

(2012) 06 JH CK 0005
In the Jharkhand High Court
Case No : W.P (S) No. 1416 of 2011

State of Jharkhand

APPELLANT

Vs

P.S. Natrajan and Others

RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20, 21
Constitution of India, 1950 — Article 226, 311(2)(b), 312(2)(b)
Limitation Act, 1963 — Section 21, 3

Citation : (2012) 06 JH CK 0005

Hon'ble Judges : Prakash Tatia, C.J.;Jaya Roy, J

Bench : Division Bench

Advocate : A.K. Sinha, A.G. and Rishi Pallava, J.C. to A.G, for the Appellant; P.K. Prasad and Ayush Aditya, for the Respondent

Final Decision : Allowed

Judgement

1. The respondent-applicant, before the Central Administrative Tribunal, Patna Bench, Patna, at relevant time was holding the post of Additional Director General of Police and was in the rank of Inspector General of Police in the year 1975. On 31.07.2005, a T.V. Chanel shown sting operation pictures in which the applicant-respondent was shown in compromising position with a woman. Finding this situation, on the same day, on 31.07.2005, the applicant-respondent was suspended vide order of the same date i.e., 31.07.2005, and a F.I.R. was lodged on 02.08.2005 against the respondent-applicant. Then on 28.12.2005 a show cause notice under Act 311(2)(b) was issued to the applicant-respondent to show cause as to why he may not be dismissed from service by invoking the provision of Article 311(2)(b) of the Constitution of India by dispensing with the departmental enquiry. The petitioner gave a detail reply to show cause notice on 26.7.2007. The applicant-respondent, who was holding the post of Additional Director General of Police from 31.7.2005 and even after lodging of the F.I.R. on 2.8.2005, could not be arrested because he was absconding and after about more than a year, the applicant-respondent surrendered on 6.11.2006 and was

bailed out on 19.12.2006. On 19.7.2007, in the criminal case against the petitioner charge sheet was submitted. The applicant-respondent then after five years, in the year 2010 submitted an O.A. No. 164 of 2010 before the Central Administrative Tribunal, Patna Bench, Patna, where in the impugned order dated 9.2.2011 has been passed, whereby the applicant-respondent's suspension order dated 31.7.2005 has been set aside. However, his prayer for quashing of the show cause notice for proposed action of his removal from service dated 28.12.2005 invoking powers under Article 312 (2)(b) of the Constitution of India for his immoral conduct and for quashing the Memo dated 19.7.2007 communicating the charges framed against the applicant-respondent have been rejected by the C.A.T. Being aggrieved against the order quashing of the suspension order dated 31.7.2005, the State has preferred this writ petition.

2. Learned counsel for the State has vehemently submitted that in a grave case of serious misconduct of moral turpitude of the non-applicant, immediate action was required to be taken in view of the telecast of the pictures and video of the applicant-respondent on a television telecast through out the nation showing him in compromising position with a woman, suspension order was passed forthwith and it could not have been delayed. For lodging the F.I.R., some formality was completed and on 2.8.2007 the F.I.R. was lodged, The applicant-respondent, who was in the rank of inspector General of Police was holding the post of Additional Director General of Police did not cooperate and immediately absconded, During the absconding period, according to the applicant himself, he received show cause notice dated 28.12.2005 which he himself replied, but he did not choose to challenge the suspension order dated 31.7.2005, which he could have challenged within a period of one year. Be that as it may, admittedly the applicant was not behind the bars from 31.7.2005 to 6.11.2006 till the day he surrendered. Not only this, but on 19.12.2006, the applicant was released on bail, and therefore, after 19.12.2006 he was free to challenge the order dated 31.7.2005, but he did not challenge. After his release, the applicant was served with the charge sheet vide Memo dated 19.7.2007. The applicant did not challenge either the order of suspension dated 31.7.2005 or the show cause notice dated 28.12.2005 nor the Memo dated 19.7.2007 till 2010. The applicant also did not comply with the statutory requirement of Section 20 of the Administrative Tribunal Act, 1985 which requires that the applicant is required to satisfy the Tribunal, that he had availed the remedy available to him under the Service Rules for redressal of his grievance before approaching Tribunal. The applicant-respondent did not challenge the order of suspension by preferring an appeal is also an admitted fact. Therefore, in this case, the applicant-respondent whose O.A. was not maintainable in view of Section 21, providing for limitation of one year, the tribunal could not have admitted the applicant's application, but ignoring Section 21 and without there being any application for condonation of delay the tribunal not only entertained the O.A. but allowed in violation to Section 20 of the Act of 1985.

3. Learned counsel for the State vehemently submitted that the Tribunal further

committed grave error of law in setting aside the order of suspension in such case where the action was required to be taken forthwith and without any delay. The Tribunal should not have entertained such technicality of law of counting of days of the date of filing of the F.I.R. instead of looking to the contemplation of the proceeding against the applicant-respondent of lodging the criminal case and should not have set aside the order of suspension. Counsel for the State vehemently submitted that even if, in any case, liberal view is taken, then also the suspension cannot be held to be bad which is only from 31.7.2005 to 1.8.2005 i.e. for two days which was only period before lodging the F.I.R. as the F.I.R. was lodged on 2.8.2005.

4. Counsel for the State has relied upon the judgment of the Hon"ble Supreme Court in the case of R. Jeevaratnam Vs. The State of Madras, , wherein it has been held that when the order is separable and one of the separable part is illegal then only that separable part can be quashed to save the order. In view that the suspension could have been held bad from 31.7.2005 to 1.8.2005 and not subsequent to that, and therefore, that order could have been maintained from 2.8.2005 and therefore, there was no reason to entertain the O.A. filed after delay of five years.

5. Learned counsel for the State further vehemently submitted that in view of Section 3 of the Limitation Act, the Tribunal could have dismissed the O.A. without calling upon the respondent State in view of the specific language used in Section 21 which clearly indicated that the O.A. should not have been admitted unless it is within the period of limitation. The O.A. also could not have been registered without there being any application for condonation of delay in view of bar created by Section 21 and as such, there was no application for condonation of delay and the Tribunal straight way entertained the O.A. It is submitted that Section 3 of the Indian Limitation Act 1963, provides for dismissal of any suit application or appeal filed beyond the period of limitation and the language of Section 3 of the Indian Limitation Act is mandatory as held in various pronouncements by the Supreme Court continuously, that even in a case where the limitation has not been set up as a defence, the court should reject the time barred suit or appeal.

6. Counsel for the respondent -applicant vehemently submitted that the order of suspension gave rise to a continuing cause of action because, by that order the applicant was not only put under suspension but was getting only the suspension allowance every month. It is also submitted that Section 3 of the Indian Limitation Act has no application to the proceedings before the C.A.T. because of the reason that special limitation has been prescribed under the C.A.T. Act, 1985 and there is also consequence provided in the Act of 1985 itself. Therefore, Section 3 cannot be invoked and the application could have been entertained by the Tribunal even if it was barred at that time. It was also submitted that the Tribunal if has condoned the delay even without application, this Court may not interfere on this ground when the applicant has raised legal issue and that issue

was decided in favour of the applicant by the Tribunal. It is also submitted that the writ petitioner has failed to establish the legality of the suspension order dated 31.7.2005 even before this Court and therefore, the writ petition may be dismissed.

7. Learned counsel for the applicant drew our attention to the various rules to indicate that the applicant could not have been suspended and even if he could have been suspended that suspension order could not have been continued beyond the period of 90 days or could have been continued beyond 90 days from the date of suspension that should have been continued for another shorter period and that order also requires to be passed by the Government which has not been passed, it is also submitted that the applicant's suspension was wrong suspension and therefore, it was also liable to be set aside.

8. Learned counsel for the applicant relied upon the judgment of the Supreme Court delivered in the matter of M.R. Gupta Vs. Union of India and others, and also relied upon a case in the matter of State of Madhya Pradesh and Others Vs. Yogendra Shrivastava, in support of contention that a cause of action in the present case was continuing cause of action, and therefore, it is not a case which could have been dismissed on the ground of delay.

9. We have considered the submissions of the learned counsel for the parties and also perused the entire records as well as the reason given by the Tribunal.

10. From the facts referred above it is clear that in a Sting Operation, the applicant-respondent was shown in a compromising position with a woman on 31.7.2005. 31.7.2005 was Sunday, but looking to the gravity of the allegation, the action was taken by the Government forthwith even on holiday i.e., on 31.7.2005 itself. On the next opening day, process of lodging of the F.I.R. was taken and on the next following day i.e., 2.8.2005 itself the F.I.R. was lodged. The order of suspension gave rise to a cause of action on 31.7.2005 itself, so far as It is challenged on the legal plea is concerned. There is clear distinction between the accrual of the cause of action and the continuing cause of action. When an action is a final and it is operative and is against someone, it gives cause of action to aggrieved person from the day when action has been taken. Some cause of action may be having consequence periodically every day or every month. The order of suspension became operative from the date it was passed. Therefore, so far as the order of suspension is concerned it gave a cause of action to the applicant on 31.7.2005. If the order was illegal, then it was illegal from the date when such order is passed. There is no subsequent accrual of the reason in such type of cases and therefore, in a case where suspension order is sought to be challenged on the ground of it being illegal then it is not a case of continuing cause of action like as may be in the cases, where the controversy is in relation to the wrong pay fixation or non giving of the monetary benefit of the service which may have periodical consequence of deprivation of monetary benefit and in a case where there is delayed challenge to such denials, then in appropriate case the time barred claim can be entertained and the

illegality cannot be perpetuated from the date when the aggrieved person challenges the order of denial of periodical benefit. It finds support of the Supreme Court judgment delivered in the case of M.R. Gupta Versus Union of India(Supra) relied by the counsel for the applicant-respondent and therefore, the judgment substantially is not supporting the respondent, but In fact explaining the "continuing cause of action" which view supports the stand of the State that case in hand is not a case of continuing cause of action, In the Case of State of Madhya Pradesh Versus Yogendra Shrivastava (Supra), in a case of controversy with respect to certain allowances, the Hon"ble Supreme Court has held that the denial of benefit of allowances and pay is wrong and the cause of action accrued every month at the time of payment of salary. In above case also, the Hon"ble Supreme Court clearly held that for consequential benefit of payment of arrears for past period cannot be granted for any period beyond three years prior to the date of original application, therefore, in such a situation also, the cause of action, in the fact of that case was, held to be continuing because of the effect of the order every month and because of this reason only, even for periodical payment, limitation expired periodically. Here, in this case, effectiveness of the order is in the suspending of an employee and that took place by the impugned order dated 31.7.2005.

11. Assuming for the sake of argument, that the Tribunal could have condoned the delay u/s 21 of the C.A.T., Act, 1985 and this Court, without any order of condonation by the Tribunal, may presume that the delay has been condoned by the Tribunal, then we examined the facts of the case which we have referred above in detail, which clearly indicates that it was the case if such benefit is given to applicant then that will be a case of giving benefit to a wrong doer of his own wrong. It is a case where the applicant had full opportunity to challenge the suspension order dated 31.7.2005 from the day one obviously, within the period of limitation of one year and that period of limitation expired when the applicant absconded and was not behind the bars. Not only this, that the applicant remained in custody from 6.11.2006 to 19.12.2006, for a very short period of less than two months, the applicant did not challenge the order of suspension dated 31.7.2005 even after 19th Dec, 2006 for four years and did not even avail departmental remedy. It appears that the Tribunal or the Tribunal's office did not examine the provision of Section 21 of the Act of 1985 which mandatorily provides that the O.A. should not be admitted by the Tribunal unless it is presented within the period of limitation or delay in filing the O.A. is condoned by the Tribunal u/s 21 of the Act of 1985. There is no indication by which the contesting party, the State, could have known that the delay had not been done and the appeal has not been entertained after condoning the delay. Even if, it is found that the respondent did not raise the objection of limitation, even then, it was initially the duty of the Tribunal to examine the period of limitation first before admitting the O.A. for hearing or deciding it particularly when the delay was inordinate and unexplained and further facts reveal that petitioner knowingly did not challenge the order of suspension for long period. So far as the Section 3

of the Indian Limitation Act, 1963 is concerned, we do not find any reason not to apply the well settled principle as given u/s 3 of the India Limitation Act 1963 to apply in such matters because the Indian Limitation Act, 1963 has prescribed the statutory provision that no suit, application or appeal shall be entertained by any court unless it is presented within the period of limitation. It is also mandatory provision that such delayed suit or application or appeal shall be dismissed and the law is well settled from the time of decision given by the Privy council in the case of AIR 1935 85 (Privy Council) and by the decisions of Hon"ble Supreme court in the other cases wherein it has been clearly held that the provision of Section 3 of the Limitation Act is mandatory and even in cases, where limitation has not been set up as defence by the respondent, then also it is the duty of the court to dismiss the suit, appeal or application. We are of the considered opinion that, in facts of this case, the Tribunal has committed serious error of law by entertaining the O.A. of the applicant ignoring Section 21 of the Act of 1985 read with Section 3 of the Indian Limitation Act, 1963, particularly when there was no reason for condonation of delay.

12. The reasons given by the Tribunal for entertaining the applicant's O.A. are worth mentioning here as has been given in Paragraph. 12 of the order. The Paragraph 12 of the order is as under :

12. The case of the respondents only is that the O.A. in this regard is premature, being hit by Section 20 of the A.T. Act. But admittedly, the applicant was absconding. So, though there is provision under Rule 16(1) of the Rules for Appeal against an order of suspension, as It was not possible for the applicant to exhaust the remedy of departmental appeal within the prescribed period of limitation of 45 days provided under Rule 17 for Appeal, it cannot be said that the applicant was debarred from approaching the Tribunal in view of the Section 20 of the AT. Act on the around that he had not exhausted the remedy of appeal. The applicant was also placed under Suspension for non existent reason, without an opportunity of hearing. Therefore, there is violation of natural justice, and it is settled that a person can approach the Tribunal directly where there has been violation of natural justice.

13. The Tribunal entertained the O.A. in violation of the Section 20 of the Act of 1985 on obviously non existing ground and that too to give benefit to the wrong doer and entertained the application on the ground that there is violation of principle of natural justice because the applicant was not given opportunity of hearing before the passing the order of suspension. It appears that, the Tribunal was of the view that in a matter of suspension of an employee, opportunity of hearing is required to be given. The Tribunal further committed serious error of law in holding that the involvement of a person in a grave act of moral turpitude and taking action for suspension of such employee is a non-existing ground. The tribunal, it appears, failed to draw distinction between non existent ground and illegality in the order. For a valid reason for passing an order, if in passing order some illegality is committed then in that situation it is not a case of non existing

ground but if is only a case of illegality in the order. For existing ground, if action is taken and is found to be not in accordance with law, then the existing ground will not become non existing ground. The Tribunal also did not apply its mind even to fact that if, it was a case of legal challenge to the order of suspension and could have been challenged, then what was the reason for not preferring the departmental appeal and what was the special reason to bye pass the remedy available under the statutory provision of law. Therefore, we do not find any reason, in the facts of the case, whereunder the applicant could have been permitted to bye pass the alternative remedy In violation of Section 20 of the Act of 1985 and could have challenged the order of suspension after five years.

14. The Tribunal was of the view that the suspension order under Rule 3 (3) of the All Indian Service (Disciplinary & Appeal) Rules, 1969 was wrong, then a bare perusal of the O.A. of the applicant will indicate that the applicant in his O.A. did not choose to raise this ground and the learned counsel for the non-applicant submitted that the applicant pleaded that the odder of suspension is per se illegal, whereas in the O.A. the applicant stated that the prolong suspension amounts to punishment and it is per se illegal. So far as the prolong suspension is concerned, such ground could not have been taken unless the suspension would have continued for a longer period and that is a separate cause of action which accrues only after passing of the long period from the date of suspension. On this ground, the Tribunal did not allow the application of the applicant and admittedly now the applicant has already been removed from the service, and thus subsequent event justifies the applicant's suspension during these period. The Tribunal's observation that before lodging of the F.I.R. the order of suspension could not have been passed is concerned, we are of the opinion that such narrow interpretation cannot be taken and in a matter where grave offence is committed by an employee for which appropriate decision is required to be taken by the employer forthwith and if the State took only one working day in lodging the F.I.R. against the applicant- respondent, it cannot be held that at the time of passing of order of suspension, the lodging of criminal case was not under contemplation. At the cost of repetition, we would like to mention that it is a case that an Officer of the rank of Inspector General of Police and who was holding a post of Additional Director General of Police was found in a compromising position with a woman and was duly telecast by a T.V. channel through out the India requiring a prompt action by the State. We are of the considered opinion that it is a fit case for exercise of equitable jurisdiction under Article 226 of the Constitution of India to correct the wrong which has been done by the Tribunal by quashing the order dated 31.7.2005 in violation of Section 21 of the Act of 1985 read with Section 3 of the Indian Limitation Act, 1963, and it is in gross violation of Section 20 of the Act of 1985 as well as on different grounds the Tribunal has committed illegality in setting aside the order of suspension of the applicant which was passed on Sunday i.e. on 31.7.2005 in exceptional situation requiring immediate action by the Government. In view of the above reason, the writ petition is allowed. The order of the Tribunal dated 8.2.2011 (in

the copy supplied to the writ petitioner the date is mentioned as 9.2.2011) is set aside and the O.A. No. 164 of 2010 is dismissed.