

(13) As regards the merits of the present appeal there being over 300 persons senior to the appellants, the impugned judgment of the learned single Judge declining relief to them, on this account, warrants no interference in appeal. We, therefore, dismiss this appeal but with the directions and observations set forth. There will be no order as to costs.

J.S.T.

Before : A. L. Bahri & H. S. Bedi, JJ.

MOHAN LAL,—Appellant.

versus

UNION OF INDIA,—Respondent.

Regular First Appeal No. 469 of 1986

4th September, 1991.

Administrative Tribunals Act, 1985—S. 29-A—Scope of—Appeal filed before enforcement of Act—Such appeal—Whether liable to be transferred to the Tribunal.

Held, that a perusal of S. 29-A of the Administrative Tribunal Act would not cover the case in hand. The suit was dismissed by the trial Court on July 30, 1985 i.e. before establishment of the Tribunal. The time for preferring appeal against the judgment and decree aforesaid had not expired before the establishment of the Tribunal. Application for obtaining certified copies of the judgment and decree was filed on 3rd August, 1985 and the same were ready for delivery on 27th September, 1985. Thus, the appeal filed on December 10, 1985 was well within time. As on November 1, 1985 though limitation had not expired, but appeal could not be filed before the Tribunal as S. 29-A came into force on January 22, 1986, it having been inserted by Act 19 of 1986. By that time, appeal had already been filed in High Court having jurisdiction to entertain it. Such an appeal could not be transferred to the Tribunal under S. 29 of the Act.

(Para 4)

Regular First Appeal from the order of the Court of Shri Jaaroon Singh, PCS Sub-Judge, 1st Class, Chandigarh, dated 30th July, 1985, dismissing the suit of the plaintiff with costs.

Claim :—Suit for recovery a sum of Rs. 25,000 on account of arrears of Salary for the last three years preceding the date of filing of the present civil suit.

Claim in Appeal:—For reversal of the order of lower Court.

Shri A. K. Mital, Advocate and Shri G. S. Sandhawalia, Advocate.
for the appellant.

Shri A. S. Tewatia, Advocate, *for the respondent.*

JUDGMENT

A. L. Bahri, J.

(1) This Regular First Appeal was admitted to Division Bench,—*vide* order dated 27th May, 1987 as an objection was taken regarding its maintainability in view of the provisions of Section 29-A of the Administrative Tribunals Act, 1985.

(2) Mohan Lal was employed as Mechanist in the Ordnance Cable Factory, Industrial Area, Chandigarh. He applied for leave for the period August 2, 1976 to October 31, 1976 with permission to go abroad. He could not return after expiry of the leave and he had applied for its extension. In the meantime, charge-sheet was issued to him on January 19, 1976. It was followed by *ex parte* enquiry and order dated December 31, 1976,—*vide* which he was removed from service. He filed the present suit on April 3, 1984 claiming recovery of wages amounting to Rs. 25,000 for the period of 3 years prior to the filing of the suit. The suit was contested by the defendant-Union of India *inter alia* on the grounds that the same was barred by time and was bad for misjoinder of causes of action. The order terminating the services of the plaintiff was legal and valid and thus the plaintiff was not entitled to arrears of salary of Rs. 25,000. The following issues were framed on the pleadings aforesaid:—

1. Whether the order of removal of the plaintiff from service passed on 31st December, 1976 is illegal, invalid and not binding on the plaintiff still continues in service ? OPP.
2. Whether the suit is barred by time ? OPD.
3. Whether the suit is bad for misjoinder of causes of action ? OPD.
4. Whether the plaintiff is entitled to recover Rs. 25,000 as arrears of salary ? OPP.
5. Relief.

The trial Court on July 30, 1985 dismissed the suit holding that order terminating services of the plaintiff was valid. The suit was time barred, it was not bad for misjoinder of causes of action and the plaintiff was not entitled to recover the amount claimed. The appeal was filed in the High Court on December 10, 1985.

(3) The Administrative Tribunals Act, 1985 came into force on February 27, 1985. However, the Central Administrative Tribunal was established on November 1, 1985. Section 29-A was added on January 22, 1986 and is reproduced below:--

"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 wherein 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.

(4) The present appeal was not pending when the Act came into force and was not to be transferred to the Tribunal established under Section 29 of the Act. A perusal of Section 29-A reproduced above would not cover the case in hand. The trial Court dismissed the suit on July 30, 1985 i.e. before establishment of the Tribunal. The time for preferring appeal against the judgment and decree aforesaid had not expired before the establishment of the Tribunal. To attract applicability of Section 29-A that an appeal could be filed before the Central Administrative Tribunal under sub clause(a). As already stated above, Sub Judge dismissed the suit on July 30, 1985. Application for obtaining certified copies of the judgment and decree was filed on 3rd August, 1985 and the same were ready for delivery on 27th September, 1985. Thus the appeal filed on December 10, 1985 was well within time. As on November 1, 1985 though limitation had not expired, but appeal could not be filed before the Tribunal as Section 29-A came into force on January 22, 1986. it having been

inserted by Act 19 of 1986. By January 22, 1986 appeal had already been filed in High Court, having jurisdiction to entertain it. Such an appeal could not be transferred to the Tribunal under Section 29 of the Act. This court has the jurisdiction to dispose of the appeal on merits.

(5) The learned counsel for the appellant has challenged the findings on issue Nos. 1 and 3. The findings on issue No. 4 would follow the decision on issue No. 1. Since the order terminating services of the plaintiff was passed on December 31, 1976 and the present suit was filed on April 3, 1984, the same is obviously barred by time. The contention of the learned counsel for the appellant is that since the order of termination of services of the plaintiff is void *ab initio*, the period of limitation will not commence. In support of this contention, reliance has been placed on the decision of the Supreme Court in *State of Madhya Pradesh v. Syed Qamarali* (1). In that case, the order passed in violation of para 241 of the Police Regulations was held to be void. On perusal of the judgment, it is observed that after police officer was acquitted by the Criminal Court, he could not be punished departmentally. The regulation prohibited departmental punishment for the offence of which an officer had been acquitted by the competent court. It relates to the jurisdiction of the authority concerned to pass the order of dismissal in such circumstances. Every order which is illegal, erroneous or against the provisions of the Act or the Rules is not always without jurisdiction. Illegal and erroneous orders are to be avoided by challenging the same in appropriate forum within a period of limitation. The order in the present case terminating the services of the plaintiff was passed by the authority having jurisdiction to pass it and the same has not been shown to have been passed in violation of any law relating to jurisdiction. It was argued that leave for the period was sanctioned which was made basis for the charge-sheet which was not permitted by law. On facts found on the evidence produced, this contention cannot be accepted. Mohan Lal plaintiff appeared as P.W. 1 and during cross-examination admitted that he received a telegram from the Department intimating that his leave sanctioned had been cancelled and he should report for duty. For whatsoever reasons, the plaintiff remained absent from duty in spite of the fact that order cancelling his leave was communicated to him as admitted by him, his absence could be treated as a misconduct for which he could be charge-sheeted. Reference was made to the statement of D.W. 1 Balwant Rai, Supervisor, Ordnance Cable Factory who had stated that the leave was earlier sanctioned but was subsequently cancelled will not help the plaintiff-appellant.

(1) 1967 S.L.R. 228.

(6) The learned counsel for the appellant has further argued that the enquiry conducted on the charge-sheet framed against the plaintiff was not in accordance with the rules of natural justice. The plaintiff was in Saudi Arabia and he was not informed about the enquiry. This contention cannot be accepted in view of the evidence of DW 2 Balbir Singh, Deputy General Manager, Ordnance Cable Factory who conducted the enquiry. As per his evidence, necessary information was sent to the plaintiff on the address given by him in Saudi Arabia. From his evidence nothing was brought out to hold that the enquiry conducted was vitiated.

(7) It has been argued by the learned counsel for the appellant that on account of unavoidable circumstances, the plaintiff was unable to return to India to resume duty after receipt of the telegram cancelling his leave. It was on December 15/16, 1976 that he came to India and later on went to the office to join duty that he was informed about the order terminating his services. It is not for this court to go into these matters to mitigate the final order passed by the Punishing Authority on proof of the misconduct during the enquiry. The finding of the trial court on issue No. 1 is affirmed holding that the order terminating the services of the plaintiff was valid. The finding of the trial court on issue No. 2 is also affirmed that the present suit is barred by time. The plaintiff is not entitled to recover any amount. The finding of the trial Court on issue No. 4 is also affirmed.

(8) For the reasons stated above, this appeal fails and is dismissed with costs.

S.C.K.

Before I. S. Tiwana, A.C.J. & Jawahar Lal Gupta, J.

VIJAY KUMAR SALUJA,—Petitioner.

versus

THE DEPUTY COMMISSIONER, KARNAL AND OTHERS,—
Respondents.

Civil Writ Petition No. 12066 of 1991.

10th September, 1991.

Municipal Committee Act,—S. 21(3)—Motion of no-confidence against President—Motion for no-confidence to be carried with support of not less than two-third members of Committee—Committee having 14 members—9 present and supported no-confidence motion—Two-thirds of 14 is 9.33—Imagined proceedings of no-confidence motion not taken by requisite members of persons—Not valid.