IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 238 OF 1998.

Date of Decision: March 05, 1999.

Smt. Rita Shamlal Khare, ---------- Applicant.

Shri D. V. Gangal, ---------- Advocate for Applicant.

Versus

Union Of India & 3 Others, ---------- Respondent(s)

Shri R. R. Shetty for
Shri R. K. Shetty,
---------- Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. D. S. Baweja, Member (A).

(1) To be referred to the Reporter or not? NO

(2) Whether it needs to be circulated to other Benches of the Tribunal? NO

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 238 OF 1998.

Dated the 5th day of March, 1999.

CORAM : HON'BLE SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Smt. Rita Shamlal Khare,
Ex-Safaiwali,
(Conservancy Sweeper),
working under
Station Headquarters,
Southern Command,
Pune - 411 001.

Residing at -

47, Dhavale Vasti,
Bharat Forge Road,
Mundhwa, Pune - 411 036. ... Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

1. The Union Of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 001.

2. Senior Civilian Staff Officer,
General Staff Branch,
Army Headquarters, Additional
Directorate General of Staff
Duties, D.H.Q., New Delhi - 110 011

3. The General Commanding Officer,
Headquarter Southern Command,
Pune - 411 001.

4. The Brigadier Commander,
Pune Sub Area Headquarters,
Pune - 411 001. ... Respondents.

(By Advocate Shri R. R. Shetty
for Shri R. K. Shetty)

OPEN COURT ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed by the applicant challenging the order of dismissal dated 30.08.1986. The respondents have filed reply opposing the application.

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The applicant has also filed a M.P. No. 633/98 for condonation of delay. The respondents have filed reply to the M.P. also. We have heard both Counsels regarding admission and on the question of condonation of delay.

2. The applicant who was working as a Safaiwalli, suffered conviction by an order of Criminal Court and thereby she was dismissed from service by the impugned order dated 30.08.1986. The order clearly says that since the applicant has suffered conviction and sentence in a criminal case, she cannot be retained in service and therefore she was ordered to be dismissed from service under Rule 19(i) of the C.C.S(C.C.A) Rules, 1965. The applicant filed an appeal against the order of the Criminal Court, namely - Criminal Appeal No. 573 of 1986, which came to be partly allowed by the order of the High Court dated 23.03.1993. The High Court has upheld the conviction of the Appellant and set aside the order with a direction that the appellant should be released under Probation of Offenders' Act. Then the applicant made some representations to the administration to reinstate her. Since she did not get any positive reply, she has now approached this Tribunal challenging the original order dated 30.08.1986 and for other consequential reliefs.

3. The respondents in their reply have jusitifed the action taken against the applicant and supported their order on merits. Then they have also stated that the application is hopelessly barred by limitation, delay and laches.

4. The applicant is now challenging the order dated 30.08.1986 by filing the present O.A. in 1998, nearly twelve years after the impugned order. The Learned Counsel for the applicant contended that the impugned order is contrary to rules and it is a void order, hence it is a nullity and need not be set aside and therefore, there is no question of limitation for challenging such an order and placed strong reliance on Syed Quamarali's case reported in 1967 (1) SLR SC 228. On the other hand, the Learned Counsel for the Respondents contended that unless the order is set aside, it is valid and, therefore, the present application filed twelve years after the impugned order is barred by limitation, delay and laches.

5. Now the Learned Counsel for the applicant is attacking the impugned order on the ground that it is passed contrary to rules and non-application of mind and necessary reasons being not recorded in the impugned order. If those are the grounds, there was no difficulty for the applicant to wait for the termination of the criminal case and could have challenged this order even during the pendency of the criminal case. In our view, the judgement of the Supreme Court in Syed Quamarali's case is not strictly applicable to the facts of the present case. That was a case where the Supreme Court held that the impugned order was a void order being passed in direct contravention of a statutory mandate. Even otherwise, the decision of the Supreme Court in Syed Quamarali's case came to be

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interpreted by a Three-Judge Bench of the Supreme Court in a subsequent decision reported in 1991 SC SLJ 93 (State of Punjab & Others V/s. Gurdev Singh & Anr.) where inspite of referring to the decision of the Constitutional Bench in Syed Quamarali's case, the Supreme Court has held that even if the order is wrongful and illegal, it has to be quashed within the period of limitation by approaching an appropriate forum. The Supreme Court in the subsequent decision has referred to the facts of Syed Quamarali's case and the observations of the Constitutional Bench and then observed that Syed Quamarali's case was not at all barred by limitation on the available facts and therefore, those observations are not applicable to the case which was before the Supreme Court. In the subsequent decision the Supreme Court has clearly stated that even a void order must be struck down by a competent court or Tribunal within the period of limitation. Therefore, in view of the law declared by the Supreme Court in the subsequent decision after interpretation of Syed Quamarali's case, we have no hesitation to hold that the applicant should have approached this Tribunal within the period of limitation to quash the order, which according to her, is either illegal or invalid.

6. We have already seen that the impugned order was passed in 1986. If the applicant wanted to challenge it on the ground that it was invalid, illegal and contrary to the rules, she could have filed an application before this Tribunal within

one year from the date of service of the order or within a reasonable time thereafter. Even granting for a moment that the applicant was facing criminal prosecution and therefore she did not approach this Tribunal, the applicant's appeal in the High Court was partly allowed in 1993. Even then the applicant has taken five years to approach this Tribunal in 1998. Mere sending representations and correspondence with the department will not arrest limitation. In a service matter, the party has to be vigilant and should approach a Court or Tribunal within an appropriate time. Therefore, in the facts and circumstances of the case, we find that it is not a fit case for condoning delay or for admitting the application.

7. The applicant's Counsel relied on AIR 1983 SC 803 where in a Land Acquisition case, the Supreme Court has observed that in public interest, the delay has to be condoned. Therefore, the question was, there being an order against the Government to pay huge amount of compensation for which no appeal has been filed by the State, it was in those circumstances that the State's appeal was allowed by the Supreme Court, though there was a delay in filing the appeal. That decision cannot be made applicable to a service matter where the matters cannot be kept hanging for years together. When the applicant has been dismissed from service, in her own interest, she should have approached a Court or Tribunal within a reasonable time.

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8. As far as merits are concerned, the applicant has been convicted by the Session Judge and the High Court has confirmed the conviction but allowed the applicant to be released on probation of good conduct. There are several decisions of the Supreme Court which clearly says that in such a case where a Government official has been released on probation and the conviction still stands, then the order of dismissal cannot be interfered with (vide 1990(2) SLR (SC) 65 - Union Of India V/s. Bakshi Ram). Therefore, on merits also, the applicant cannot now say that in view of the order by the High Court setting aside the ~~conviction~~ sentence, the applicant is entitled to reinstatement. As long as the conviction stands, the applicant cannot ask for reinstatement. Therefore, even on this ground, it is not a fit case for admitting the application.

9. In the result, both the application and the M.P. No. 633/98 are hereby rejected at the admission stage. No costs.

(D. S. Baweja)
Member (A).

(R. G. Vaidyanatha)
Vice-Chairman.

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