Mohd. Quaramuddin (dead) By LRs. v. State of AP, 1994 SupremeCourtOnline 0007*, *1994(5) SCC 118].

SUPREME COURT OF INDIA

Before:- A.M. Ahmadi and G.N. Ray, JJ.

Civil Appeal. 509/1980.

Mohd.Quaramuddin – Petitioner

Versus

State of A.P. – Respondent

10.5.1994.

Limitation Act, 1963, Article 58 – Termination of services – review – Since he had sought a review of the order the period of limitation could run against him after the date of disposal of the statutory review – Where a statutory notice under Section 80 Civil Procedure Code is required to be given that period of 60 days would be added to the period of limitation prescribed by the Limitation Act

Service matter – Vigilance Commissioner's report which formed part of the report of the enquiry and which was taken into consideration by the disciplinary authority was not supplied to the employee – It was held that the omission has vitiated the order of dismissal.

Cases Referred :

1. *Sita Ram Goel v. Municipal Board, Kanpur, 1959 SCR 1148.*
2. *S.S. Rathore v. State of M.P.(1989) SCC 582.*

JUDGMENT

A.M. Ahmadi and G.N. Ray, JJ. – The short question which is required to be considered is whether the court below was right in taking the view that the suit filed by the deceased Government servant was barred by limitation, having been filed three years after the date of dismissal. The order of dismissal was passed on 24-7-1967.Feeling aggrieved the delinquent filed a review under Rule 21 of the Andhra Pradesh Civil Services (CCA) Rules, 1963, (Rules)which review was dismissed on 6-12-1967. The learned counsel for the appellant contends that the tribunal was wrong in taking the view that the period of limitation began to run from 24-7-1967 when the order of dismissal was passed because the delinquent was entitled to exhaust the departmental remedy and, therefore, at best the period could run against him from 6-12-1967. He further stated that since statutory notice under Section 80 of the Civil Procedure Code had to be given the period of limitation stood enlarged by further two months. If that period is added the suit filed on 5-2-1971 was clearly in time. We think there is considerable force in this line of reasoning.

2. In taking the view that the suit was barred by limitation the tribunal placed reliance on the decision of the Constitution Bench of this Court in ***Sita Ram Goel v. Municipal Board, Kanpur.***That decision was reconsidered and overruled by this Court by a larger Bench of seven Judges in ***S.S. Rathore v. State of M.P.*** Briefly stated, the facts of that case were that the delinquent was dismissed from service by the Collector's order . He preferred an appeal against the said order which appeal was dismissed on 31-8-1966. The order of dismissal of the appeal was communicated to him on 19-9-1966. Thereafter, he gave notice under Section 80, Civil Procedure Code, on 17-6-1969 and instituted the suit on 13-9-1969 for declaration that his dismissal was inoperative. Like here, in that case also, the suit was dismissed on the plea of limitation on the ground that the cause of action first arose as required by Article 58 of the schedule to the Limitation Act, 1963 on 13-1-1966. When the matter came up for hearing before a Division Bench of this Court reliance was placed on the decision in Sita Ram case'. The Division Bench observed that Sita Ram case] requires reconsideration. That is how the matter came up before a Bench consisting of seven Judges. The larger Bench after noticing the relevant provisions of the law as well as the decided cases on the subject concluded in paragraph 18 as under: (SCC p. 590)

"We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant Service Rules as to redressal are disposed of."

The larger Bench was of the view that if the service rules provided for an appeal or any statutory representation the period spent in perusing that remedy would be available to the delinquent and the period of limitation would start after the appeal or statutory representation is disposed of. In the present case, as stated earlier, although an appeal was not available to the delinquent, Rule 21 entitled him to make, within a period of three months from the date on which the order came to be communicated to him, a petition to the Government to review the order passed against him on the ground that the authority which passed the order was not competent to do so; that reasonable opportunity was not given to him for defending himself; that the punishment was excessive or unjust; that he had discovered new material which was not within his knowledge and could not be adduced by him before the order imposing penalty was passed and that the order suffered from an evident error or omission such as failure to apply the law of limitation or an error apparent on the face of record. It would, therefore,appear that this was a statutory remedy available to him and,therefore, since he had sought a review of the order the period of limitation could run against him after the date of disposal of the statutory review. That is why the seven Judge Bench has put the matter a little broadly by not confining the issue to a statutory appeal only and extending it to a statutory representation as well. The seven-Judge Bench also observed that where a statutory notice under Section 80 Civil Procedure Code is required to be given that period of 60 days would be added to the period of limitation prescribed by the Limitation Act and if in the instant case that period is added the suit instituted on 5-2-1971 was clearly within the period of limitation. That being so the trial court as well as the tribunal were in error in dismissing the suit as barred by limitation.

3. On merits the tribunal came to the conclusion that the principle of natural justice had been violated in that the delinquent was not supplied a copy of the Vigilance Commission

Report although it formed part of the record of the enquiry and material which the disciplinary authority had taken into consideration. The tribunal observed that where such a material which the disciplinary authority relies on is not disclosed to the delinquent it must be held that he was denied the opportunity of being heard, meaning there by that the audi alteram partem rule had been violated. In the present case the tribunal found that the directions to this effect found in the Government Memorandum No. 821/Services-C/69-8 dated 30-3-1971 had not been adhered to. Had the tribunal not come to the conclusion that the suit was barred by limitation, it would have allowed the appeal preferred by the delinquent.

4. In the result, therefore, this appeal succeeds. The order of the tribunal dismissing the suit as barred by limitation is set aside. The finding of the tribunal that the dismissal order was vitiated on account of the violation of the audi alteram partem rule makes it necessary to quash and set aside the dismissal order and grant consequential benefits to the appellants who are the legal representatives of the delinquent who died pendente lite. We may state that we also gave an opportunity to the learned counsel for the State to support the judgment of the tribunal by satisfying us that the finding that the rule of natural justice has been violated, was not correct.The learned counsel was not able to satisfy us. During the pendency of the appeal the delinquent had passed away. The exact date of his retirement is not known and therefore the direction which we can give is as under.

5. The order of dismissal is set aside and, therefore, the delinquent would be entitled to wages and allowances up to the date of his retirement or demise, whichever is earlier. If the date of his demise is subsequent to the date of retirement, he would be entitled to pension up to the date of his demise.Thereafter, his legal representatives would be entitled to family pension under the rules. We direct the respondent-State to workout the monetary benefits available to the appellants within three months from today and grant the same to the appellants.There will, however, be no order as to costs.