

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

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O.A.No.160/91

Date of Order: 21st Feb., 1992.

K.S. Saiwal

- Applicant.

Mr.N.K. Joshi

- Counsel for the Applicant.

Vs.

U.O.I. & Ors.

- Respondents.

CORAM:

1. The Hon'ble Mr. Kaushal Kumar - Vice Chairman.
2. The Hon'ble Mr. Gopal Krishna - Member (Judl.).

Mr. Kaushal Kumar, Vice Chairman.

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was working as Assistant Medical Officer at Botad (Bhavnagar Division) of Western Railway has prayed for quashing the order dated 10th December, 1975, by which his resignation was accepted. It has been stated in the application that the applicant made a number of representations to the concerned authority but no decision was taken thereon. The last of such representations was made on 30th October, 1990 to the Minister for Railways to which a reply was sent on November 6, 1990 by the Addl. Private Secretary to Minister of Railways that the matter had been referred to the concerned Directorate for examination.

2. The reliefs prayed for in the application run as follows :-

- " (i) The Hon'ble Tribunal may be pleased to call for the records relating to the matter and examine the same and be pleased to quash and set aside the order dated 10/12/1975 (Annexure A-7) and to order that the petitioner be reinstated in service with full salary and all other consequential benefits from 5.12.75, the date from which the resignation of the petitioner has been treated as effective and the petitioner be given senior scale of 700-1600 with effect from 1.1.1973.

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(ii) The applicant be given advantage of his adhoc service and his services be deemed continuous for all purposes from 9.9.1969 till the reinstatement and the order of termination of adhoc services Annexure A-4 dated 3.3.1971 be set aside and quashed.

(iii) In the alternative, respondents be directed to finally decide the grievance raised by the Applicant in his representations dated 30.10.90 and 4/6th January, 1991 submitted to the Minister of Railways as assured by the Addl. Private Secretary to the Railway Minister vide his letter dated Nov., 6, 1990 (Annexure A/1).

(iv) Any other relief to which the petitioner is found to be entitled to by the Hon'ble Tribunal in the facts and circumstances of the case, may also be granted."

3. We gave a very long and patient hearing to Shri Joshi, learned counsel appearing on behalf of the applicant on the question of limitation. In the present case, the cause of action arose on 10th December, 1975 when the communication regarding acceptance of resignation was issued (Annexure - 7). Since the cause of action arose more than three years preceding the establishment of the Tribunal, the provision of Section 21 sub section (2) would stand in the way of entertaining the application. However, the learned counsel contended that this provision was applicable only in those cases where no representation was pending or where <sup>it</sup> had already been decided in the period preceding three years of the establishment of the Tribunal. The learned counsel placed reliance on certain rulings in support of his contention that the present application was not barred by limitation. In Har Binder Lal Vs. The Comptroller and Auditor General of India and others, 1988 (5) SLR Page 315, the Hyderabad Bench of the Central Administrative Tribunal observed as follows :-

"..... In the instant case before us as already stated that the Comptroller and Auditor General of India has dismissed the applicant's claim on 24.5.1984 not on the ground of delay but on the ground of non-applicability of Government of India's instructions dated 25.3.1977. Thereafter, i.e. after 24.5.1984 the application is within the time limit prescribed under Section 21 of the Administrative Tribunals Act. Hence, we are of the opinion that it is not open to the respondents to contend that the claim of the applicant is barred by limitation or is it hit by latches."

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In S.M. Bhati Vs. U.O.I. & Another, (1989) II Administrative Tribunals Cases 722, the Chandigarh Bench of the Central Administrative Tribunal observed as follows :-

"10. Turning to the second question, it may be stated at the very outset that as stated hereinabove and also held in Dharampal case, the respondents should on their own grant the benefit of decision of the Bangalore Bench to all the similarly situated Assistant Masters in the School, especially when it is a question of infringement of a Fundamental Right. It ill behoves the government, which is considered to be a model employer, to defeat the otherwise well founded claims of its employees on technical plea of limitation in such cases. In the facts and circumstances of this application, we would not like to oust the applicant on the technical plea of limitation."

4. In Smt. Saraswati, K Vs. Head of Utilisation Research 1990 (1) SLR Page 192, the Bangalore Bench of the Central Administrative Tribunal observed as follows :-

"26. It is apparent from the above, that R1 to R3 took inordinately long, to come to a final decision in the matter, after quite some vacillation for which the applicant cannot be blamed. She has filed the present application on 20.4.1988 after she was given a final reply on 17.7.1987. She has thus approached this Tribunal in time. We, therefore, overrule the preliminary objection raised by Sri Padmarajaiah, on grounds of limitation."

5. It will be seen from the above that in the cases decided by Hyderabad and Bangalore Benches, limitation was taken to run from the date of rejection on merits of the representation filed by the petitioners therein. In the Chandigarh case referred to above what the Bench held was that since the petitioners were placed in the same class as the persons who had been given relief by the Bangalore Bench, they were entitled to the same relief in accordance with the ratio decidendi of Dharampal's case.

6. In the present case before us, the facts are clearly distinguished from those which form the basis

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for the rulings relied upon by the learned counsel for the applicant. Neither the representation of the applicant has been decided nor has he claimed relief on par with that given to any other person similarly placed as the applicant. Therefore, the rulings referred to and relied upon by the learned counsel for the applicant do not advance the case of the applicant in so far as the bar of limitation is concerned.

7. We also gave hearing to certain other counsel who were present and volunteered to put forth their contentions. The gist of their contentions and the thrust of their arguments briefly was that the technical ground of limitation should not be allowed to stand in the way of affording substantive justice and that the Hon'ble Supreme Court had held in Sampat Kumar's case that this Tribunal was a substitute for the High Court and since the High Courts had discretionary powers to condone delays and latches, this Tribunal had the same powers to condone delays in genuine and deserving cases.

8. We have carefully considered the contentions raised by Shri Joshi and other counsel who argued before us and hold that since the Tribunal has to exercise its powers and jurisdiction within the framework of the Administrative Tribunals Act, 1985, the provisions of the said Act in regard to limitation cannot be ignored. In case of writ petitions under Article 226 of the Constitution, there is no statutory bar of limitation and, therefore, latches and delays can be condoned but such is not the case in the scheme under the provisions of the Act.

9. In Sukumar Dey Vs. Union of India & Others (1987) 3 A.T.C. 427, the Calcutta Bench of the Tribunal observed as follows :-

"8. We may refer to Section 21(2) of the

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Administrative Tribunals Act, 1985, which runs as follows :-

(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;

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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.

Plain reading of the section goes to show that in matters wherein grievance arise by reason of any order made at any time before the period of three years immediately preceding the date on which the Tribunal was set up, the Tribunal has no power to give any relief beyond the period specified therein has been made to be barred leaving no discretion to the Tribunal. In some other cases, the Tribunal has been given some discretion to entertain an application but in such cases exercise of any such discretion has been taken away from the jurisdiction of the Tribunal and, therefore, we cannot entertain this application seeking reliefs against certain other orders, which have, as we have already stated, been passed ten years back. Not only these orders are stale but also they are statutorily barred by limitation barring jurisdiction of this Tribunal to give any relief.

9. We are also fortified by a judgement passed by the Principal Bench of the Administrative Tribunal in V.K. Mehra V. Secretary, Ministry of Information & Broadcasting (ATR 1986 CAT 203). That judgement follows a previous judgment passed by the same Bench in the case of Capt. Lachhman Singh V. Secretary, Ministry of Personnel & Training (Reqn.No.T.34/85). In the light of the said judgments, we do not think that we can exercise any jurisdiction over the instant application nor can we entertain this application let alone admitting the same."

10. In S. Sangeetha Rao Vs. Union of India (1989) 11 A.T.C. 516).

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"9. In case of Amin Singh Tyagi V. Delhi Administration (ATR 1989) 1 CAT 227) a Division Bench of the Tribunal comprising of the then Chairman, K.Madhava Reddy and

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Shri Kaushal Kumar, held that a cause of action which arose on 22.5.1974 was barred by time. The Bench held that since the relief is sought against the above order which was made prior to 1.11.1982 it was barred by time and no relief should be given. The Bench referred to three earlier decisions of the Tribunal in R.N. Singhal V. Union of India (1987) 4 ATC 507) V.K. Mehra Vs. Secretary of Ministry of Information and Broadcasting (ATR(1986) CAT 203) and Satyabir Singh Vs. Union of India (1987) 3 ATC 924).

10. It is, therefore, clear that the Tribunal has been taking a consistent view that any cause of action which arose before 1.11.1982 would be not within the purview of the Tribunal".

11. One of us (Shri Kaushal Kumar) was a party to some of the judgments referred to in para 9 above."

12. In S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 Supreme Court 10, the Hon'ble Supreme Court observed as follows :-

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"Para 20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertain the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made....."

12. In view of the above discussion, we hold that since

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the cause of action arose more than three years preceding the establishment of this Tribunal, the present application is hit by the bar of limitation and the Tribunal has no jurisdiction to entertain the same.

13. The learned counsel for the applicant Shri Joshi further stated that although no application as such for condonation of delay had been filed, he was making an oral prayer for condonation of delay. He further pleaded that at least a direction might be issued to the respondents for disposing of the pending representation which might give a fresh cause of action to the petitioner. Since in the present case we have held that the Tribunal has no jurisdiction to entertain the application, the prayer for condonation or issue of any other direction can also not be entertained.

14. The application is accordingly dismissed at the admission stage. Before parting with the case, we would like to record our appreciation of the exhaustive and extensive arguments advanced by the learned counsel Shri Joshi appearing for the applicant and also valuable contribution made by the learned counsel Sarveshri S.K. Jain, U.D. Sharma, M.K. Shah and K.S. Sharma.

G.Krishna 21-2-92.  
(GOPAL KRISHNA)  
MEMBER (JUDL.)

K. Kaushal 21-2-92  
(KAUSHAL KUMAR)  
VICE CHAIRMAN.