

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD  
BENCH : AT HYDERABAD :

O.A.No.48 of 1986.

Date of Order : 19-12-1989.

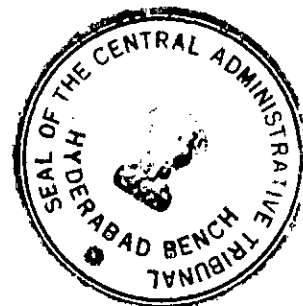
M.Satyanarayana (Died)  
M.Sridevi & others.

...Applicants

Versus

Union of India represented by its  
General Manager, SC Railway, Sec'bad  
& others.

...Respondents



Counsel for the Applicants : Shri P.B.Vijaya Kumar

Counsel for the Respondents : Shri N.R.Devaraj

CORAM:

HONOURABLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

HONOURABLE SHRI J.N.MURTHY : MEMBER (JUDL)(II)

(Judgment of the Bench dictated by Hon'ble  
Shri B.N.Jayasimha, Vice-Chairman)

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This is an application from a Station Master questioning the order of removal from service passed by the 4th respondent in his order No.C/T/194/1/5/C/82 dated 3-8-83. The applicant states that he joined the service as Assistant Station Master on 3-6-1963. He faithfully served till 9-7-83 as Station Master, Yard Station Master (platform). While he was working as Railway Station Master at Khazipet, a charge-sheet was issued to him enclosing articles of charges under memo No.C/T/194/1/5/C/82 dated 8-3-1982. It was stated in the charge sheet while working as A.S.M. at 16-00 to

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ment is not in proportion to the seriousness of the offence committed by the applicant. Therefore a show cause notice was issued to explain as to why the penalty should not be enhanced to that of removal from service. Even for this show cause notice the applicant did not choose to submit any explanation. Consequently the applicant was removed from service. The respondents state that the averments made by the applicant are not correct and the applicant was given all the opportunities to defend himself. For these reasons the respondents contend that the applicant has made no case for interference.

4. We have heard the learned counsel for the applicant, Shri P.B.Vijaya Kumar and the learned standing counsel for Railways Shri N.R.Devarej. The first question that requires to be considered is whether this application is maintainable in view of the fact that the applicant had filed a writ petition No.3284/85 in the Andhra Pradesh High Court which was dismissed on 15-4-1985. Shri Vijaya Kumar argues that while dismissing the writ petition the High Court had not considered the case on merits and dismissed only on grounds of laches. Under section 21(2)(a) of the Administrative Tribunals Act, 1985, if the grievance in respect 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 in

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dated 3-8-83. Thereafter, the applicant got the matter represented through a Member of Parliament for reconsideration but to no avail. Thereafter the applicant got issued a lawyer's notice on 12-12-1984 for reinstatement in service but there was no response. He filed a writ petition in the High Court on 15-4-85, and the High Court did not admit the writ petition on the ground that there was delay in approaching the court. Hence he filed this application.

2. The respondents in their counter states that this Original Application is not maintainable on the ground that the applicant had filed a writ petition No.3284/85 impugning the same order of the respondents and had sought the same relief as in this Original Application. The said writ petition was dismissed on 15-4-1985 and it is not open to the applicant to re-agitate for the same relief as the Judgment of the High Court operates as resjudicata.

3. Respondents further state that the applicant while working as Asst. Station Master was found in a drunken state on different dates while on duty and failed to discharge his duties besides committing irregularities. The Disciplinary Authority found him guilty and awarded the punishment of reduction in rank. Against this punishment the applicant did not prefer any appeal. But the appellate authority reviewed the order of punishment and felt that the punish-

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(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,

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.

5. It will be seen that even under section 21(2), the applicant, even if he satisfies the conditions laid down in 21(2)(a), also has to satisfy the condition in 21(2)(b). In this case the applicant had initiated proceedings in the High Court of judicature of Andhra Pradesh. The contention of Shri Vijaya Kumar that the application is within time under section 21(2) and should be admitted has to be rejected.

6. Section 29(A) was introduced by an amendment Act, 19/1989. It provides for filing of appeals and reads as follows :-

29-A. Provision for filing of certain appeals.—Where any decree or order has been made or passed by any court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law for the time being in force had not expired before such establishment, such appeal shall lie—

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order, whichever is later.]

respect of the matter to which such order relates, such a case will be entertained by the Tribunal if it is made within a period of six months from the said date. In this case the order of removal was passed on 25-6-83 i.e. within three years from the date of constitution of the Tribunal. He therefore submits that the application is within the limitation prescribed under section 21. Shri Devaraj on the other hand states that although the applicant could have filed an application before this Tribunal, since he had already filed a writ petition in the High Court and the same has been dismissed, the applicant cannot file this application under section 29(1) of the Administrative Tribunals Act, 1985. The order of the High Court could only be challenged through a Writ Appeal in the High Court and not by a fresh application under the Administrative Tribunals Act. We have given our consideration to these submissions. Section 21 reads as follows :-

**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.

To:

1. The General Manager, (Union of India), S.C.Railway, Sec'bad.
2. The Senior Divisional Operating, superintendent (B.G) S.C.Railway, Secunderabad.
3. The Divisional Safety officer, S.C.Railway, Secunderabad.
4. The Divisional Railway Manager(P), S.C.Railway, Sec'bad.(BG).
5. One copy to Mr.P.B.Vijaya Kumar, Advocate, 1-8-7/13, Sarvodaya colony, chikkadpally, Hyderabad-20.
6. One copy to Mr.N.R.Devaraj, SC for Rlys.,CAT,Hyderabad.
- ✓ 7. One spare copy.

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*8/12/89*  
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Case Number.....	0A.48/86
Date of Judgement.....	19.12.89
Copy made ready on.....	5-1-90
<i>[Signature]</i> Section Officer (I)	

It is clear that no appeal against the order of the High Court would lie to this Tribunal. If the applicant is aggrieved by the order of the High Court he could only have filed a Writ Appeal as rightly pointed out by the learned Standing Counsel for the Railways. The Judgment of the High Court will operate as resjudicata and this Tribunal cannot entertain an application on a matter which has already been decided by the High Court. The application therefore fails and we reject the same accordingly.

7. The learned counsel for the applicant however at this stage states that he proposes to approach the High Court of Andhra Pradesh seeking the withdrawal of the writ petition No.3284 of 1985 or for the modification of the order of the High Court in the said writ petition to overcome the objection of resjudicata. He says that he should be permitted to file a Review Application after he has moved the High Court and obtained the orders of that court. Shri Devraj urges that it is premature to consider this question. We do not think that we can express our opinion at this stage.

8. In the result the application is dismissed.  
No order as to costs.

Sd/- x x x x x  
(B.N.JAYASIMHA)  
Vice Chairman

// True copy //

Sd/- x x x x x  
(J.NARASIMHA MURTHY)

Member (J)  
CERTIFIED TO BE TRUE COPY

COURT OFFICER.

Date.....  
Court Officer

Central Administrative Tribunal  
Hyderabad Bench