IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

M.A.NO. 46/95 in O.A.No. 98/96

and O.A. 98/96.

Date of Order: 25-1-96.

Between:

Tadikonda Wilson Paul

... Applicant.

and

1. Deputy Chief Signal Telecommunication Engineer, Tele/Railway Electrification, Secunderabad.
2. Chief Project Manager, Railway Electrification, Vijayawada.
3. General Manager, Central Organisation, Railway Electrification, Allahabad.

.. Respondents.

Counsel for the Applicant: Mr.G.V.Subba Rao, Advocate.

Counsel for the Respondents: Mr.J.R.Gopal Rao, SC for Rlys,

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR.A.B.GORTHI : MEMBER(ADMN)

JUDGMENT

(As per Hon'ble Sri A.B.Gorthi : Member(Admn.).

...

The case of the applicant is that he was engaged as a Casual labour in the Railway Electrification Project under the Deputy CSTE/RE/Secunderabad on 14.2.1982, that he worked as such till 9.5.1985, that he fell sick from 10.5.1985 to 21.2.1988 and that on 22.2.1988 when he reported for duty with a private medical certificate, he was not allowed to resume duty. His prayer in this O.A. is for setting aside the oral order of termination of his service and for directing the Respondents to reengage him as a Casual Labour. The main contention raised on behalf of the Applicant is that as he was granted temporary status w.e.f. 1.1.84 his services could not have been terminated in the manner in which the Respondents did, as it violated not only the provisions of Section 25(b) of the Industrial Disputes Act read with para 2505 of the Indian Railway Establishment Manual, but also the protection guaranteed under Article 311(2) of the Constitution.

4 (12)



8. In the case of Collector, Land Acquisition, Anantnag, the Apex Court elaborated on the principle that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and that meritorious case need not be thrown out at the very threshold by refusing to condone the delay. The said judgment is an authority on how the discretion vested in a Court/Tribunal should be exercised while examining the question of condonation of delay. It cannot be interpreted as laying down the legal proposition that delay in approaching the Court/Tribunal should invariably be condoned.

9. The decision of the Tribunal (Ahmedabad Bench) in Abdulmohit Mustakikhan's case is based on the facts of the said case which led the Tribunal to condone the delay. Relevant observations of the Tribunal are reproduced below:-

> "9. It is well settled that the Government not giving reply to repeated representations, a civil servant does not lost his right on account of his delay when no decision is taken by the department on representation for a long time. It cannot be said that the application is not maintainable. As could be seen from the provisions contained in sub-clause A of Section 21 of the Act, a period of three years has been conferred in respect of the grievance which arose immediately preceding the date on which the jurisdiction, power and authority of the Tribunal becomes exercisable under the Act, (came into force on 1st day of July, 1981). But this Tribunal was constituted on 30th June, 1986. Even while taking into account all these facts and circumstances, in caseit is found that there is some delay in filing this application the same deserves to be condoned. As held earlier, the impugned order is absolutely bad in law, it would be therefore in the fitness to exercise the discretion to excuse delay. It is exercised to advance substantial justice.

In the above case, one of the factos taken into consideration by the Tribunal was that the impugned order was bad in law.

5. The law governing the limitation in respect of the application filed before the Tribunal is laid down in Section 21 of the Administrative Tribunals Act, 1985. Section 21(1) relevant to the issue is reproduced below:-

"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."

6. Vide sub-Section (3) of Section 21 of the Administrative Tribunals Act, 1985 the Tribunal has been vested with the discretion to condone the delay " if the applicant satisfied the Tribunal that he had sufficient cause for not making the application within such period."

7. Sri G.V.Subba Rao, learned counsel for the Applicant urged before us that the oral order of termination of service of the Applicant being a void order it could be challenged any time and that the bar of limitation stipulated in Section 21 of the Administrative Tribunals Act, 1985 does not apply. In support of his contention he has referred to the decisions in the following cases:-

a) Collector, Land Acquisition, Anantnag & Another Vs. Mst.Katiji and others, AIR 1987 SC 1353.
(b) Abdulmohit Mustakikhan Vs. U.O.I. & Others, ATR 1987(1) CAT.567.
(c) Laxman Dass and others Vs. U.O.I. & Others, ATR 1988 (1)CAT.375.
(d) The State of Madhya Pradesh Vs. Syed Qamaralli, 1967(1) SLR 228.
(e) Sri Dhiru Mohan Vs.U.O.I. published in Kalra's Full Bench Judgments 1991-1993 at page 262.

6 (14)



On merits, we are, therefore, not inclined to condone delay in this case.

12. On the next question that a void order can be challenged at any time and that the period of limitation does not apply in such a case, learned counsel for the Applicant heavily relied on the decision of the Apex Court in Syed Qamarali's case. In that case it was observed thus:

> "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."

In the case of Syed Qamarali, the respondent(Syed Qamarali) limited his claim to payment of Rs.1,000/- only on the ground that his dismissal was illegal. Without the requirement of setting aside the order the Apex Court observed that "the High Court was right in decreeing the suit for the sum of Rs.1,000/- to which the Respondent had, without preferring the appeal to the District Judge, reduced his claim."

The decision in Syed Qamalari's case came to be examined by a Full Bench of the Tribunal in Sri Lhiru Mohan's case(supra). After noting the relevant case law and examining the question whether the period of limitation applies in respect of a challenge to a void order, the Tribunal held as under:-

> "In view of the dictum of the Supreme Court in Syed Qamarali and the reasons set out hereinabove, we would hold that a void order has no existence in the eyes of law and as such as a nullity, the same need not be got quashed or set aside. We would further hold that the Application claiming arrears of salary or any appropriate relief without assailing a void order cannot be defeated by a plea on behalf of the respondents to the effect that the applicant had not filed an Application to get the order quashed or set aside within the period of limitation."

The Tribunal also found that the Applicant was diligent enough in prosecuting his appeals/representations. As already noted above, there can be no dispute that the Tribunal can, in an appropriate case, condone the delay if satisfied that the Applicant had shown sufficient cause for not approaching the Tribunal within the period specified in Section 21 of the Administrative Tribunals Act, 1985.

10. In the case of Laxman Dass & Others, the Tribunal held that where an order is bad in law on account of non-compliance with the principles of natural justice the delay in filing the O.A. could be condoned. In coming to the said conclusion the Tribunal adopted the liberal yardstick as approved by the Apex Court in the case of Collector, Land Acquisition, Anantnag(supra).

11. In the instant case, the applicant worked as a casual labour till 9.5.85 whereafter, according to him, he remained sick till 21.2.88. Apart from a representation made by him on 11.2.1988 the Respondents did not receive any representation from the Applicant till March, 1993. In the Miscellaneous Application(No.46/95) the Applicant stated that he made a number of representations and sent several reminders but did not get any response. He further stated that he personally approached the authorities concerned but they did not give him any relief. Accordingly it was stated that the delay of over four years should be condoned. Apart from the fact that the Respondents denied receiving the various representations/ reminders, it is well settled that repeated representations will not entitle the Applicant to claim extension of the period of limitation. This is the principle laid down in S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 wherein it was observed as under:-

> "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 entertaining 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."

(16)



8. But nonetheless the impugned dismissal orde has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In Smith Vs. East Elloe Rural District Counsil 1956 AC 736, 769(1956) 1 All ER 855, 871 Lord Radcliffe observed:(All ER p.871)

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. I propose to this principle, Prof. Wade states See Wade: Administrative Law, 6th Edn.p.352 "the principle must be equally true even where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles: Ibid.

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

10. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for."

13. The Full Bench thus makes it very clear that where the claim is for the consequential reliefs such as arrears of salary, the same can be entertained without resorting to quashing a void order even in a case filed after the period of limitation. In other words, the respondents cannot defeat the legitimate claim of an applicant claiming arrears of salary or any other appropriate relief disregarding the void order on the plea that the applicant had not assailed the void order within the period of limitation. The question of the effect of a void order and its status till it is challenged came up for consideration before the Supreme Court in State of Punjab and others Vs. Gurdev Singh, 1991 SCC(L&S) 1082. Relevant portion of the judgment is reproduced below:-

> "7. In the instant cases, the respondents were dismissed from service. May be illegally, The order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. They have ~~xxxx~~ not been paid their salary from that date. They came forward to the court with a grievance that their dismissal from service was no dismissal in law. According to them the order of dismissal was illegal, inoperative and not binding on them. They wanted the court to declare that their dismissal was void and inoperative and not binding on them and they continue to be in service. For the purpose of these cases, we may assume that the order of dismissal was void, inoperative and ultra vires, and not voidable. If an Act is void or ultra vires, ~~xxxxxxxxxxxxxxxx~~ it is enough for the court to declare it so and it collapses automatically, It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares thee existing state of affairs and does not 'quash' so as to produce a new state of affairs.

10 (18)



of three months from the date of communication of this order. In case the relevant record is no longer retained and thus not available, the Respondents will have to come up with an M.A. within the said period explaining the full circumstances.

(b) As the Applicant has admittedly worked for sometime as a casual labour, the Respondents shall consider engaging him as a casual labour, if there is work and in preference to freshers, provided the Applicant makes a written application for such fresh engagement within one month from the date of communication of this order.

18. The O.A. and the M.A. are ordered accordingly. No costs.

Sd/-HVIIRJ
VC

Sd/-MABG
M(A)

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

21-1-96

Tribunal

BENCH

To

1. The Deputy Chief Signal Telecommunication Engineer, Tele/Railway Electrification, Secunderabad.
2. The Chief Project Manager, Railway Electfification, Vijayawada.
3. The General Manager, Central Organisation, Railway Electrification, Allahabad.
4. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
5. One copy to Mr.J.R.Gopal Rao, SC for Rlys, CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One copy to All Reporters as per standard list of CAT.Hyd.
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pvm.

G.V.Subba Rao

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