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**(1982) 05 AHC CK 0049**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 3043 of 1980

Jai Prakash

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

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**Date of Decision :** 21-05-1982

**Acts Referred:**

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Article 113

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

**Citation :** (1982) 05 AHC CK 0049

**Hon'ble Judges :** K.N.Singh, J

**Final Decision :** Dismissed

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## Judgement

K. N. Singh, J.

This petition is directed against the order of the Service Tribunal dated 31.12.1971 dismissing the petitioner's claim Petition as barred by time.

The petitioner was a confirmed Collection Amin in the service of the State of Uttar Pradesh. While he was posted at district Bulandshahr, certain complaints were made against him, charges were framed and enquiry was held and thereafter he was dismissed from service on 14.5.1968 by the Collector. He preferred an appeal to the Commissioner, but that too was dismissed on 19.12.1968. The petitioner thereupon preferred a revision to the Board of Revenue which was also rejected on 25.4.1970. The petitioner made representation to the State Government which too was rejected on 3.8.1973. Thereafter, the petitioner filed a suit in the civil Court on 15.7.1974 for a declaration that his dismissal from service as Collection Amin and the orders passed by the appellate authority and the State Government be declared illegal and void and further a decree be passed that the petitioner continued in service with all benefits. While the suit was pending before the Civil Court the provisions of the U. P. Public Service (Tribunals) Act, 1976, were enforced. In view of the provisions contained in Section 6 of the Act the petitioner's suit stood abated

and the record was transferred to the Public Service Tribunal. After hearing the parties, the Tribunal dismissed the petitioner's suit on the ground that it was barred by time. Hence this petition.

The limitation for filing a suit for declaration is prescribed by the residuary Article 113 of the Indian Limitation Act, 1963, which is as under:

Description of appeal Period of limitation Time from which period begins Three years When the right to sue accrues.

113. Any suit for which no period of limitation is provided elsewhere to this schedule.

The limitation for filing a suit for declaration commences from the date the order of dismissal is passed. In the instant case, the Tribunal held that three years period will commence from 14th May, 1968, when the initial order of dismissal was passed against the petitioner, but even assuming that the petitioner had a right to file departmental appeal to the Commissioner and to the Board of Revenue even then the suit was filed beyond time. The petitioner's appeal was dismissed by the Board of Revenue on 20.4.1970, whereas the suit was filed on 15.7.1974. The Tribunal concluded that the suit should have been filed latest within three years from 20.4.1970, as the time taken by the petitioner in filing representation before the State Government could not be taken into account inasmuch as there was no provision in the statutory rules for any such representation.

Learned counsel for the petitioner urged that since the Government had power to set aside the order of the subordinate authorities the time taken by the petitioner in pursuing his remedy before the State Government should be taken into account in computing the period of limitation. Learned counsel further referred to the provisions contained in the Manual of Government Orders which enjoins upon a Government servant to exhaust his remedy before the departmental authorities before taking any proceedings before a Court of law. For this reason also the time taken by the petitioner before the State Government should have been taken into account in considering the question of limitation. Reliance was placed on a Single Judge decision of the Andhra Pradesh High Court in State of Andhra Pradesh v. Munnu swami (A. I. R. 1969 A. P. 221). Learned Standing Counsel, on the other hand urged that the order of dismissal dated 14.5.1968 become effective on the same day and the cause of action for filing the suit arose to the petitioner on that very day. The time taken by the petitioner in pursuing his appeal or representation before the higher departmental authorities could not ensure to his benefit for the purpose of computing the period of limitation as all the three orders affirmed the order of Collector dismissing the petitioner from service.

The question arises as to when the cause of action for filing the suit accrued to the petitioner and from what date the period of limitation would commence to run. Article 113 of the Limitation Act provides that the suit may be filed within three years. The period of three years would commence from the date the cause

of action accrued to the petitioner. Plainly speaking, the cause of action arose when he was dismissed from service by the Collector on 14th May, 1968 and the limitation for filing the suit would commence to run from that date. The petitioner's contention that since he had filed appeal and revision the period of limitation could not commence from the date of the initial order of dismissal cannot be accepted in view of the authoritative decision of the Supreme Court in *S. R. Gael v. Municipal Board, Kanpur* (2). In that case there was statutory provision for filing appeal against the order passed by the Municipal Board. The time taken in pursuing the appeal was not taken into account by the Supreme Court while considering the period of limitation. A similar argument that the period spent in pursuing the appeal should be taken into account in computing the period of limitation for the purpose of filing the suit was repelled by the Supreme Court on the ground that mere filing of the appeal or representation against the order of dismissal does not have the effect of postponement of the dismissal order. The Supreme Court held that the cause of action accrued the moment resolution of the Board dismissing the plaintiff in that case was communicated to him and that was the date of commencement of the limitation notwithstanding that he had filed an appeal in accordance with the statutory provisions contained in the U. P. Municipalities Act. There is thus good authority to hold that the cause of action accrued to the petitioner on the date the dismissal order was passed and communicated to him and the period of limitation commenced to run from that date. The running of the period of limitation was not suspended during the period the petitioner pursued his remedy of appeal and revision before the higher departmental authorities.

The petitioner's contention that he could not file the suit in a Court of law without exhausting his departmental remedy in accordance with the instructions contained in the Manual of Government Order is untenable. The instructions contained in the Manual of Government Order requiring a Government servant to exhaust departmental remedy before approaching the Court of law is not statutory. The instructions contained therein are administrative in nature. If a Government servant filed a suit in spite of those instructions the suit cannot be dismissed on the ground that he had not exhausted his departmental remedy. The view taken by a learned Single Judge of Andhra Pradesh High Court in *State of Andhra Pradesh v. Munnuswami* (supra) cannot be accepted in view of the decision of the Supreme Court in *Sit a Ram Gael's* case as the Supreme Court held that the running of limitation would stand suspended if the period during which statutory remedy of appeal before the higher departmental authorities was pursued.

It is necessary to refer to the proviso to Section 4 of the Public Service Tribunal Act, 1976. Section 4 provides for filing of claim by a public servant. The proviso lays down that no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him. The effect of the proviso is that ordinarily it would not be open to a public servant to approach the Service Tribunal unless he has exhausted his

departmental remedies available under the relevant rules. In such a situation, the period of limitation would not commence to run from the initial order of dismissal and the time taken by a Government Servant in pursuing his departmental remedies under the relevant rules would be taken into account while computing the period of limitation. In the instant case, however, the proviso to Section 4 does not provide any relief to the petitioner as the suit had been filed in July, 1974, much before the Act was enacted and much before the promulgation of the U. P. Public Service (Tribunal) Ordinance.

In view of the above discussion there is no error apparent on the face of the record in impugned order of the Services Tribunal. The petition fails and is accordingly dismissed, but there will be no order as to costs.