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CENTRAL ADMITTED APPEALS TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

O.A No. 198/90

Date of Decision: 30-9-92

T.A. No.

Mr PK Naidu

Petitioner

Mr K. Sudhakar Reddy for Mr PSN Murthy Advocate for
the Petitioner(s)

Versus

Director General of Shipping, Min. of Transport Respondent.
Bombay

Mr N. Bhaskara Rao

Advocate for
the Respondent
(s)

CORAM:

THE HON'BLE MR. T. CHANDRASEKHARA REDDY, MEMBER (JULD.)

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not ?
3. whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on Columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

T - C. M
(HTCR)
M(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.198/90

DATE OF JUDGEMENT: 30th SEPTEMBER, 1992

BETWEEN

Sri PK Naidu .. Applicant

and

1. Secretary, Ministry of Transport
Department of Surface Transport
Government of India, New Delhi.

2. The Director General of Shipping
Jahaj Bhavan
Walchand Hirachand Marg
Bombay-400 038

3. The Surveyor In-Charge
Mercantile Marine Department
Port Area, Visakhapatnam

4. The Principal Officer
Mercantile Marine Department
Port Area, ~~Chennai~~
Madras

5. The Pay & Accounts Officer(Shipping)
Marine House Hastings,
Calcutta 22. .. Respondents

Counsel for the Applicant :: Mr K. Sudhakar Reddy for
Mr PSN Murthy

Counsel for the Respondents:: Mr N. Bhaskara Rao, SC

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

T - C. A. J

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JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act to direct the respondents to i) calculate and fix the applicant's pension, family pension gratuity and other terminal benefits taking in to account his combined naval and civil service into account under the CCS Pension Rules and ii) settle his GPF account and pay the balance with interest due to the applicant and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief, may be stated as follows:

3. The applicant served in the Indian Navy from 22.3.56 to 19.11.70. He retired on medical ground with invalid pension from the Indian Navy w.e.f. 20.1.70. The applicant was re-employed in a civilian post under the Ministry of Transport Government of India, as a Deck Instructor on Board TS Mekhala with effect from 2.1.71 at Visakhapatnam. The applicant has got 13 years 4 months 6 days service under the respondents. The applicant was declared as quasi-permanent.

4. While so, the applicant was absent for 2 years from 4.5.82 to 3.5.84 and attended office for 5 days from 4.5.84 to 8.5.84. The applicant absented again himself from duty continuously with effect from 5.5.84. Before 4.5.82, he was granted medical leave on the recommendations of the Surgeon of KG Hospital, Visakhapatnam as he was suffering from "duodinal ulcer" for 3 months w.e.f. 4.2.82 to 3.5.82 with instructions to appear before the Medical Board on expiry of the above leave for further medical check-up. The

The applicant however, evaded to do so till 25.2.84. The applicant was examined by a Medical Board on 25.2.84, who opined that he was in a state of normal health without any physical ailment. The applicant hardly worked for 5 days from 3.5.84 to 8.5.84 and again stopped attending duties with effect from 9.5.84. As the applicant was absent from duty from 4.5.82 to 3.5.84 and again from 9-5-84 onwards (except for 5 days) the applicant was issued a show-cause notice on 9.1.86 stating that if no reply was received from him within 10 days, his services would be terminated.

5. The applicant on receipt of the notice dated 9.1.86 gave his explanation dated 20.1.86 informing the respondents that his prolonged absence from duty was due to intermittent sickness. The applicant, in the said letter also requested that he may be allowed to retire voluntarily taking into account his previous services in the Indian Navy that is 14 years and 11 years 4 months service in TS Mekhala.

6. After considering the explanation of the applicant, the respondents terminated the services of the applicant ~~as per the order dated 21-6-87~~ with retrospective effect from 9.5.84. It is the contention of the applicant that the said removal order of the 2nd respondent dated 22.6.1987 ^{is} ~~are~~ illegal and he must be deemed to have been retired from 20.1.86. It is also the case of the applicant that he is entitled for pensionary benefits, payment of gratuity, etc., and hence, the present OA is filed for the relief as already indicated above.

7. The respondents have filed counter opposing this OA.

8. It is maintained in the counter that the applicant has not been confirmed in the post of Deck Instructor and ~~as~~ the applicant was working only in temporary capacity

as Deck Instructor and that the termination of the services of the applicant are valid in law and hence, legal. It is also further maintained that the applicant is not eligible to count his previous service in Indian Navy which was permissible only on his confirmation in the post of Deck Instructor, as laid down in para 90 of CCS(Pension) Rules, 1972. It is also further stated that a sum of Rs.17,760/- towards final settlement was paid to the applicant on 5.3.91, after obtaining proper receipt, and there is nothing else to be paid to the applicant and the applicant is not entitled to any pensionary benefits. It is also maintained in the counter as this OA is filed beyond 3 years, from the date of removal from service that this OA is liable to be dismissed as the remedy of the applicant is barred by time.

9. We have heard Mr K. Sudhakar Reddy, prox. counsel for Mr PSN Murthy, counsel for the applicant and Mr Naram Bhaskara Rao, Standing counsel for the respondents.

10. The main question with which we are confronted with in this OA is whether the termination orders of the 2nd respondent dated 22.7.1987, terminating the services of the applicant w.e.f. 9.5.84, are valid. It is not in dispute in this case that the applicant was working in a temporary capacity as Deck Instructor. Admittedly, in this case, only a show cause notice had been issued to the applicant as to why his services should not be terminated and, after the applicant submitted his reply, his services had been terminated. It is contended on behalf of the respondents, by Mr Naram Bhaskara Rao, Counsel for the respondents, as the applicant is a temporary Govt. servant, that, there is no need to follow the procedure as prescribed for termination of service of a regular Govt. employee and in view of this position that the services of the applicant were validly terminated. We may point out that this is not a case of simple termination of the services of a temporary Govt. employee. The services of the applicant were terminated for the specific reason that the applicant wilfully absented himself from his duties for different periods, as already indicated above. To say, that a Govt. servant

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willfully absents himself from duty, casts stigma on his conduct as it suggests that he is an irresponsible person who has no sense of duty in him. It is settled law, even a temporary govt. servant is sought to be terminated by way of punishment on account of specific fault, then the provisions of Article 311(2) must be complied with. In this context, we may refer to the decision reported in AIR 1958 SC 36 - Purushotamlal Dhingra Appellant Vs Union of India, Respondent, wherein it is laid down as follows:

"In the absence of any special contract, the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' of service or the post is abolished and his services cannot be terminated except by way of punishment for mis-conduct, negligence, in-eficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to, during that period unless by way of punishment dismissed or removed from the service. Except in these two cases, the appointment to a permanent or temporary on probation, or on officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his services may be terminated unless his services had ripened into what is, in the service rules, called a quasi permanent service."

11. So, it is quite evident that the procedure to be followed with regard to a Government servant whether temporary or permanent, in the matter of removal from service is one and the same and both are entitled for the same protection under Article 311 of the Constitution.

T - C. n 28

...6.

Article 311(2) of the Constitution reads as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against and given a reasonable opportunity of being heard in respect of those charges." (emphasis supplied)

12. It is the case of the applicant that reasonable opportunity had not been given to him while terminating his services to put forth his defence and in view of this position that his termination of services is illegal. Reasonable opportunity, envisaged to a Govt. servant as per the provisions of the said Constitution (Article 311(2)) is laid down in AIR 1958 SC 300 - Khem Chand Appellant Vs Union of India Respondents - as follows:

"The reasonable opportunity envisaged to a Govt. servant by the provision contained in ARTICLE 311(2) includes (a) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; (b) an opportunity to defend himself by cross examining himself or any other witness in support of his defence; and, finally (c) an opportunity to make his representations as to why the proposed punishment should not be inflicted on him which, he can only do if the competent authority after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Govt. servant tentatively proposes to inflict one of the three punishments and communicates the same to the Govt. servant....."

13. So, the observations in the said Khem Chand case applies on all fours to the facts of this case. It cannot be disputed that the applicant had not been given reasonable opportunity by the respondents to meet the case against him. So, in view of this position, we do not have any hesitation to come to the conclusion that the termination orders of the applicant dated 22.6.87 passed by the respondents are illegal.

admission
14. When this OA came up for hearing on 14/3/90, this Tribunal had kept the question of limitation open and to be decided during the course of final hearing of this OA. The respondents had specifically raised the plea that this OA is barred by limitation. Admittedly, if the applicant had been removed from service as per the orders dated 22.6.87, of the respondents. As per the provisions of Section 21 of the Administrative Tribunals Act, the applicant should have approached this Tribunal within a year from 22.6.87 i.e. the applicant should have filed this OA before 22.6.88. But the OA has been filed on 7.3.90. There is nearly one year 9 months/delay unexplained by the applicant herein in filing this OA. Even though the OA is filed for pensionary benefits, unless the removal order is set aside, the applicant will not be entitled for pensionary benefits. ~~As the removal order of the applicant remains unaltered, it is a measure of punishment and this fact is not in dispute.~~ ^{(X)(1)}

Even if the orders of removal (termination) are illegal and void ab-initio, still law casts duty on the applicant to take recourse to legal remedy within the period of limitation. In this context, we may refer to a decision reported in "Full Bench Judgement of Central Administrative Tribunals (1989-1991) at page 498 - 499 Dhiru Mohan Vs Union of India where it is held as follows:

"... the next important point which falls for consideration is as to whether or not on 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 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.

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 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 for an application filed under Section 21 of the Administrative Tribunals Act would regulate the question of limitation for an application filed under Section 19 of the Act irrespective of the fact whether it im ugns an irregular order or illegal order or a void order. The question referred to us is answered accordingly....."

So, from the said judgement it becomes amply evident and clear that even orders that are void-ab-initio have got to be set aside by competent ^{Judicial} forum within the period of limitation. ^{Even though} ~~So, as~~ we have held earlier that the orders of the removal of the applicant are illegal but the remedy of the applicant is barred by limitation as the orders of termination are not challenged before this Tribunal, within one year, ~~the order of termination on the applicant was passed.~~ So in view of this, we see no other alternative except to dismiss the OA as barred by time. In the result, we dismiss this OA as time barred leaving the parties to bear their own costs.

(T:CHANDRASEKHARA REDDY)
Member (Judl.)

Member (Judl.)

~~Dy. Registrar (Jud1)~~

~~Dy. Registrar~~

Dated: 30th Sept 1992.

~~Dy. Registrar (Jud1)~~

Copy to:-

1. Secretary, Ministry of Transport Department of Surface Transport, Govt., of India, New Delhi.
 2. The Director General of Shipping Jahaj Bhavan, Walchand Hirachand Marg, Bombay-38.
 3. The Surveyor In-Charge Mercantile Marine Department Port Area, Visakhapatnam.
 4. The Principal Officer, Mercantile Marine Department Port Area, Madras.
 5. The Pay & Accounts Officer(Shipping) Marine House Hastings, Calcutta.
 6. One copy to Sri. P.S.N. Mustafa, advocate, 8-1-197, Buidadejupalem, vizag-2
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