

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4299/2013

Order Reserved on: 06.01.2017
Order pronounced on 12.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

Sh. Nitish Sharma
S/o Late Shri Ram Phal Sharma\R/o D-109/A, Gali No.1
Burari Road
Saroop Nagar
Delhi – 110 042. ... Applicant

(Applicant in person)

Versus

1. Union of India
Through its Secretary
Ministry of Corporate Affairs
Vth Floor, A-Wing, Shastri Bhawan
Dr. Rajender Prashad Road
New Delhi – 110 001.
2. Regional Director (N.R.)
Ministry of Corporate Affairs
PDIL Bhawan, Indian Oil Circle
Sector – 1
NOIDA (UP).
3. Registrar of Companies NCT of Delhi & Haryana
4th Floor, IFCI Tower, 61, Nehru Place
New Delhi – 110 049. ... Respondent(s)

(By Advocate: SH. H.K.Gangwani)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Junior Stenographer in the Respondent-Ministry of Corporate Affairs, filed the OA, seeking the following relief(s):

“a) to set aside impugned order dated 27.11.2006 with all its consequences.

b) to take cognizance on respondents' willful failure to comply with the directions dated 29.11.2005 passed by the Hon'ble Delhi High Court as well as directions dated 25.09.2003, 19.05.2004 and 15.09.2006 passed by this Hon'ble Tribunal by instituting contempt of court proceedings in terms of Hon'ble Delhi High Court's order dated 29.11.2005 and disciplinary action against respondents.

c)

d) to award the costs in favour of the applicant and against the respondents; and

e) to pass such other order or further orders as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.”

2. Heard the applicant in person and Shri H.K.Gangwani, the learned counsel for the respondents, and perused the pleadings on record.

3. When this matter taken up for hearing, Shri H.K.Gangwani, the learned counsel appearing for the respondents submitted that the OA is liable to be dismissed on the sole ground of limitation as the OA was filed beyond the period of limitation, and hence, there is no necessity to go into the other merits of the case.

4. In the case of **Smith Kline Beecham Cons v. Hindustan Lever** (2003)105BOMLR547 Hon'ble Bombay High Court (DB) has categorically held, that it is not sufficient that the Court has territorial

or pecuniary jurisdiction or jurisdiction in relation to the subject matter of the suit but if the suit is barred by any statute, the Court will have no authority to hear and decide the same. The said judgment clearly holds that the use of the word "jurisdiction" is used in a wider sense under Section 9A, which would include the bar to maintainability of the suit, i.e. to say any statutory bar to the maintainability of the suit. Section 3 of Limitation Act clearly mandates the Court to dismiss the suit, if the same is barred by Limitation.

5. Further, in the case of **Foreshore Co-operative Housing Society Ltd. v. Praveen D Desai**, 2008(6) ALLMR 600 while deciding the question, whether plea of limitation can be decided as a preliminary issue of jurisdiction under Section 9A of the Code of Civil Procedure? Hon'ble Bombay High Court (DB) observed that a plea of limitation is a plea which goes to the jurisdiction of the Court and it is a plea on law, and it is a settled position in law that when a suit is barred by limitation, the Court is precluded from proceeding on the merits of the contentions and in fact obliged to dismiss the suit.

6. In view of the above, it is necessary to decide first the preliminary objection of limitation, raised by the respondents' counsel.

7. Vide the aforesaid impugned order dated 27.11.2006, the respondents treated the period of absence of the applicant from 13.09.2004 to 10.03.2005, as unauthorized under FR 17A and accordingly a break in service.

8. To cut short the controversy, and for better understanding of the history of the case of the applicant, it is sufficient if the latest judicial order, i.e., Order dated 15.09.2006 in RA No.34/2006 in OA No.739/2002 of this Tribunal, referred in para 8(b) i.e., the 2nd relief of the OA, is perused, accordingly the same is extracted as under:

"This RA has been preferred by the respondents in OA seeking, modification in review of the directions issued in paragraph 8 (iii) of the order, passed in OA-739/2002 on 25.9.2003.

2. Brief factual matrix suggests that applicants who barely after working for one month was removed from service vide order dated 12.9.2000, which when assailed before this Tribunal, the following directions have been issued:

a. The impugned termination order dated 12.9.2000 is quashed and set aside.

b. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of a copy of his order and pass such necessary orders as required, in accordance with the directions of the Hon'ble Supreme Court's order dated 27.8.1999 (supra).

c. The applicant shall be entitled to back wages in the post of Junior Stenographer with effect from one year prior to the date of filing of the OA, i.e., 13.3.2001 but he shall be entitled to continuity of service from the date of his earlier appointment in that post and other consequential benefits as given to similarly situated persons who were directed to be absorbed, as held by the Honble Delhi High Court in the order dated 5.5.2003 (supra). The respondents shall also keep in view the orders passed by the Honble Calcutta High Court in the order dated 26.3.2001 (supra).

d. In the circumstances, liberty is granted to the respondents to proceed against the applicant for the alleged unauthorized absence from duty, in accordance with law.

3. Being aggrieved with the order of the Tribunal WP(C) No.13324/2004 preferred by the respondents before the High Court of Delhi was disposed of on 29.11.2005, wherein reinstatement of applicant having been upheld, liberty by way of review has been granted to respondents regarding payment of back wages.

4. As original applicant, who appeared in person contends that on liberty to hold a disciplinary enquiry (DE)

against applicant a recommendation has been made by respondents to drop the (DE) against him for unauthorized absence, in such an event period from the date of termination till the date of reinstatement has to be treated as spent on duty for all purposes as per FR 53.

5. On the other hand, learned counsel of review applicants/original respondents stated that final orders have not been passed in the disciplinary proceedings but only a recommendation has been made to drop the DE, in such an event applicant, who was absent from duty, is not entitled to the back wages and accordingly prays that directions be modified, as respondents have been accorded liberty by the High Court.

6. On careful consideration of the rival contentions of the parties, insofar as reinstatement and continuity of service is concerned, High Court of Delhi has not upset the order of the Tribunal and hence the direction has attained finality.

7. Insofar as back wages are concerned, we deem it appropriate to dispose of this RA with a direction to respondents in the light of the decision of the Apex Court in K.V.S. v. S.C. Sharma, (2005) 2 SCC 363, that the interregnum, i.e., the period from the date of termination from 12.9.2000 till reinstatement of applicant in 2003 shall be regulated on conclusion of the disciplinary proceedings and a final order thereof passed in accordance with rules and instructions on the subject, i.e., FR and also in accordance with law.

8. With the aforesaid observations RA is disposed of and the OA is modified insofar as directions contained in paragraph 8 (iii) are concerned."

9. A perusal of the aforesaid order, reveals that when the respondents removed the applicant from service vide Order dated 12.09.2000, the same was questioned by the applicant in OA No.739/2002 and when the same OA was allowed, quashing the termination Order dated 12.09.2000, the respondents preferred W.P(C) No.13324/2004 and the same was disposed of on 29.11.2005, by upholding the orders of this Tribunal, in so far as reinstatement of the applicant is concerned, however, liberty, by way of review, was given to the respondents regarding payment of back-wages. Accordingly, the respondents filed RA No.34/2006 and this Tribunal by its aforesaid Order dated 15.09.2006, while observing that the Hon'ble

High Court has not upset the orders of this Tribunal in OA No.739/2002, in so far as reinstatement and continuity of service is concerned, but in so far as back-wages are concerned, directed the respondents to regulate the period from 12.09.2000, i.e., the date of termination, to till 2003, i.e., till his reinstatement and to pass a final order thereon in accordance with law.

10. In none of the orders of this Tribunal or of the Hon'ble High Court, referred by the applicant, in his relief para 8(b), no order in respect of the period from 13.09.2004 to 10.03.2005, which is the period subsequent to the reinstatement of the applicant, was passed. Hence, nothing comes in the way of the respondents in passing an appropriate order with regard to the period of absence of the applicant from 13.09.2004 to 10.03.2005, as per rules. Accordingly, the respondents passed the impugned Order dated 27.11.2006 by treating the said period as unauthorized under FR 17A and as a break in service.

11. Admittedly, the applicant filed the present OA on 05.12.2013, i.e., after a lapse of more than six years.

12. The applicant neither filed any MA along with the OA seeking condonation of the delay in filing of the OA nor given any valid reasons anywhere in his OA, for not filing the OA in time.

13. Section 21 of the Administrative Tribunals Act, 1985, which prescribes the period of limitation for filing an application under Section 19 of the said Act, reads as under:

"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.

(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."

As per the above Section 21 of the Administrative Tribunals Act, 1985, an application is maintainable within one year from the date of passing of the impugned order. If a representation or appeal as is mentioned in Clause (b) of sub-section (2) of Section 20 of the said Act, 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.

14. In the case of **S.S.Rathore v. State of M.P.**, AIR 1990 SC 10 wherein it was held 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.

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. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

15. In **D.C.S. Negi v. Union of India & Ors.** decided on 07.03.2011 in SLP (C) No.7956/2011(CC No.3709/2011) the Hon'ble Apex Court, while dismissing the Appeal, has emphasized that the Administrative Tribunal established under the Act is duty bound to first consider whether the application is within limitation, and that an application can be admitted only if the same is found to have been

made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3). The relevant observations of the Hon'ble Apex Court are extracted below:

"A reading of the plain language of Section 21 makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

16. In **State of Tripura v. Arabinda Chakraborty**, (2014) 5 SCALE 335, the Hon'ble Supreme Court held that

"18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done."

(Emphasis added)

17. The only explanation given by the applicant is that he preferred a representation and appeal dated 20.06.2007 against the impugned order dated 27.11.2006 and that the respondents disposed of the

same only on 27.12.2012 (Annexure A34) and hence, there is no delay.

18. A perusal of the said Annexure A34 dated 27.12.2012, reveals that the same was not an order passed considering the representation/appeal dated 20.06.2007 of the applicant and on the other hand, it was stated in the said letter written by a Joint Director representing the Regional Director to the Registrar of Companies, that the representation/appeal dated 20.06.2007, said to have been preferred by the applicant against the impugned order, has not been received in their Directorate and the applicant was working in RoC, Jaipur at that time and even no appeal was forwarded by the Office of RoC, Jaipur.

19. Merely making of representations continuously would not extend the period of limitation, as per the settled law referred to hereinbefore.

20. Even otherwise, the applicant enclosed the copy of the representation dated 20.06.2007 which was said to have been made as an appeal against the impugned order dated 27.11.2006, as Annexure A26, and even a perusal of the same indicates that the request made in the said representation was something else but not an appeal questioning the impugned order dated 27.11.2006 and to treat the period of absence from 13.09.2004 to 10.03.2005 as spent on duty.

21. In the circumstances and for the aforesaid reasons, the OA is dismissed being barred by the period of limitation. In view of the same, the other grounds, raised by both sides, need not be gone into.

No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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