

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.708/99 and 720/99

Dated this the 17th day of January 2003.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Mrs.Aradhana Choudhary,
W/o Capt.G.C.Choudhary,
115/3947, Tilak Nagar,
Chembur, Mumbai.

...Applicant

By Advocate Shri R.C.Kotiankar

V/S.

1. Union of India
through Secretary
to Govt. of India,
Ministry of Defence,
South Block, New Delhi.

2. Director General,
National Cadet Corps.,
West Block No.4,
R.K.Puram, New Delhi.

...Respondents

By Advocate Shri R.R.Shetty

O R D E R

{Per : Shri S.L.Jain, Member (J)}

We have heard both the OAs. (OA.708/99 & 720/99) at the request of the parties together as they are filed by the same applicant though for different relief but reliefs being inter-dependent or consequential to one another, as such we proceed to decide the same together.

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2. In OA.NO.708/99 the applicant seeks the relief to quash and set aside orders contained in Ministry of Defence's letter No.5431/DG NCC/MS(B)/Extn./2856/A/D(GS-VI) dated 1.8.1977 and the declaration that the judgement of Hon'ble High Court of Allahabad passed in Writ Petition Nos.192 of 1977 and 1162 of 1977 is a judgement in rem, the respondents ought to extend the benefit of the same to the applicant, he be deemed to be in service w.e.f.1.8.1977 (A.N.) and entitled to arrears of pay and allowances for the period 1.8.1977 to 31.7.1997 the superannuation date with all consequential benefits of seniority, revised scales of pay, promotion and retiral benefits along with interest @ 18% p.a.

3. In OA.NO.720/99 the applicant seeks the relief of pensionary benefit claiming qualifying service for pension based on the outcome of OA.NO.708/99.

4. The applicant - G.C.Choudhury was appointed as UDC in the Office of Controller of Defence Accounts. He was selected as ECO in Army as 2nd Lieutenant, promoted as Lieutenant, Captain and thereafter as Acting Major. He was Lieutenant in NCC holding substantive grade in Army and worked for a period commencing on 9.1.1961 to 30.9.1967 in Military service and thereafter w.e.f.1.10.1967 to 31.7.1977 as Lieutenant in NCC. Ministry of Defence took a decision to release 42 officers - the applicant being one of them in view of order passed on 1.4.1977.

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Ministry of Defence reconsidered the above said release order on 4.6.1977 and the applicant continued in service. The applicant received a telegram dated 31.7.1977 that he is released w.e.f. 31.7.1977 but no ground for releasing him was stated therein. He received a letter dated 1.8.1977 notifying applicant's release w.e.f. 31.7.1977. On 2.11.1977 he received a letter dated 1.8.1977 that he has not been granted further extension of service and is to be relieved on 31.7.1977.

5. The applicant claims that he has submitted the representation dated 4.3.1978, 16.2.1980, 30.3.1982, 3.10.1983, 10.2.1985, 3.2.1986, 17.10.1988, 3.8.1989, 20.8.1991, 12.12.1991, 26.2.1992, 22.7.1992, 27.8.1992, 14.10.1992, 9.2.1993. He attained the age of superannuation on 31.8.1977 and filed the OA. on 18.8.1999. During the pendency of the OA. the applicant G.C. Choudhary expired on 28.11.1999 and the legal representatives are brought on record.

6. The applicant's grievance is that his service was terminated without notice and without holding an enquiry. As such, his termination is violative of Article 311 of the Constitution of India, as such void ab-initio. In consequence thereof he is entitled to continue in service till the age of superannuation.

7. The applicant has also filed application for delay condonation in filing the OA. The Tribunal vide its order dated 29.9.2000 stated that the matter will be heard on the point of limitation first.

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Thereafter on 27.11.2000 after hearing the parties for little while mentioned that issues are linked up to the merits and hence it cannot be decided at the admission stage and therefore after admitting the OA. the matter was remitted to the Sine-die list.

8. The learned counsel for the applicant relied on para 20 of 1967 SLR 231 - The State of Madhya Pradesh vs. Syed Qamarali and argued that as order of release was void, had no legal existence, as such was not necessary for the applicant to have the order set aside by a court which is extracted below :-

"20. We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under Section 7 could be exercised, is totally invalid. The order of dismissal had therefore no legal existence and it was not necessary for the respondent to have the order set aside by a Court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

9. The learned counsel for the respondents relied on 1991 SC SLJ 93 - The State of Punjab & Ors. vs. Gurdev Singh & Ashok Kumar and argued that the above referred case of Syed Qamarali was subject of consideration before the Apex Court and the Apex Court has stated as under :-

"9. Counsel for the respondents however, has placed strong reliance on the decision of this Court in State of M.P. v. Syed Quamarali (1967(1) SLR 228). The High Court has also relied upon that the decision to hold that the suit is not

governed by the limitation. We may examine the case in detail. The respondent in that case was a sub-inspector in the Central Province Police Force. He was dismissed from service on 22 December 1945. His appeal against that order was dismissed by the Provincial Government. Central Provinces and Berar on 9 April 1947. He brought the suit on 8 December 1952 on allegation that the order of dismissal was contrary to the para 241 of the Central Provinces and Berar Police Regulations and as such contrary to law and void, and prayed for recovery of Rs.4724/5/- on account of his pay and dearness allowance as sub-inspector of Police for the three years immediately preceding the date of the institution of the suit. The suit was decreed and in the appeal before the Supreme Court, it was urged that even if the order of dismissal was contrary to the provisions of law, the dismissal remained valid until and unless it is set aside and no relief in respect of salary could be granted when the time for obtaining an order setting aside the order of dismissal had elapsed. It was observed :

"We therefore hold that the order of dismissal having been made in breach of a mandatory provision of the rules subject to which only the power of punishment under Section 7 could be exercised, is totally invalid. The order of dismissal had therefore, no legal existence and it was not necessary for the respondent to have the order set aside by a Court. The defence of limitation which was based only on the contention that the order had to be set aside by a court before it became invalid must therefore be rejected."

10. These observations are of little assistance to the plaintiffs in the present case. This Court only emphasized that since the order of dismissal was invalid being contrary to para 241 of the Berar Police Regulations, it need not be set aside. But it may be noted that Syed Qamarali brought the suit within the period of limitation. He was dismissed on 22 December 1945. His appeal against the order of dismissal was rejected by the Provincial Government on 9 April 1947. He brought the suit which has given rise to the appeal before the Supreme Court on 8 December 1952. The right to sue accrued to Syed Qamarali when the Provincial Government rejected his appeal affirming the original order of dismissal and the suit was brought within six years from that date as prescribed under Article 120 of the Limitation Act, 1908.

11. The Allahabad High Court in Jagdish Prasad Mathur and ors. v. United Provinces Government (AIR 1956 All 114) has taken the view that a suit for declaration by a dismissed employee on the ground that his dismissal is void, is governed by Article 120 of the Limitation Act. A similar view has been taken by Oudh Chief Court in Abdul Vakil v. Secretary of State and anr. (AIR 1943 Oudh 368). That in our opinion is the correct view to be taken. A suit for declaration that an order of dismissal or termination from service passed against the plaintiff is wrongful, illegal or ultra vires is governed by Article 113 of the Limitation Act. The decision to the contrary taken by the Punjab & Haryana High Court in these and other cases (State of Punjab v Ajit Singh (1988 (1) SLR 96) and (ii) State of Punjab v. Ram Singh (1986 (3) SLR 379) is not correct and stands over-ruled."

10. Facing the said situation the learned counsel for the applicant argued that the judgement in Syed Qemarali's case is rendered by Five Judges - the constitution Bench while the judgement in case of Gurdev Singh and Ashok Kumar referred above is delivered by three judges, as such the verdict in case of Qemarali will prevail relying on 1998 (1) SC SLJ 106 General Manager, Telecom vs. S.Srinivasan Rao & Ors. As stated above in case of Gurdev Singh and Ashok Kumar referred above, the contrary view is not being taken but the judgement is being explained, as such the said authority is of no assistance to the applicant.

11. The case of Qemarali, Gurdev Singh and Ashok Kumar referred above do not deal with Section 21 of the Administrative Tribunals Act, 1985 but they deal with Limitation Act - 1908 and Limitation Act 1963 respectively. As such, the said authorities are in no way applicable to the present case, when OA. is filed on 18.8.1999.

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12. It is further clarified that in case of Qemarali - the suit was filed while Limitation Act, 1908 was in force while in case of Gurdev Singh & Ashok Kumar Limitation Act, 1963 was in force and period of limitation prescribed under Article 120 of Limitation Act, 1908 was subject of change from six years to 3 years in Limitation Act, 1963.

13. The learned counsel for the applicant relied on an order passed by CAT, Ahmedabad Bench (Full Bench case) in OA.NO.13/89 decided on 11.7.1991 reported in Full Bench Judgements Vol:II 498 and argued that a void order has no existence in the eyes of law need not to be set aside. Application claiming arrears of salary etc. cannot be defeated on the plea that void order was not assailed within the period of limitation. Failure to challenge a void order within the limitation period would not render the same impregnable. These are the observations of the Full Bench in Para 27 of the said order.

14. We have to mention Para 13 & 14 of the said order which are extracted below :-

"13. The next important point which falls for consideration is as to whether or not the true import and construction of Section 21, it would be correct to take the view that there is no period of limitation in respect of an application assailing a void order or an order void ab-initio. In this connection, it is significant to notice that Section 21 does not make any distinction between an application impugning an irregular or illegal order and an application impugning a void order. That apart, there is no provision express or implied in Section 21 or in any other provision of the Act to warrant the view that the period of limitation prescribed by Section 21 is inapplicable in the case of an application challenging a void order.

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14. For the reasons enumerated hereinabove, we are unable to countenance the view that an application under Section 19 of the Administrative Tribunals Act, 1985 impugning a void order is not to be governed by the period of limitation prescribed by Section 21 of the Act. The correct view, to our mind, appears to be that the period of limitation prescribed by Section 21 of the Act would regulate the question of limitation for an application filed under Section 19 of the Act irrespective of the fact whether it impugns an irregular order or illegal order or a void order. The question referred to us is answered accordingly. A contrary view taken by the Principal Bench in 'Shri Beer Singh' and by the Chandigarh Bench in 'Ram Lai Thakur' or by any other Bench of the Tribunal cannot be said to lay down correct law on this question."

After careful perusal of the said order we are of the considered view that the case of State of Punjab & Ors. vs. Gurdev Singh and Ashok Kumar referred above was not the subject of consideration before the Full Bench. As such, in our considered opinion the said decision of the Full Bench particularly in para 27 of the said order does not help the applicant.

15. The learned counsel for the applicant relied on 1995 (2) SC SLJ 337 - M.R.Gupta vs. Union of India & Ors. and argued that it being a recurring cause of action, the OA. is not barred by limitation. Suffice to state that case of pay fixation is a recurring cause of action but not recovery of pay which is also apparent in view of case of Syed Qemarali referred above, B.P.Shrivastava vs. Consolidation Commissioner U.P. & Ors. (1985 (2) A.I.SLJ 542). Madhav Laxman Vaikunthe vs. State of Mysore (A.I.R. 1962 S.C. 8), Jai Chand Sawheny vs. Union of India (1969 SLR 879).

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16. The learned counsel for the applicant argued on the basis of 2000 (2) A.I.SLJ 14 - Shri A.K.Singhal vs. Union of India & Ors. that the guidelines laid down by the Apex Court in case of State of Karnataka vs. Kappu Swami Govinder (A.I.R.1987 S.C.1353) must be followed while dealing with a case of condoning delay. In this respect he also referred to (1987) 2 SCC 107 - Collector Land Acquisition & Anr. vs. Mst.Katiji & Ors. There can not be a disagreement with the said proposition but before we exercise a jurisdiction to condone the delay, there must be a jurisdiction to decide the lis with the Tribunal. In absence of jurisdiction to decide the lis, question of jurisdiction to condone the delay does not exist.

17. The learned counsel for the applicant relied on (1989) 10 ATC 407 - Parmod Kumar Bhargava & Anr. vs. Union of India & Ors. decided by C.A.T.Chandigarh, 1998 (1) A.I.SLJ 54 K.C.Sharma & Ors. vs. Union of India & Ors. decided by the Apex Court & argued that Uniform extension of the benefit of Courts decision to all similarly placed employes desirable in view of Article 14 and 16 of the Constitution. He clarified that one Capt. Brijesh Chandra Awasthi who was similarly placed filed writ in the High Court of Judicature at Allahabad (Civil Mis.Writ Petition No.192/97 connected with Civil/Mis.Writ Petition No.1162/97) succeeded in the matter vide order dated 22.5.1985. The said writs were filed in the year 1977 while the present OA. is filed on 18.8.1999. The law helps the vigilant litigants/citizens. A writ filed in 1977 and an OA. filed on 18.8.1999 the petitioners/applicants cannot be said to be on par with each other.

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18. The learned counsel for the applicant relied on A.I.R.1977 S.C.2050 Sualal Yadava vs. The State of Rajasthan & Ors. which is based on facts that a ground for review before the Governor which was not upheld by the Governor itself, can not be taken to reject the writ petition. We are of the considered opinion that the said authority is not at all relevant to the issue involved in the present case.

19. The learned counsel for the applicant relied on 2001 (SCC (L&S) 374 - K.Thimmappa & Ors. vs. Chairman, Central Board of Directors State Bank of India & Anr. and argued that a petition can not be rejected solely on the ground of laches when question of violation of Fundamental right - Art.14 is involved in it. The question of laches is distinct with question of limitation. Further, in the present case, question of limitation is mixed with question of jurisdiction in view of specific provision contained in Section 21 (3) of the Administrative Tribunals Act,1985.

20. The learned counsel for the applicant relied on (1992) 21 ATC 32 - Ram Chandra vs. Union of India & Ors. decided by CAT,Jodhpur Bench wherein it has been held that discovery and production of documents, plea taken by the Government that relevant records were lost, adverse inference drawn against Government. On the basis of the said plea, the learned counsel for the applicant argued that the respondents have pleaded that the records have been destroyed as such adverse inference against

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the Government to be drawn. He advanced the arguments on the basis of the fact that only by the pleadings in the written statement the applicant became aware of the fact that his services were terminated or he was released/relieved from service on account of Financial Mis-Management (R-2). He argued that when respondents have pleaded this fact, the record can not be destroyed particularly when representation of the applicant since 1978 and thereafter were pending for decision. It is worth mentioning that applicability of the said decision can be considered only when the Tribunal has jurisdiction to decide the case.

21. The learned counsel for the applicant argued that he became aware of the judgement of Hon'ble High Court of Allahabad only by letter dated 4.6.1999 and as such the period of limitation begins to run from the said date. The proposition the learned counsel for the applicant wants to lay that it is the knowledge which is the date of cause of action in no way enumerated under Section 21 of the Administrative Tribunals Act, 1985 particularly when he was out of job since the year 1977.

22. (1989) 9 ATC 61 C.N.Locanathan vs. Union of India along with other OAs. - 340/86, 319/87, 320/87 decided by C.A.T. Hyderabad lays down the proposition that cause of action arising more than three years prior to constitution of the Tribunal does not empower the Tribunal to entertain such matters. In the present case, cause of action accrues to the applicant on 31.7.1977, the date of release/relieved. As such, the Tribunal has no jurisdiction either to entertain the OA. or consider the delay condonation application.

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23. As the relief of pension being inter-dependent or consequential to the result of OA.No.708/99, till the order of release/relieve dated 31.7.1977 is not set aside or quashed, the retiral benefits are not available to the applicant.

24. We are narrating only the case law relied on by the learned counsel for the applicant without expressing any opinion in respect of entitlement of the applicant. 1997 SCC (L&S) 555 Union of India & Ors. vs. D.R.R.Sastri, 1997 SCC (L&S) 1688 State of Rajasthan & Anr. vs. Prem Raj, 1991 SCC (L&S) 911 - Om Prakash Goel vs. Himachal Pradesh Tourism Development Corp., A.I.R.1984 SC 636 Anoop Jaiswal vs.. Govt. of India & Anr.

25. The learned counsel for the applicant relied on (1992) 21 ATC 32 - Ram Chandra vs. Union of India & Ors. decided by CAT, Jodhpur Bench wherein it has been held that discovery and production of documents, plea taken by the Government that relevant records were lost, adverse inference drawn against Government. On the basis of the said plea, the learned counsel for the applicant argued that the respondents have pleaded that the records have been destroyed as such adverse inference against the Government to be drawn. He advanced the arguments on the basis of the fact that only by the pleadings in the written statement the applicant became aware of the fact that his services were terminated or he was released/relieved from service on account of Financial Mis-Management (R-2). He argued that when respondents have pleaded this fact, the record can not be

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destroyed particularly when representation of the applicant since 1978 and thereafter were pending for decision. It is worth mentioning that applicability of the said decision can be considered only when the Tribunal has jurisdiction to decide the case.

26. The learned counsel for the applicant argued that he became aware of the judgement of Hon'ble High Court of Allahabad only by letter dated 4.6.1999 and as such the period of limitation begins to run from the said date. The proposition the learned counsel for the applicant wants to lay that it is the knowledge which is the date of cause of action in no way enumerated under Section 21 of the Administrative Tribunals Act, 1985 particularly when he was out of job since the year 1977.

27. In the result, both the OAs. are disposed of arriving to a finding that the Tribunal has no jurisdiction either to consider the delay condonation application or the O.A.

28. No order as to costs for the reason that the original applicant G.C.Choudhary has expired and his L.Rs. are brought on record, as such, we refrain ourselves from passing any order as to cost.

S.L.Jain

(S.L.JAIN)

MEMBER (J)

B.N.BAHADUR

(B.N.BAHADUR)

MEMBER (A)

mrj.