punished departmentally when the offence for which he was tried constitutes the sole ground for punishment. It further provides that if the acquittal was based on technical grounds, the District Superintendent may take departmental cognizance of his conduct,after obtaining the sanction of the Inspector General. As Qamarali's acquittal was not based on technical grounds,the Supreme Court held that the departmental action against him was clearly in breach of the prohibition in para 241. According to the Supreme Court the provision in para 241 was mandatory and not directory as the words "may not be punished" in the context were equivalent to "shall not be punished". It may be further noted that the suit filed by Qamarali was merely for recovery of arrears of pay and allowances for three years preceding the date of institution of suit.

13. The above case does not help the applicant before us. It is not the case of the applicant that the respondents had no authority

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to hold a departmental enquiry against ~~the~~ her. ~~applicant~~. We also do not find any substance in the allegations that the Director had no authority to pass the impugned order of penalty. In fact the applicant has requested for a declaration that the order is bad in law and illegal and that she still continues to be in service. However, as the order of penalty was not contrary to any mandatory provisions of law it cannot be said to be void ab-initio. In the case before the Supreme Court, Qamarali had filed the suit for recovery of arrears of pay and allowances for three years only. Article ~~100~~ 102 of the Limitation Act, 1908 which corresponds to Article 7 of the Limitation Act, 1963 provides a period of limitation of three years for recovering wages ~~would be~~ was applicable in that case. In other words the ratio of the Supreme Court is not that the provision of Limitation Act do not apply to such a case.

14. In a similar case, S.R.Chinchwadkar vs. Union of India(O.A.No.258/87) decided by this Tribunal(New Bombay Bench) has taken the view that Section 21 applies to such applications. In that case also Syed Qamarali's case was cited on behalf of the applicant.

15. In another case viz.M.B.Khan vs. Union of India(O.A.727/87,New Bombay Bench),

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the applicant had been stopped from duty without any written order in 1970. The applicant filed the application on 30-8-1977 under Section 19 of the Administrative Tribunals Act challenging his removal or termination from service as being illegal and bad in law. At the time of the admission it was found that a departmental enquiry was held against the applicant in 1970 and he was awarded the penalty of removal from service. The application was rejected summarily holding it was grossly barred by ~~time~~ limitation.

16. Moreover it is true that after the constitution of this Tribunal the jurisdiction of the High Court and other Courts(excluding the Supreme Court)relating to the service matters of the central government employees is taken away and the same is vested in this Tribunal. While entertaining and deciding the disputes under Article 226 of the Constitution of India the High Court is not bound by the provisions of the Limitation Act. The Subordinate Courts ~~were~~ are however, bound by the provision of the Limitation Act. After considering the provisions of the Administrative Tribunals Act we are of the view that an application under Section 19 of the Act will be governed by the provisions under Section 21 of the Act regarding limitation. The application before us is neither a Writ Petition under Article 226 of the Constitution of India nor a Suit filed in a Civil Court. The provisions of

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Section 21 of the Act are complete in themselves and these provisions shall have to be taken into consideration while deciding whether the application is within limitation or not.

17. It may be useful here to note the legal position in England. It is explained at pages 151 to 153 in "De Smith's Judicial Review of Administrative Action, Fourth Edition, by J.M.Evans" As explained there, if an act, order or decision is ultra vires or outside jurisdiction, it is said to be invalid, or null and void. If it is intra vires it is, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it is usually said to be voidable; that is to say, it is valid till set aside on appeal or quashed by certiorari for error of law on the face of the record.(Page 151) Again, although an ultra vires decision is ineffctive against the party aggrieved, he may need, for his own protection, a formal pronouncement of a court setting the decision aside or declaring it to be void. Meanwhile he may be enjoined from disregarding the decision until its validity has been finally determined. If he takes no judicial proceedings at all within the prescribed statutory time-limit, the void decision will become as impregnable as if it has been valid in the first place.(Page 153). In our opinion the position of law in India is not different. Turning to the case before us, the order of penalty passed by the Director in the name of the President cannot be said to be void but assuming that it was void, the applicant should have got it

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set aside by preferring an appeal or by approaching some Court of Law within a reasonable period. As she has not done so, the order has now become impregnable and unassailable.

18. The applicant has made a prayer in this application for giving her salary from March,1970 till she was removed from service. But there was no dispute about the payment of this salary or the amounts which are due to the applicant after her removal from service. In fact it is the applicant who is refusing to accept the dues. We are told on behalf of the respondents that they are ready to pay the amounts provided the applicant is willing to accept the same.

19. In the result we hold that the application is barred by limitation in view of Section 21(2) of the Administrative Tribunals Act. The grounds given by the applicant in Misc.Petition No.68/88 for condonation of delay are neither legal nor proper.

20. We, therefore, dismiss Misc.Petition No.68/88 and reject O.A.No.8/88 summarily under Section 19(3) of the Administrative Tribunals Act, 1985 with no order as to costs. We, however, direct that the respondents shall pay the arrears of salary and other dues to the applicant whenever she makes a request for the same in writing.

(M.B.MUJUMDAR)
Member(J)

(J.G.RAJADHYAKSHA)
Member(A)