

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**MA No. 190 of 2018
OA No. 321 of 2018**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Dhabaleswar Naik, aged about 51 years, S/o Gajapati Naik, Village-Kundarsingha, PO/PS-Kolabira, District – Jharsuguda, last employed in the office of the Sub Divisional Officer, Telegraph, Jharsuguda, Rourkela Telecom District.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary to the Government, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited (BSNL), Bharat Sanchar Bhawan, Harischandra Mathur Lane, Janapath, New Delhi-110001.
3. Chief General Manager, Telecommunication, Bharat Sanchar Nigam Limited, Odisha Circle, Bhubaneswar.
4. General Manager, Telecom District, Rourkela, At/PO/PS-Rourkela, District – Sundargarh.
5. Sub Divisional Officer, Telegraph, Jharsuguda, At/PO/PS-District – Jharsuguda.

.....Respondents.

For the applicant : Mr.A.Swain, counsel

For the respondents: Mr.D.K.Mallick, counsel
Mr.K.C.Kanungo, counsel (BSNL)

Heard & reserved on : 22.1.2020 Order on : 12.2.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This MA No. 190/2018 is filed by the applicant to condone the delay in filing the OA No. 321/2018. It is stated by the applicant that he had filed the OA with a prayer for grant of temporary status and regularization of his service with consequential service benefits w.e.f. the date of his engagement under the respondents as casual labourer. It is stated that while continuing as a casual Mazdoor under the respondents prior to 1985 he was retrenched from the service in 1986 and the respondents had assured to call him back as and when required. While some other persons similarly placed have been allowed fresh engagement his case was not considered for which he had filed OA No. 470/2000. The said OA was disposed of with a direction to the respondents to consider engagement of the applicant in terms of the letter dated 8.4.1991

followed by subsequent regularization vide order dated 1.1.2002 copy at Annexure A/3 to the OA.

2. It is alleged by the applicant that inspite of the above order, the respondents did not allow engagement of the applicant and regularization of the applicant's service by citing the judgment of the Hon'ble Apex Court in the case of State of Karnataka -vs- Uma Devi reported in 2006 (4) SCC 1. It is further stated by the applicant in the MA that his juniors are going to be engaged without considering the applicant's case. He had filed another OA No. 147/2010 which was disposed of vide order dated 1.4.2010 (Annexure A/10) directing the respondents to consider the pending representation of the applicant by passing a speaking order. The present OA has been filed for grant of temporary status and regularization.

3. It is further stated in the MA that the delay in approaching the Tribunal in this fresh OA was not willful and deliberate since he was waiting for the respondents' decision after their assurance. It is also mentioned that the applicant being a Tribal person waited with patience but no reply was received from the respondents.

4. The respondents have filed the objection to the MA No. 190/2018, stating that the OA has been filed after a lapse of about 32 years and number of days of delay have not been mentioned in the MA for condoning the same. It is stated that the respondents have passed an order dated 27.10.2010, while considering his representation in obedience to the order of this Tribunal dated 1.4.2010 in OA No. 147/2010 and since no challenge has been made by the applicant to the said order, the order dated 27.10.2010 has attained finality. It is further stated that the OA is liable to be dismissed on the ground of delay in view of the following judgments have been cited in the objection in support of his contention :

- (i) U.P.Jal Nigam & Anr. -vs- Jaswanth Singh & Anr. [(2006) 11 SCC 464]
- (ii) Jacob C. -vs- Director of Geology & Mining & Anr. [(2008) 10 SCC 115]
- (iii) D.C.S. Negi -vs- UOI & Ors. [SLP (Civil) No. 7956/2011 CC No. 3709/2011]
- (iv) State of Tripura & Ors. -vs- Arabinda Chakraborty & Ors. [2014 SCC (L&S) 2 (300)]
- (v) State of Jammu & Kashmir -vs- R.K.Zalpuri & Ors. [Civil Appeal Nos. 8390-8391 of 2015]
- (vi) S.S.Balu & Anr. -vs- State of Kerala & Ors. [(2009) 2 SCC 479]
- (vii) State of Uttaranchal & Anr. -vs- Shri Shiv Charan Singh Bhandari & Ors. [2014 (2) SLR 688]
- (ix) UOI & Ors. -vs- M.K.Sarkar [2010 (2) SCC 59]
- (x) BSNL -vs- Ghanshyam Dass (2) & Ors. [(2011) 4 SCC 374]
- (xi) State of T.N. -vs-Seshachalam [(2007) 10 SCC 137]
- (xii) Ajay Kumar Behera -vs- State of Odisha & Ors. [WP(C) No. 15392/2011 of Hon'ble High Court of Orissa]

5. Rejoinder/reply to the objection has been filed by the applicant stating that the applicant was engaged as a casual mazdoor and after rendering 459 days of service he was retrenched in 1986 along with others with the condition that he will be recalled. It is stated that the applicant being retrenched casual Mazdoor has not been re-engaged, but the respondents are engaging freshers time and again inspite of the fact that the applicant had approached the Tribunal from time to time. The applicant cited the judgment of Hon'ble Apex Court in the case of State of Orissa –vs- Md. Illiyas in support of his contention. It is stated that the judgment relied upon by the respondents are factually different.

6. Heard learned counsel for the applicant who also filed a written note of citations indicating the main argument submitted by learned counsel at the time of hearing and enclosing the copy of the following judgments :

- (i) Collector, Land Acquisition, Anantnag & Ors. –vs- Katiji & Ors. [AIR 1987 SC 1353]
- (ii) N.Balakrishnan –vs- M.Krishnamurthy [AIR 1998 SC 3222]
- (iii) Ram Nath Sao & Ors. –vs- Gobardhan Sao & Ors. [AIR 2002 SC 1201]
- (iv) Jayanta Kumar Sahu –vs- Laxmidhar Sahu [2013 (1) OLR 589]
- (v) State of Karnataka –vs- Y. Moideen Kunhi & Ors. [AIR 2009 SC 2577]
- (vi) Manoharan –vs- Sivarajan & Ors. [(2014)4 SCC 163]

7. Similarly learned counsel for the respondents was also heard. He also filed copy of the judgment relating to limitation reiterating the contention of the respondents in the Counter. Learned counsel for the respondents submitted that the MA is liable to be disallowed since no valid ground has been mentioned in the MA explaining the delay in filing the OA.

8. We have considered the submissions on behalf of both the parties and the judgments cited by learned counsels at the time of hearing. Perusal of the MA shows that the ground taken by the applicant for condoning the delay is that the respondents have not acted in his case in accordance with the orders of the Tribunal in OA No. 471/2000 and OA No. 147/2010 and have also not followed their own circular dated 8.4.1991. Admittedly, the applicant was discontinued from service as casual Mazdoor in 1985 as mentioned in the MA. When his case for re-engagement was not considered he filed OA No. 470/2000, which was disposed of along with OA No. 471/2000 vide order dated 1.1.2002 (Annexure A/3) with the following directions :

“9. In the earlier batch of OAs the learned counsel for the petitioners had filed a set of documents after the hearing was over. Even though those documents were not taken into consideration in the earlier cases because the respondents did not have any opportunity to re-act to these documents, the Tribunal noted in their order dated 10.8.2000 that in letter dated 7.1.1993 it has been mentioned that according to Department of Telecommunication’s letter dated 8.4.1991 casual workers engaged before 7.6.1988 and who are in service as on 8.4.1991 may be considered for regular appointment to Group – D post. This letter dated 8.4.1991 had not been filed in the earlier cases nor is it before us in the present cases. In view of this, it is not possible to know the

exact contents of the letter dated 8.4.1991. We, however, make it clear that if the applicants are entitled to re-engagement in terms of the letter dated 8.4.1991 and subsequent regular appointment, the respondents will consider these two applicants for the above benefits.”

9. As per the above direction of the Tribunal the persons who were in the service as on 8.4.1991 are to be considered for regular appointment against Group 'D' posts. Further, the case of the applicant was to be considered for re-engagement in terms of the letter dated 8.4.1991 followed by subsequent regular appointment. As observed in the above order, the letter dated 8.4.1991 was not placed before the Tribunal in OA No. 470/2000. In the present OA also, the circular dated 8.4.1991 has not been placed by the applicant although the said circular has been referred to justify his claim.

10. Since the applicant felt that his case was not duly considered in accordance with the orders of the Tribunal dated 1.1.2002 (Annexure A/3), he filed another OA No. 147/2010 which was disposed of vide order dated 1.4.2010 (Annexure A/10), without going into the merits of the case, with a direction to the respondents to consider the pending representation of the applicant within 2 months. It has been stated by the respondents in their objection that in compliance of the order dated 1.4.2010 the respondents have passed an order dated 27.10.2010 disposing of the representation of the applicant and the said order has not been challenged by the applicant. The contention of the respondents in para 3 of the objection to that effect has not been specifically contradicted in the rejoinder filed by the applicant in reply to the objection filed by the respondents.

11. From the above it is clear that the applicant did not take appropriate follow up action as per provisions of law for compliance of the order of this Tribunal passed in OA No. 470/2000 vide order dated 1.1.2002 (Annexure A/3) and did not also challenge the order dated 27.10.2010 which was stated to have been passed by the respondents in compliance of the order dated 1.4.2010 in OA No. 470/2000. This OA again filed for the same cause of action for temporary status and regularization without any specific prayer for re-engagement of the applicant. Clearly the reliefs sought for in the present OA have already been considered in the earlier OAs and the applicant has not taken action for compliance of those orders as discussed above. Further as submitted by the respondents, the applicant has been disengaged since 1985-86 and the order of the Tribunal to reconsider his re-engagement as per circular dated 8.4.1991 vide order dated 1.1.2002 passed in OA No. 470/2000 has not been followed although there was a specific direction by the Tribunal in the order dated 1.1.2002 (Annexure A/3) to that effect. It has not been established by the applicant that he was eligible for re-engagement as per the circular dated 8.4.1991 and if there was non-compliance of the order dated 1.1.2002 in respect of the applicant by the respondents, no action as per

provisions of law was taken for such non-compliance. Hence, again approaching the Tribunal by filing the present OA in 2018 without any explanation for such inaction will be barred in the light of the Section 21 of the Administrative Tribunals Act, 1985.

12. Learned counsel for the applicant has cited the judgment of Katiji (supra) where it was held that "Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated". In this case the applicant has not effectively challenged the decision of the respondents if they did not act as per the order dated 1.1.2002. The delay of more than 15 years from the order dated 1.1.2002 has not at all been explained in the MA No. 190/2018. Further, the order dated 27.10.2010 passed by the respondents rejecting his case as per the order dated 1.4.2010 of the Tribunal has not been challenged by the applicant. *Prima facie*, no merit has been made out for the applicant's case for condoning such delay in filing the OA. Hence, the cited judgment will not be helpful for the applicant's case.

13. In the judgment of N.Balakrishnan (supra) cited by the applicant's counsel, it was held that for the purpose of limitation, the explanation of delay should be considered on merit. This judgment will be also of no assistance to the applicant since no satisfactory explanation has been furnished by the applicant in the MA for delay and for not taking any action for compliance of the order dated 1.1.2002 of the Tribunal and the order dated 27.10.2010 passed by the respondents rejecting his case in pursuance to the Tribunal's order dated 1.4.2010. Similarly other judgments cited by the applicant will be of no help for the applicant in this case.

14. Learned counsel for the respondents cited the judgment of Hon'ble Apex Court in the case of Jaswant Singh (supra) where the dispute was mainly about the retirement age. In this case the respondents had approached the Court at a belated stage and they chose to sit in fence till in a similar case relief was granted by the Court. Hon'ble Court did not grant any relief to the persons who approached the Court belatedly after their retirement and the relief was granted to only those persons who filed writ petitions while in service or they have opted for interim order. Similarly in the case of C.Jacob (supra) cited by the learned counsel for the respondents, belated claim was not accepted by the Hon'ble Apex Court. It was held in that case when a petitioner keeps quite for a number of years after the cause of action has arisen and then approaches the Court for consideration of his representation, the rejection of such representation by the authorities will not give rise to a fresh cause of action. In the case of D.C.S.Negi (supra) it is held as under :

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application

after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).”

15. In view of the discussions above we are of the considered view that MA No. 190/2018 for condonation of delay does not disclose any explanation for inaction on the part of the applicant inspite of direction of this Tribunal vide order dated 1.1.2002 (Annexure A/3) directing the respondents to consider the case of the applicant and hence, it is liable to be dismissed. Accordingly MA No. 190/2018 is dismissed.

16. Since MA No. 190/2018 praying for condonation of delay in filing this OA has been dismissed, the OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and hence, the OA is also dismissed on the ground of limitation and delay. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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