Before M. R. Sharma, J.

SOHAN SINGH,—*Appellant.*

versus

STATE OF PUNJAB,—*Respondent.*

Regular Second Appeal No. 1261 of 1974.

September 18, 1980.

Limitation Act (XXXVI of 1963)—Section 9—Person dismissed from service—Statutory right of appeal provided against such dismissal—Dismissal sought to be challenged in a Civil Court—Right to sue when accrues—Limitation for such suit—Whether to be determined from date of original dismissal from service or dismissal of appeal.

Held, that there is no doubt that if an appeal is provided by statutory rule against an order passed by a Tribunal, the decision of the appellate authority is the operative decision in law if the appellate authority modifies or reverses it. In law the position would be just the same, even if the appellate decision merely confirms the decision of the Tribunal. The original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement. As such, if the order of the dismissing authority is deemed to have merged in the order of the appellate authority then the limitation for challenging that order shall obviously commence from the date when that order is passed. (Paras 2 and 3).

Regular Second Appeal from the decree of the Court of Shri Aftab Singh Bakshi, Additional District Judge, Ferozepur. dated the 17th January, 1974, reversing that of Shri H. S. Kamboj, Sub-Judge III Class, Ferozepur, dated the 17th January, 1973, and dismissing the suit of the plaintiff with costs.

M. R. Agnihotri, Advocate with Anil Seth, Advocate, *for the appellant.*

H. S. Bajwa, Advocate, *for the Respondent.*

JUDGMENT

M. R. Sharma, J. (Oral).

(1) This judgment will dispose of R.S.A. Nos. 1261 of 1974 and 1264 of 1973 as common questions of law are involved in both of them.

2. The first point for consideration is whether limitation for challenging the order of dismissal commences on the date when the order is passed or on the date when the statutory appeal is dismissed. The learned Courts below have found this point against the appellants on the basis of *Sita Ram Goel* v. *The Municipal Board, Kanpur and others* (1). Therein it was doubted whether the doctrine of merger could be made applicable to appeals arising out of special enactments. However, in a later judgment reported as *Somnath Sahu* v. *The State of Orissa* (2), the Supreme Court has laid down that the original order of termination passed by the Appointing Authority merges in the appellate order of the appellate authority. It was observed therein as under:—

> "The appellant was heard by the State Government in support of his appeal and ultimately the State Government dismissed the appeal in its order, dated the 2nd January, 1962. In these circumstances we are of opinion that the order of respondent No. 4, dated the 11th March, 1960 has merged in the appellate order of the State Government dated the 2nd January, 1962 and it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. In other words the original decision of respondent No. 4, dated the 11th March, 1960 no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish that the appellate decision of the State Government is defective in law the appellant will not be entitled to the grant of any relief. There can be no doubt that if an appeal is provided by a statutory rule against an order passed by a tribunal the decision of the appellate authority is the operative decision in law if the appellate authority modifies or reverses it. In law the position would be just the same even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal by the appellate authority the original decision merges in the appellate decision and in the appellate decision alone which is subsisting and is operative and capable of enforcement."

(1) A.I.R. 1958 S.C. 1036.

(2) 1969 Unreported Judgments (S.C.) Volume I, 351.

3. It is, therefore, apparent that the highest Court of the land has veered away from its earlier view. If the order of the dismissing authority is deemed to have been merged in the order of the appellate authority, then the limitation for challenging that order shall obviously commence from the date when that order is passed. The decision rendered by the Courts below on this point, is, therefore, reversed.

4. In R.S.A. No. 1264 of 1973 (*Parshotam Singh* v. *State of Punjab etc.*), the additional point on which the appellant has been non-suited is that the Courts at Patiala had no jurisdiction to try this case. This appellant is said to have embezzled some funds belonging to the Government, which are admittedly being recovered at Patiala. Since the funds are being recovered at Patiala, at least a part of the cause of action has accrued there and the Courts at Patiala had the jurisdiction to try this case. On merits, a finding has been recorded in favour of the appellant and he has only been non-suited on these two technical grounds.

5. For the reasons aforementioned, these appeals are allowed, the judgments and decrees of the Courts below are set aside the suits of the plaintiffs-appellants are decreed. The parties are left to bear their own costs.

H. S. B.

Before P. C. Jain and J. M. Tandon, JJ.

JARNAIL SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 3632 *of* 1979.

September 23, 1980.

Constitution of India 1950—*Article* 311(2) (*a*)—*Government servant convicted of a criminal charge—Appeal against the said conviction pending—Disciplinary authority—Whether can avail of the provisions of proviso* (*a*) *to Article* 311(2) *to dismiss the government servant during the pendency of the appeal—Term 'conviction' used therein—Whether includes the one recorded by the trial Court.*