

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00145/2020

Jabalpur, this Wednesday, the 04th day of March, 2020

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Shri Bhimrao Suraj, S/o Shri Suraj, aged about 53 years, Occupation :
Temporary Khalasi, R/o Village Kundai, Tehsil Multai, District Betul, Pin
495004 (M.P) **-Applicant**

(By Advocate – Smt. Shimla Jain)

V e r s u s

1. Union of India through its General Manager, Ministry of Railways, Rail Bhawan, New Delhi 110001.
2. Senior Divisional Railway Manager (Personnel), Central Railway, Nagpur (Maharashtra) – 440001.
3. Executive Engineer (Construction), Central Railway Ajni/Nagpur (Maharashtra) 440001.
4. Senior Accounts Officer (Construction), Central Railway, Nagpur (Maharashtra) 440001.
5. Divisional Manager Engineer (Construction) Locomotive Works, Narkhed District Nagpur 440001 **-Respondents**

(By Advocate – Shri A.S. Raizada)

ORDER (O R A L)

By Navin Tandon, AM.

The applicant is aggrieved that he has not been granted retiral benefits.



2. The applicant has submitted that he entered into the services of the respondent department in the year 1982 as Gangman/Khallasi and rendered his services for a period of 16 years, i.e. up to 1998. On 26.07.1997 (Annexure A-1), he was served with a charge memorandum dated 26.07.1997 (Annexure A-1) regarding his unauthorised absence from duty. After holding the enquiry, he was issued with a letter dated 30.11.1998 (Annexure A-2), whereby the applicant was proposed to remove from service and he was directed to submit his reply within 15 days.

2.1 The applicant submits that without waiting for his reply, the respondents have orally terminated him from service. He represented the authorities several times for redressal of his grievances. However, no heed was paid on his representation.

2.2 The applicant has submitted his representation dated 27.10.2018 (Annexure A-3) for payment of retiral dues.

3. He has sought for the following reliefs:

“8. RELIEF SOUGHT:

It is, therefore, prayed;

- (i) This Hon’ble Tribunal may kindly be pleased to call for the entire relevant record in respect of the applicant.
- (ii) This Hon’ble Tribunal may kindly be pleased to direct the respondents to consider the applicant’s representation for grant of retrial/terminal benefits.



- (iii) This Hon'ble Tribunal be further pleased to grant all consequential terminal benefits to the applicant along-with arrears with interest accrued thereon, including continuous payment of pension in future.
- (iv) Any other order/orders, which this Honorable Court deems, fit proper;
- (v) Cost of the petition may also kindly be awarded."



4. Alongwith the O.A, the applicant has also filed M.A No.200/121/2020 for condonation of delay, wherein he has submitted that he is a poor and tribal person and is not aware of law.

5. Heard both sides.

6. It is seen that the applicant is seeking direction to the respondents to consider his representation for grant of retiral benefits, which has been submitted in the year 2018. Thus, as per his own assertion, he was removed from service way back in the year 1998, whereas he has approached this Tribunal in the year 2020 after a delay of more than 21 years.

7. Section 21 of the Administrative Tribunals Act, 1985 (for short '**the Act**') deals with limitation for filing O.A. before this Tribunal. Under the Act, the limitation of one year from the date of cause of action has been prescribed for filing O.A. before this Tribunal. The same can be extended by another six months from the date of filing of appeal if the same is not decided. Further, if the application is not filed within time as stipulated in

Section 21 of the Act, then the applicant has to move a Miscellaneous Application seeking condonation of delay in not filing the Original Application within the limitation.

8. In the instant case, the cause of action arose in favour of the applicant in the year 1998 when his services were dispensed with. However, he kept silent since then and has submitted his representation in the year 2018, i.e. after a lapse of 20 years from the date of his removal. Further, he has filed this Original Application after a gap of 21 years. Thus, we find that there is an inordinate delay in filing this Original Application, which has not been explicitly explained by the applicant in his application for condonation of delay. Moreover, the applicant has not assailed the order of his removal/termination and is seeking retiral benefits, without challenging the same.

9. The Hon'ble Supreme Court in the matters of **C. Jacob vs. Director of Geology and Mining**, (2008) 10 SCC 115 has held as under:

“7. The order of the learned Single Judge was challenged by the respondents in an intra-court appeal. The Division Bench allowed the writ appeal by order dated 28-1-2008. The Division Bench held that the petitioner had not completed 20 years of qualifying service as on 18-7-1982, and therefore, he was not entitled to pension. The said order is under challenge in this petition. We propose to examine the following two issues arising in this case:



(i) *The modus of representation adopted by several claimants/petitioners to get over the bar of limitation/delay and laches.*

(ii) *Common error in assuming that 10 years' service entitles a government servant to pension under the Pension Rules.*

The modus of “representation”

8. *Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying to such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/writ petition before the tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The tribunals/High Courts routinely allow or dispose of such applications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation.*

9. *The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.”*



10. In the matters of **M.K. Sarkar vs. Union of India and others**, (2010)

2 SCC 59, the Hon'ble Apex Court has held that:

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”



11. In view of the above settled legal position, we find that this is a stale case, which is sought to be revived. Therefore, clearly the Original Application is time barred. Accordingly, the Original Application is dismissed *in limine* as barred by limitation. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-