

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/983/2018

Jabalpur, this Wednesday, the 29th day of January, 2020

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Shrimati Uma Verma (Pasi, Bauriya)
D/o Late Bhaiya Lal Pasi, Babariya
aged about 54 years
Working as Senior Nurse Grade-I
in the Vehicle Factory Hospital
R/o H.No.1158 Street No.01
Sadar Holly Chook
Jabalpur M.P.

-Applicant

(By Advocate –**Shri Rakesh Kuma Sahu**)

V e r s u s

1. The Union of India,
Through it's Secretary,
Ministry of Defence (Production)
South Block New Delhi 110001
PIN 110001

2. The Vehicle Factory Jabalpur,
Through its General Manager Factory Jabalpur
Jabalpur M.P. PIN 482002

-Respondents

(By Advocate –**Shri N.K. Mishra**)

ORDER

This Original Application has been filed by the applicant challenging the action of the respondent-department seeking full salary of suspension period i.e.

from 17.07.1999 to 23.08.2000 as well as back wages when she was terminated i.e. from 24.08.2000 to 26.08.2009.

2. The applicant has prayed for the following reliefs:-

“A order or direction may kindly be issued to the respondents that the applicant may kindly be

A/ That, the applicant is praying and the applicant seeking the back wages when she was terminated i.e. period was 24.08.2000 to 26.08.2009, her (termination period was 24.08.2000 to 26.08.2009) and also seeking the full pay of suspension period i.e. 2.07.1999 to 23.08.2000 along with all consequential benefits as permissible in the eye of law.

B. That, the applicant is also praying that her suspension, and termination period may kindly be considered as time spent on duty, i.e. qualifying service and do not break in service with all consequential benefits. Also praying for full pay along with permissible interest of termination period and suspension period for the purpose of pension benefits, because Pension of a Central Government is governed by Central Civil Service (Pension) Rules, 1972 along with all consequential benefits.

C/ Any other relief as deemed fit and proper looking to the facts and circumstances of the case.”

3. The facts of the case as narrated in the pleadings are that the applicant was working as Senior Nurse Grade-I in the Vehicle Factory Hospital Jabalpur and in the year 1999

she was implicated in the criminal case wherein she was convicted in the offence vide Session Trial No.521 order dated 24.08.2000 by Additional Sessions Judge Jabalpur.

3.1 The applicant filed a Criminal Appeal No.2177/2000 before the Hon'ble High Court of Madhya Pradesh Jabalpur whereby the applicant was acquitted from all the charges leveled against her vide order dated 27.08.2009 (Annexure A/1). Due to conviction she was placed under suspension from 12.07.1999 to 23.08.2000 and was paid suspension allowance. After conviction the applicant was terminated and later was reinstated in service on 24.11.2009. The applicant submitted her representations dated 30.08.2009, 04.01.2013, 09.06.2014, 30.03.2017 and 10.04.2016 (Annexures A-2 to A-5) but the respondents has not considered till date. Hence this Original Application.

3.2 The applicant has also moved Misc. Application No.200/391/2019 under Section 5 of the Limitation Act for condonation of delay in filing of Original Application. It

has been submitted by the applicant that the applicant was working as Assistant II Nurse in the Vehicle Factory Hospital. All of sudden in the year 2009 she was implicated in the false criminal case consequential she was convicted in the offences vide Session Trial No.521 order dated 24.08.2000 by A.S.J. Jabalpur and was acquitted from all charges on 27.08.2009. The applicant submitted that the period shall be treated as a period spent on duty as per Fundamental Rule 54-B Sub Rule (1) and Sub Rule (3) i.e. where the suspension period is to be regularized and the applicant is entitled for backwages w.e.f.24.08.2000 to 26.08.2009 (her termination period). It has been specifically submitted by applicant that the limitation is one year for filing Original Application, then it comes 27.08.2010, the delay comes 8 years but regularly the applicant were submitting the representation to the competent authority that is on record from Annexure A-2 to Annexure A-5 then there is no delay in filing the O.A.

4. The respondent-department has filed reply to application for condonation of delay. It has been submitted by the replying respondents that in the O.A., the applicant is seeking back wages for the period from 24.08.2000 to 26.08.2009 i.e. the period when she was terminated from services and further back wages for the period from 12.07.1999 to 23.08.2000 when she remained under suspension. The Original Application has been filed in the month of September 2018 whereas the cause of action arose in the year 2009 when the applicant was reinstated in service and applicant is aware of the fact regarding the limitation for filing Original Application. So, the Original Application has been filed after inordinate delay of 8 years and no application for condonation of delay was filed. Moreover the application for condonation of delay has been explained by the applicant. It has been further submitted by the replying respondents that the representation Annexure A/2 and A/3 are there but none of them bears any endorsement/receipt of their submission to

the competent authority. So these documents could not be relied upon as they appear to be antedated and prepared just to meet out the delay. There is no continuity in the cause of litigation and the cause of action arose 8 years earlier. It has been further submitted by the replying respondents that it is a settled law that mere filing of representations would not meet the limitation. The claim for backwages is based on the ground that earlier she was convicted in a criminal trial on 24.08.2000 because of which the applicant was dismissed from service. Later on the Hon'ble High Court has set aside the conviction and applicant were reinstated in service w.e.f. 24.11.2009. The backwages as such cannot be granted on the principle of "no work no pay". The applicant was convicted under Section 302 and 498-A of the IPC was personal in nature and related to the applicant herself. Thus the employer cannot in any manner be found at fault to have kept her out of service during the said period. The effect of conviction does not get diluted because of subsequent acquittal of the

applicant for the purpose of counting the service which is settled by the Hon'ble Apex Court in the matter of ***Union of India vs. Jaipal Singh*** (2004) 1 SCC 121. It has been further submitted by the replying respondents that the applicant has suppressed the material fact that a show cause notice was issued to her on 24.11.2009 (Annexure R/1). Against the same, she preferred representation on 02.12.2009 (Annexure R/2). The period of suspension from 12.07.1999 to 23.08.2000 was treated as not spent on duty following 'no work no pay' as per clarifactory order of Hon'ble Apex Court dated 28.10.1996 in SLP (C) No.22538/1996 (Annexure R/4). Vide order dated 11.12.2009 it was also communicated that she is not entitled to back wages for the period from 24.08.2000 to 26.08.2009. The replies were also given to the representations on 30.05.2017 and 05.09.2018 and copies of same were filed as Annexure R/5 collectively. The applicant had not challenged any of those orders passed by the replying respondents. So there is not merits in the

Original Application and deserves to be dismissed and application for condonation of delay as it suffers from delays and latches and deserves to be dismissed.

5. I have heard the learned counsel for both the parties and have gone through the annexures attached with the pleadings.

6. From the pleadings itself it is very clear that the applicant convicted by competent court of law and due to conviction the services of the applicant was dismissed. The applicant has approached the Hon'ble High Court Jabalpur by way of criminal appeal which was allowed and the conviction was set aside. It is the fact that the applicant was reinstated in service w.e.f. 24.11.2009. As per Annexure R/1 the respondent-department has issued an order whereby the period from 27.08.2009 to 23.11.2009 (period from the date of acquittal to the date of reinstatement) shall be treated as the period spent on duty for all purposes. Vide Annexure R/2, the applicant had represented the respondent-department on 02.12.2009 and

vide Annexure R/3 the respondent-department has passed the order whereby it has been specifically communicated vide letter dated 11.12.2009 that the applicant is not entitled for backwages from 24.08.2000 to 26.08.2009. The representations made by the applicant were also dealt with by the respondents vide Annexure R/5. It is also fact that the applicant had not challenged those orders passed by respondent-department.

7. On the other side the applicant has submitted that despite various representations the respondent-department has not decided the representations. Learned counsel for the applicant had relied upon the judgment passed by Hon'ble Apex Court in the matters of Radha Krishna Rai vs. Allahabad Bank and others (2000) 9 SCC 777 wherein it has been held by Hon'ble Apex Court that submission of regular representation to the department as per advice of her counsel is enough need not to file petition until their implementation/consideration on the representation. In the present circumstances this is not the case and there is no

such averment on behalf of applicant that the representation has been made on the advice of her counsel. Learned counsel for the applicant had also relied upon the judgment passed by Hon'ble High Court of Karnataka in the matters of *Narayanhamma* vs. *K.P. Jagganath* 1998 SCC online Kar 752 wherein it has been held that the definite circumstance justifying the case for delay. But in the instant case there is no such circumstance. Moreover, there is no reoccurring cause of action in the present circumstances. It is true that the applicant has been dismissed but it is on conviction held by the trial court and the respondent-department has acted as per law. That is why the applicant has been dismissed from service on conviction. It is also fact that later on Hon'ble High Court of Jabalpur has acquitted the applicant and the judgment of conviction passed by trial court has been set aside. But in the instant case the respondent-department has acted as per law envisaged in the service jurisprudence.

8. Though the various representations has been made by the applicant but law is well settled in the case of ***S.S. Rathore vs. State of Madhya Pradesh*** 1989 (4) SSC 582 wherein it is held that repeated representations shall not give the fresh cause of action. Hon'ble Supreme Court has held that "*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.*"

9. In the instant case the applicant has filed this O.A. on 07.09.2018 and not only this, application for condonation of delay has been filed on 19.02.2019. It is also admitted fact by both the parties that the applicant is seeking backwages for the period from 24.08.2000 to 26.08.2009 and seeking full pay of suspension period i.e. 12.07.1999 to 23.08.2000 as the applicant has been dismissed from service on conviction by competent court of law. There is delay of 8 years in filing the Original Application. Moreover, law is settled that repeated representations will not give fresh cause of action particularly when the period

for limitation for filing Original Application as prescribed under Section 21 of the Administrative Tribunals Act, 1985 (for short 'the Act') deals with limitation for filing O.A. before this Tribunal, which reads 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 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."

10. Section 21 of the Act has been considered by the Hon'ble Supreme Court in the case of **Union of India & Ors. v M.K. Sarkar**, reported in 2010 (2) SCC 58, wherein it has been said that limitation has to be counted from the date of original cause of action and stale matters should not be entertained. It has further been held as follows:-

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. 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. Moreover, a court or tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with

reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

11. In view of the above, M.A. No.200/391/2019 for condonation of delay is dismissed being without any merits. Accordingly, I do not find any reason to interfere in the matter and dismiss the Original Application on the ground of delay and laches.

(Ramesh Singh Thakur)
Judicial Member

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