

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) No. 5977/2016**

% **Reserved on:** 28th March, 2017
Date of Decision: 24th July, 2017

ALL INDIA INSTITUTE OF MEDICAL SCIENCESPetitioner
Through Mr. R.K. Gupta and Mr. A.K. Singh,
Advocates.

Versus

PRAHLAD RAUTRespondents
Through Mr. Deepak Verma and Mr. K.R.
Sachdeva, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J.

The All India Institute of Medical Sciences in this writ petition impugns order dated 29th February, 2016, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 3381/2013.

2. OA No.3381 of 2013 was filed by Prahlad Raut, the respondent before us, challenging the order dated 6th January, 2000, passed by the Disciplinary Authority in exercise of the power conferred by Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (Rules, for short) removing him from service retrospectively from 16th September, 1993 i.e. the date of his conviction under Sections 356/379/411 of the Indian Penal Code, 1860 by the Metropolitan Magistrate.

3. The Tribunal in the impugned order has held that the order of removal could not have been passed with retrospective effect from 16th September, 1993. Secondly, a mere conviction in a criminal case cannot justify an order under Rule 19, for the Rule postulates that the Disciplinary Authority must be satisfied for reasons to be recorded in writing that the conduct of the employee which had led to his conviction in the criminal trial was such that the said punishment should be imposed. There is a difference between “conduct which had led to his conviction” and the “conviction” itself. Reliance was placed upon the Full Bench’s judgment of the Punjab and Haryana High Court in *Om Prakash Vs. The Director, Postal Services (Post and Telegraphs Department), Punjab Circle, Ambala and Ors.*, AIR 1973 P & H 1, *Hari Ram Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. & Anr.*, 2006 (2) SLT 112 and *UOI Vs. Tulsi Ram Patel*, AIR 1985 SC 1416.

4. It is pertinent that we record the relevant facts. The respondent was appointed and started working as a bearer with the petitioner Institute on 9th February, 1972. In 1987, he was promoted to the post of steward.

5. The respondent was also elected as an executive member of the AIIMS Cooperative, Thrift and Credit Society. On 5th March, 1991, FIR No.91 was registered by Police Station-Defence Colony under Sections 406/420/468/471/477A/120B of the Indian Penal Code, 1860 against the respondent and others for causing pecuniary loss, by forging signatures, to the tune of Rs.5,00,000/- to the Thrift and Credit Society. The respondent was arrested on 5th June, 1991 and had remained in custody up to 12th June, 1991. He was placed under deemed suspension from the date of his arrest vide order dated 7th August, 1991 and paid Subsistence Allowance. The aforesaid FIR was quashed in view of the settlement between the parties,

which was recorded by the High Court in Criminal M.C. No.3268/2012 and Criminal M.A. No.16615/2012, ***S.P. Giri and Anr.Vs. State, Government of NCT of Delhi & Anr.*** This order dated 2nd November, 2012 records that an amount of Rs.2,00,000/- had already been paid by the respondent and the remaining settlement amount of Rs.2,46,130/- was paid by way of banker's cheque, a photocopy of which was placed on record.

6. Unknown to the petitioner Institute, while the respondent was under suspension, FIR No.868/1991 was registered at Police Station-Connaught Place, New Delhi against the respondent under Sections 356/379/411 IPC. The charge was that the respondent had committed theft of a bag containing Rs.290/- in cash, two lottery tickets belonging to complainant Jai Ram behind Regal Cinema, and in front of the liquor shop, in Connaught Place. The respondent was convicted vide judgment dated 15th September, 1993 passed by the Metropolitan Magistrate under Section 379 IPC. By order on sentence dated 16th September, 1993, the respondent was released on probation of good conduct and furnishing a personal bond and one surety of Rs.5,000/- for a period of one year. This prosecution and ensuing judicial orders were concealed and not brought to the notice of the authorities, i.e. the petitioner Institute.

7. The respondent's conviction and order granting him probation in FIR No. 868/1991 came to the knowledge of the petitioner authorities after about 7 years. They obtained a copy of the judgment/order. The Director of the petitioner Institute vide memorandum dated 6th January, 2000 passed the following order:-

“Whereas Shri Prahlad Raut, Steward (under suspension) from 5.6.1991 on charge of embezzling and mis-appropriation in view

of F.I.R. No.91 dated 3.3.1991 under Section 406/420/468/471/477-A and 120-B IPC

And whereas shri Prahlad Raut was later on charge for an offence of theft of a bag in public place, he had been convicted by the Court of Shri D.K. Saini, Metropolitan Magistrate, New Delhi under section 356/379/411 IPC vide judgment dated 16.9.1993.

As whereas it is considered that the conduct of the said Shri Prahlad Raut which had held to his conviction is such as to render his further retention in the service of the Institute undesirable.

And whereas Shri Prahlad Raut was given an opportunity to offer his written explanation.

And whereas the said Shri Prahlad Raut has given a written explanation which has been duly considered by the undersigned.

Now, therefore, in exercise of the powers conferred by the Rule 19 (1) of the C.C.S. (C.C.A.) Rule 1965 the undersigned removes the said Shri Prahlad Raut from the service of the Institute from the date of the conviction i.e. 16.9.1993.

Shri Prahlad Raut therefore is directed to deposit the subsistence allowance as received by him from the A.I.I.M.S. beyond 16.9.1993.”

8. The respondent thereafter filed a statutory appeal to the President, AIIMS which, as per the petitioner institute, was rejected in the same year, i.e., 2000. A copy of the rejection order is not available and has not been placed on record. The respondent claims that he is unaware of the decision and the rejection order was never communicated to him.

9. After the judgment was reserved vide order dated 10 March, 2017, the writ petition was listed for directions on 15th March, 2017 as it was noticed on examining the file that the order of dismissal dated 6th January, 2000 under Rule 19(i) of the Central Civil Services (Classification, Control

and Appeal) Rules, 1965 was challenged after nearly thirteen years in OA No. 3381/2013. Parties were asked to address arguments on the said aspect, as limitation was not urged and argued when the arguments were addressed. Accordingly, arguments were heard and judgment reserved on 28th March, 2017.

10. On the question of limitation, the respondent's plea in the OA No. 3381/2013 was as under:-

" 3 Limitation

The application is within the period of limitation as prescribed in Section 21 of the A.T. Act, 1985. Moreover, the applicant challenges a per se illegal order of removal from service with retrospective effect as well as his pension/GPF is withheld and thus are continuing wrongs.

The respondent along with OA No. 3381/2013 had filed an application seeking condonation of delay and an affidavit stating that the application was filed in exercise of abundant caution and also to comply with the procedural requirements.

11. The argument was that the order of removal with retrospective effect was *void ab initio* and hence the law of limitation would not apply to a patently illegal order. In addition, the respondent had pleaded that Delhi High Court had quashed FIR No. 91/1991 dated 5th March, 1991 registered at Police Station Defence Colony vide order dated 2nd November, 2012 and this order gave rise to a fresh cause of action. Further, the respondent had made application/appeal dated 21st January, 2013 to the appellate authority to review the order of removal, to which no response was received. Lastly, it was observed that the respondent has a continuing and recurring cause of

action as the pension/provident fund amounts were illegally withheld and that the respondent being 67 years of age, had retired. He was in a state of penury and required money for his wife/family and himself.

12. In the reply filed by the petitioner Institute to the Original Application, the question of limitation was left unanswered. However in a detailed counter affidavit filed by the petitioner Institute, the OA was opposed on the ground of delay which it was stated was not explained properly and the application of the respondent for condonation of delay was devoid of merit. It was argued that the applicant having approached the Tribunal after a delay of 13 years, the OA was misconceived.

13. The Tribunal in the impugned order referring to the question of limitation and condonation of delay observed as under:-

“9. At the very outset, learned counsel for contesting respondents has raised a preliminary objection of limitation in filing the instant OA after expiry of the statutory period. He urged that the impugned order (Annexure A-1 Colly) was passed on 06.01.2000 whereas this OA was filed by the applicant on 23.09.2013.

10. On the contrary, learned counsel for the applicant has submitted that although there is no actual delay, nevertheless he has filed a Miscellaneous Application for condonation of delay in order to avoid any technical objection. In this regard he contended that the impugned order dated 06.01.2000 is void ab initio, per se illegal and the same gave a recurring cause of action to the applicant. It has also been argued that the applicant has filed the appeal dated 23.02.2000 (Annexure A-5 Colly) to the Appellate Authority (President, AIIMS) which was received on 25.02.2000 by the office of the President, AIIMS, New Delhi. It was also stated that the applicant subsequently sent his representation dated 21.09.2013 (sic. 21.01.2013) (Annexure A-6 Colly) to the President, AIIMS but no decision has yet been communicated to the applicant. Hence, the main OA is within limitation.

11. Having considered the matter, we are of the firm view that the OA was filed within the period of limitation. It is not a matter of dispute that the punishing authority has retrospectively removed the applicant from service with effect from 16.09.1993, that being the date of his conviction in a criminal case by means of impugned order dated 06.01.2000. Such orders are illegal, void ab initio and can be challenged at any time. The Hon'ble Apex Court in a celebrated judgment in the case of *State of Madhya Pradesh Vs. Syed Qamarali* 1967 (1) SLR 228, which was subsequently followed in many decisions, has authoritatively ruled that the order of dismissal having been made in breach of mandatory provision of the rules, such order of dismissal had, therefore, no legal existence and it was not necessary for the respondents to have the order set aside by the court. The defence of limitation which was based only on contention that the order has to be set aside by a court before it became invalid must, therefore, be rejected.

12. Not only that, the applicant claimed that he has filed the appeal on 23.02.2000 (Annexure A-5 Colly) to the Appellate Authority which was received by the office of the President, AIIMS, on 25.02.2000. Subsequently, he moved a representation dated 21.01.2013 (Annexure A-6 Colly) claiming all the consequential benefits by ignoring the impugned removal order.

13. The contesting respondents have neither specifically denied nor produced any cogent record even to indicate that applicant has not filed any appeal (Annexure A-5 Colly)/representation (Annexure A-6 Colly) or the same were decided by the Appellate Authority. Moreover, the applicant has claimed all consequential benefits along with amount of pension and other emoluments along with interest, which to our mind, is recurring and continuing cause of action.

14. Thus, seen from any angle, it cannot possibly be said that the OA filed by the applicant is barred by limitation as contrary urged on behalf of respondents. Hence, it is held that the main OA filed by the applicant is within the prescribed period of limitation and the crux of law laid down in *Syed Qamarali* (supra) is fully applicable in the present case.

15. Once it is held that the main OA has been filed within the period of limitation, learned counsel for applicant then contended

with some amount of vehemence that there is no provision of law/rules that the applicant can retrospectively be removed from his service with effect from 16.09.1993, the date of his conviction, that too, simply on the ground of his conviction in a criminal case by the impugned order dated 06.01.2000 by the competent authority.”

14. Having examined the issue and question of limitation, it is difficult to accept the aforesaid reasoning and the finding of the Tribunal that application for condonation of delay was not required to be filed or considered as the OA was filed within the limitation period. Validity or illegality of the order challenged would not decide and determine whether or not an OA has been filed within the prescribed limitation period. This is not a relevant or prescribed consideration. The cause of action and the date when it accrued are determinative. On occasions, illegality etc. of the impugned order/action are noticed, as due consideration is given to these aspects when examining the question whether or not to condone the delay.

15. Reliance placed by the Tribunal on the decision of the five Judge Bench of the Supreme Court in *State of Madhya Pradesh Vs. Syed Qamarali* (1967) 1 SLR 228, is not apposite. Article 120 under the Limitation Act, 1908 was the residuary Article which had prescribed a period of limitation of six years. This period has been reduced to 3 years under Article 113 of the Limitation Act, 1963. In *Syed Qamarali* (supra) the Supreme Court held that the order of termination was invalid, being contrary to paragraph 241 of the applicable regulations. However, the said suit was within the period of limitation as the appeal was rejected by the Provincial Government on 9th April, 1947 and the suit was filed on 8th December, 1952. This crucial aspect in *Syed Qamarali* (supra) was

highlighted by the Supreme Court in *State of Punjab and Another Vs. Gurdev Singh* (1991) 4 SCC 1 for the aforesaid reasons [See paragraph 12].

16. The judgment in *Gurdev Singh* (supra) also holds that an order of dismissal would remain at least *de-facto* operational until it is declared void or a nullity by a competent body or court. Even if the order suffers from illegality, it has to be challenged in accordance with law to declare it void and null. In *Gurdev Singh* (supra), it was observed:-

"8. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In *Smith v. East Elloe Rural District Council* [1956 AC 736, 769 : (1956) 1 All ER 855, 871] Lord Radcliffe observed: (All ER p. 871)

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. Apropos to this principle, Prof. Wade states [See Wade: Administrative Law, 6th edn., p. 352] : "the principle must be equally true even where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles: [Ibid.]

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

10. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for.”

17. ***Gurdev Singh*** (supra) also holds that judgments or the view that a suit is not governed by the law of limitation runs foul of the Limitation Act, for the said statute was intended to prescribe time limit for all suits conceivable. Reference was made to Section 2(j) which defines “prescribed period” and Section 3 to observe that it is the function of the Court on presentation of the plaint to examine whether, on the assumed facts, the plaint has been filed within time.

18. The order of removal was passed on 6th January, 2000. The respondent had filed an appeal on 25th February, 2000. It is the case of the respondent that the appeal was never disposed of by the Appellate Authority as the respondent had not received the rejection order. The petitioner Institute has denied the said statement and on the contrary, professed that the appeal filed by the respondent was rejected in 2000. However, the petitioner Institute has failed to file a copy of the order rejecting the appeal. Perhaps, the time gap of more than 13 years makes it impossible for them to trace out the old relevant records. The respondent is also not forthright. His case, as pleaded, is that he never received, or was not served with the appellate order rejecting his appeal.

19. The question is whether in terms and as per the statutory provisions, the OA was filed within the limitation period as prescribed by the Administrative Tribunals Act, 1985, even if we assume that the appeal

preferred by the respondent was never decided. If not, the second issue which arises for consideration is whether the delay of 13 years should be condoned.

20. Sections 20 and 21 of the Administrative Tribunals Act, 1985 (1985 Act) are relevant for the purpose of deciding the two questions and read 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."

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20. Application not to be admitted unless other remedies exhausted

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

21. Section 20 (2) read with Section 21(1) is clear and lucid that if a person or officer has filed an appeal and a final order has been passed, the same can be challenged in an Original Application before the Tribunal, within the time and limitation period as specified. Section 21 stipulates and

prescribes the limitation period of one year for filing an Original Application. As per clause (a) to sub-section (2) of section 20, the cause of action would have arisen on the date of making of the penalty or appellate order, whichever is later. The OA is required to be filed within one year from the later date. However, where the employee has preferred an appeal but no final order has been passed by the person or the authority competent to pass such order, the employee can approach the Tribunal after a period of six months from the date on which the appeal was preferred or representation was made. In case the appeal was not disposed of, the cause of action would have arisen under clause (b) to sub-section (1) of Section 20, i.e. six months after filing the appeal and non-disposal of the same. The period of limitation would be one year from the date such cause of action arose, i.e. the limitation period commenced upon expiry of six months from the date of preferring the appeal. This principle is not applicable when the remedy availed of, i.e. appeal or representation is not provided by law, i.e. the statute or the Rules.

22. In *S.S. Rathore Vs. State of Madhya Pradesh*, (1989) 4 SCC 582, a Constitution Bench of seven Judges of the Supreme Court decided the question relating to commencement of a cause of action when the appellate order affirms or partly affirms the order of punishment passed in the backdrop of 'doctrine of merger'. It was observed that if the original order of punishment is taken to be the date on which the cause of action first accrued, it would lead to hardship. Moreover, an Original Application or a writ petition would not be maintainable before availing departmental or alternative remedy, which may possibly take an unduly long time. While

examining the said aspect, the Constitution Bench had referred to sub-sections (2) and (3) of Section 20 of the 1985 Act and held:-

“21. It is appropriate to notice the provision regarding limitation under Section 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 only when the appeal or representation provided by law is disposed of, cause of action shall first accrue 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, the right to sue shall first accrue. *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.”*

The decision of the Constitution Bench clarifies that repeated unsuccessful representations not provided by law would not confer any fresh right or give rise to a continuous cause of action.

23. The law of limitation is founded on public policy. Its aim is to secure quietus on stale and dead disputes. A person should not be allowed to agitate his claim after a long delay as belated claims often suffer from lack of evidence owing to dissipated records and material, thus making it difficult to uncover the truth. Limitation suppresses fraud and perjury and also discourages litigation.

24. Even if it is assumed that there is no specific order rejecting the appeal, the respondent had kept quiet and did not take any further action or steps from 2000 till filing of the OA on or about 24th July, 2013. The respondent now wants to put the clock back by 13 years possibly because in the meanwhile he has compounded and settled the criminal case by making payment in FIR No. 91/1991. In the second FIR No. 868/1991, his conviction was concealed. He has been released on probation of good conduct and furnishing a personal bond.

25. The fact that the respondent was silent for nearly 13 years supports the stand of the petitioner- Institute. An employee who has been dismissed from service and whose appeal is pending would or is likely to insist on an early hearing, and in the case of delay protest by making representations to the authorities concerned. It is not the case of the respondent that he had ever corresponded or made any representation to the petitioner Institute between 2000-2012. The reasonable inference to be drawn from such conduct is that the respondent was aware of the fate of his appeal and therefore chose to remain quiet. In the letter written by the respondent on 21st January, 2013 he has not mentioned his appeal or its fate. He had prayed for quashing/setting aside the order dated 6th January, 2000 which removed him from service. The letter dated 21st January, 2013 also states that the respondent was placed under deemed suspension as he was detained for more than 48 hours. It was claimed that the suspension was never revoked or continued as required under the rules. The respondent had pleaded that he was not the main accused.

26. Faced with the aforesaid circumstances, the respondent has submitted that the petitioner should not take up the plea of limitation. Reference was

made to the decision of the Supreme Court in *S.R. Bhanrale versus Union of India and Others*, 1997 (1) All India Service Law Journal 14. This was an agonising case in which retirement benefits were not settled and paid to the Government employee upon his superannuation on 31st July, 1984. He had then filed an application before the Tribunal in 1987. In these circumstances, the Supreme Court felt that the retirement dues were wrongly withheld and it was unfair, unjust and improper on the part of the Government of India to plead bar of limitation. The said case proceeded on a different factual matrix as payment of retirement benefits had remained pending. Further, the period of limitation was not as prolonged as in the present case. In *Ajit Singh versus Union of India and Others*, 2002 (1) All India Service Law Journal 188, it was held that entitlement to pension is a recurring cause of action. On the said aspect, we would like to refer to the decision of the Supreme Court in *Union of India and Others versus Tarsem Singh*, (2008) 8 SCC 648 wherein it has been held as under:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the

claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

Learned counsel for the respondent also referred to the decision of the Punjab and Haryana High Court in *Sardara Singh versus Union of India*, (1992) 6 SLR 683, wherein the High Court noticed that the petitioner had filed a writ petition after a lapse of more than 40 years, but he had been regularly making representations for disability pension. The Court observed that approaching the Court in the matter of pension cannot be completely defeated for this reason. The aforesaid decision/ratio has to be read in the light of the ratio laid down by the Supreme Court in the case of *Tarsem Singh* (supra). Here, we are not concerned with pensionary benefits. The question involved in the present case relates to order of termination or removal from service. Similarly, reference to *State of Punjab through Collector Patiala and Others versus Amar Singh, Constable*, (1990) 1 SLR 763, is of no avail as the Court had held that the respondent had a recurring cause of action, a concept that has been dealt with and explained in the context of pension in *Tarsem Singh* (supra). The present case would not be a case of continuing cause of action as the employer-employee relationship

stood terminated when the order dated 6th January, 2000 was passed. The cause of action arose at that time for the order of removal could and should have been challenged within the limitation period before the Tribunal.

27. In the aforesaid circumstances, it has to be held that the OA preferred by the respondent was barred by limitation, not by a few days but for periods spanning more than 13 years. Keeping in view the extraordinarily prolonged delay of 13 years and the explanation and reason furnished for the same by the respondent, we do not think that the delay in filing the OA and approaching the Tribunal can be ignored and condoned. Doing so would distort and impair justice. Furthermore, as the period of delay is rather long, even an order of remand to the Tribunal to examine and pass an order on the application for condonation of delay would be a futile and unnecessary exercise.

28. In the light of the aforesaid discussion, we would allow the present writ petition and set aside the impugned order for the reason that the OA itself was barred by limitation and delay should not have been ignored. OA No. 3381/2013 filed by the respondent would be treated as dismissed. There will be no order as to costs.

Sd/-
(SANJIV KHANNA)
JUDGE

Sd/-
(CHANDER SHEKHAR)
JUDGE

JULY 24th, 2017
NA/VKR/ssn