

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

**OA No.290/00364/2016 with
MA No.290/00228/2016** **Pronounced on : 06.03.2020**
(Reserved on : 03.03.2020

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Abdul Karim son of Shri Abdul Rehaman, aged about 56 years, resident of Kabir Nagar, near Radha Swami Satsangh Bhawan, Jai Colony, Kachchi Basti, Soorsagar Road, Jodhpur, last employed on the post of Hammer Man (MES No.169427) in the office of GE (Army) MES, Jaisalmer (Erstwhile GE (Army) EWS 860, Jaisalmer).

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra.

VERSUS

1. Union of India through Secretary to Govt. of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Garrison Engineer (Army), MES, Jaisalmer-345001.
3. Engineer-in-Chief, AHQ, Integrated HQ of MOD (Army) Rajaji Marg, Kashmir House, New Delhi-110011.

...RESPONDENTS

BY ADVOCATE: Mr. B.L. Tiwari, for R1 to R3

ORDER

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Per Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

"8(i). That impugned order dated 09.01.1993 (Annexure A1), passed by 2nd respondent, imposing the penalty of dismissal from service may be declared illegal, without jurisdiction and void ab initio and the same may be quashed. The applicant may be allowed all the consequential benefits as if the impugned penalty order were never in existence.

(ii) That respondents may be directed to produce the original records of the impugned Disciplinary proceedings against the applicant, so as to unfold the true facts, at the time of hearing of this case.

(iii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice."

2. This OA has been made against the order No.1000/Abdul Karim/147/EIC, dated 09.01.1993 (Annexure A1), passed by 2nd respondent on the subject of disciplinary proceedings for imposition of penalty of dismissal from service.

3. The facts of the present case as narrated by the applicant are that the applicant was initially appointed to the post of Mazdoor on 11.12.1980 in the office of GE (Army) MES, Jodhpur. He was promoted to the post of Hammer Man after passing the requisite test w.e.f. 23.02.1987 vide PTO No.07, dated 15.03.1987 (Annexure A2) and he was posted in the office of GE (Army) MES, Jaisalmer (Erstwhile GE (Army) EWS 860, Jaisalmer), in 1990. He worked there upto

09.01.1993 when he was imposed the penalty of dismissal from service. The applicant was asked to submit the original certificate of VIII class pass along with one photocopy of the same duly attested vide 2nd respondent's letter dated 19.10.1990. The applicant informed that he had not studied in any school and he never submitted any certificate and the question of submitting the same did not arise. He also informed that there was no qualification prescribed for the post of Mazdoor and the same was not required even then.

4. It is further stated that the applicant was issued with a charge sheet by 2nd respondent under Sub Rule 2 of Rule 14 of CCS (CCA) Rules, 1965, vide memo dated 20.06.1992 alleging the Article of charges and substance of imputation of misconduct or misbehavior. The applicant denied the charges and one Shri LC Meena AEE was appointed as Inquiry Officer vide letter dated 08.10.1992. Thereafter, the applicant submitted an application dated 29.10.1992 and requested for 30 days' time to defend his case through defence assistant. The I.O. granted the required time and fixed the date for inquiry as on 02.12.1992 vide letter dated 29.10.1992 (Annexure A3). The applicant suddenly fell ill and sent an application dated 01.12.1992 (Annexure A4) along with medical certificate to the IO. The applicant was served with a penalty order dated 09.01.1993 (Annexure A1) issued by 2nd respondent, imposing the penalty of dismissal from service.

5. The applicant immediately approached the Labour Court and his case was registered as Industrial Dispute Centre No.1/1994, the same was decided vide order dated 18.10.1997 (Annexure A5) wherein it had been held that respondent employer was not an Industry within the

meaning of Industry as per Industrial Act, 1947 and the case was dismissed for want of jurisdiction. The applicant had no option except to challenge the same before Hon'ble High Court of Rajasthan vide SBCW Petition No.4082/1997, which was admitted. The said Writ Petition was also permitted to be withdrawn with liberty to approach competent authority under the CCS Rules vide judgment dated 19.07.2016 (Annexure A7).

6. It is also stated that the inquiry officer did not conduct any inquiry. No witness was examined. No document was proved by another. The giving of opportunity to cross examination did not arise. The applicant was also not questioned on the points having bearing on the charges as per sub rules 18 which is a mandatory provision. The rules of conducting ex-parte inquiry was also not followed and the charges have been held as proved on the basis of some material collected at the back of the applicant and that too without supplying a copy of the same to the applicant. The appointing authority as well as disciplinary authority in respect of the applicant would be Engineer-in-Chief i.e. 3rd respondent. But in the instant case the charge sheet has been issued by Garrison Engineer i.e. 2nd respondent, the penalty order was also passed by 2nd respondent. 2nd respondent is a lower authorities to the 3rd respondent. Thus, the complete disciplinary proceedings including the penalty thereof are non-est and void ab initio.

7. In the instant case very specific issues have been examined in detail by this Bench in the case of Mohan Lal Vs. UOI & Ors. in OA No.34/2003 with MA No.105/2003 and set at rest vide order dated 07.01.2005. In that case the charge sheet was issued by Garrison

Engineer and penalty order came to be passed by Engineer-in-Chief. The very initiation of disciplinary proceedings in that case has been held as without jurisdiction and non-est in the eyes of law. A DBCW Petition No.1806/2006 UOI & Ors. Vs. Mohan Lal filed against the order of this Tribunal came to be dismissed as abated vide judgment dated 26.04.2010. The same squarely covers the controversy on all fours; rather the instant case is on a better footing since none of the order has been passed by the competent authority. Thus no valid order is in existence against him and he continues to be in service and entitled to the reliefs claimed in the relief clause of this OA. Hence the OA.

8. The applicant has filed Miscellaneous Application bearing No.290/00228/2016 under Section 21 of the AT Act, 1985, for condonation of delay.

9. In the written statement filed on behalf of the respondents, wherein the preliminary objection has been taken that the original application is not maintainable before this Tribunal because the applicant has sought liberty before Hon'ble Rajasthan High Court to approach the competent authority under the CCS Rules, and as such the Hon'ble High Court was pleased to dismiss the Writ Petition granting liberty in the terms as prayed by the applicant vide order dated 19.07.2016 (Annexure A7). Without being inconsistent to the OA is hopelessly barred by limitation under the AT Act, 1985, therefore, the OA to be dismissed on this ground alone, because termination order was passed on 09.01.1993. Without admitting lack of competency with the Annexure A1, the applicant is stopped from challenging the order Annexure A1 on this ground, because he never

raised any objection this regard, as much as applicant further failed to impugn the competency of authority even before the learned Industrial Tribunal, while prosecuting the reference. The applicant has not come with clean hand, therefore, the OA deserves to be dismissed.

10. It is further stated that the applicant when asked by respondent no.2 submitted photocopy of TC bearing endorsement of Original (Annexure R1) received by the applicant himself. On 20.12.1990, the applicant submitted an application making false averments pertaining to the submission of original TC with office (Annexure R2). The sufficient time and opportunities was given to the applicant by the IO, but the applicant failed to respond the same, therefore, disciplinary authority was no option but to pass final order on the basis of material available on record. The applicant himself is responsible for obtaining the order from learned Industrial Tribunal and therefore willing and unwillingly applicant has to suffer the effect and consequences of the order Annexure A5. As the applicant himself failed to appear before the IO on the date fixed even though his defence assistant also remained absent on 02.12.1992. Therefore, the respondents prayed that the OA filed by the applicant may be dismissed with cost being devoid of merit and substance.

11. In the rejoinder filed on behalf of the applicant, it has been stated that there is no doubt that the applicant had remedy to resort to filing of the appeal before appellate authority as per the provision of CCS (CCA) Rules, 1965. But in the instant case the impugned proceedings are void and the same is non-est. No appeal would be efficacious remedy and filing of the appeal is of no consequence as the appellate

authority cannot legalise such order by passing a legal order and this proposition of law is fortified by a celebrated decision of Hon'ble Supreme Court in the case of Baradakanta Mishra Vs. High Court of Orissa & Anr. reported AIR 1976 SC 1899 = 1976 SCR 561. The applicant did not have any effective alternative remedy except to file this OA. The Hon'ble High Court only directed to approach the competent authority which includes even this Tribunal; after decision on appeal also one has to go to the court of law. The applicant has submitted an MA for seeking condonation of delay on good and sufficient reasons mentioned therein. There is no estoppels against the statute and question of law can be raised at the appellate stage. Otherwise also and an order passed by incompetent authority is void ab initio and has no legal existence in the eye of law. In the instant case, the very disciplinary proceedings as well as punishment orders have been passed by incompetent authorities and thus are of no consequence/effect being void.

12. It is also further stated that the TC at Annexure R2, the bare perusal of the same would reveal that it is ex-facie fabricated. It is unlikely that the TC at the relevant time contained photocopy of the candidate. The photo of the applicant is taken from his service records and signature seems to have been obtained by misguiding. Similar is the fate of hand written letter dated 20.12.1990 which was got written as per dictation of union office bearer. The Principal of the said school rightly found the certificate as false and the applicant also endorses the same. Further, such fabricated certificate was also not produced before the Labour Court where the applicant denied to have submitted any

such certificate. The applicant is not aware of the same. Therefore, the applicant prayed that the present OA may be allowed with costs.

13. Learned counsel for the respondents have also filed reply to MA filed by the applicant, wherein it has been stated that the present MA is not maintainable in absence of a live cause of action. If the applicant despite having justifiable grievance, voluntarily withdrawn the Writ Petition, pending before the Hon'ble High Court of Rajasthan to pursue the statutory remedy of appeal under CCS (CCA) Rules, 1965 before the competent authority is now stopped to approach this Tribunal. The reasons for condonation of delay lack merits and no reasonable explanation has been furnished for such long delay of about 25 years. The applicant remained dormant for all about 25 years and even did not care to get the writ petition decided within reasonable period, probably no early hearing application was submitted by the applicant before the Hon'ble High Court of Rajasthan.

14. It is further stated that the Hon'ble Tribunal has to keep in mind that a special period of limitation has been prescribed under the AT Act, 1985 for filing OA in service matters. The averments made in the application for condonation of delay no good and sufficient reasons for condonation of delay do exist in favour of the applicant, rather it is a glaring example of deliberate and intentional delay. Therefore, the respondents prayed that the OA as well as MA may kindly be dismissed.

15. Heard Shri J.K. Mishra, learned counsel for the applicant and Shri B.L. Tiwari, learned counsel for respondent no.1 to 3 and perused the pleadings available on record.

16. At the outset respondents have submitted during final hearing that the original application is not maintainable before this Tribunal because the applicant has sought liberty before Hon'ble Rajasthan High Court to approach the competent authority under the CCS Rules, and as such the Hon'ble High Court was pleased to dismiss the Writ Petition granting liberty in the terms as prayed by the applicant vide order dated 19.07.2016 (Annexure A7). Without being inconsistent to the OA is hopelessly barred by limitation under the AT Act, 1985, therefore, the OA to be dismissed on this ground alone, because termination order was passed on 09.01.1993. Without admitting lack of competency with the author Annexure A1, the applicant is stopped from challenging the order Annexure A1 on this ground, because he never raised any objection this regard, as much as applicant further failed to impugn the competency of authority even before the learned Industrial Tribunal, while prosecuting the reference. The applicant has not come with clean hand, therefore, the OA deserves to be dismissed.

17. In counter to this, counsel for the applicant avers that as stated in their MA for COD there are good and sufficient reasons for condonation of delay and there has been no deliberate or intentional delay in approaching this Tribunal. Admittedly the cause of action arose on 09.01.1993 when the penalty order was passed and under the law of limitation prescribed under AT Act, 1985, applicant was required to file the OA within one year period. It has, however been filed in August, 2016, which amounts to delay of 22 years. It is his case that he has been prosecuting his case with due diligence and good faith under the industrial Disputes Act. Industrial Tribunal in 1997 stated that he did not have the jurisdiction to examine the case of the petitioner. In the

absence of any remedy, the petitioner then challenged the same before Hon'ble High Court of Rajasthan in 1997. After admitting the same, the Hon'ble High Court kept the matter pending for a long time and vide their order dated 19.07.2016 the Hon'ble High Court was pleased to permit the withdrawal of the writ petition for availing appropriate remedy available under the rules.

18. Learned counsel for the respondents argued vehemently that none of the reasons given above can be stated to be cogent reasons and in view of this the case is not maintainable and must be dismissed at the threshold. The respondents while filing their reply to MA have mentioned very clearly that despite having a justifiable grievance the petitioner on his own violation has withdrawn the writ petition pending before the Hon'ble High Court to peruse the statutory remedy of appeal under CCS (CCA) Rules, 1965 and has approached this Tribunal.

19. The fact that the applicant remained dormant for almost 25 years and no cogent sufficient reasons for condonation exists in favour of the applicant; rather it is a glaring example of deliberate and intentional delay on the part of the applicant.

20. In the context of the pleadings and manner in which the matter has been argued it does appear that the applicant has not approached the Tribunal with clean hands. Learned counsel for the applicant vehemently argued the competence of the authority who had issued the penalty order without making any reference to the fact that the applicant himself had proceeded on leave on the issue of enquiry in the context of his penalty.

21. In view of these facts which emerged we are of the opinion that the relief sought by the applicant is not maintainable rather it would be appropriate to say that this is a classic example of frivolous litigation wherein the applicant has approached the Industrial Disputes Tribunal. Knowing well that the jurisdiction for this case lay with the Central Administrative Tribunal and not the Industrial Tribunal.

22. In view of the discussions hereinabove, we are of the opinion that there are no good and sufficient reasons as required under the provisions of Limitation as prescribed under AT Act, 1985. Accordingly, the MA No. 290/00228/2016 for COD is dismissed. The OA also stands dismissed. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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