

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

MA 3076/94
O.A. No. 1589/94
T.A. No.

198

(9)

2.6.1995

DATE OF DECISION

Mrs Ganga Saini

Applicant (s)

G.K. Aggarwal

Advocate for the Applicant

Versus

Union of India & Anr.

Respondent (s)

Shri C. Hari Shanker, proxy

Advocat for the Respondent (s)

for Shri Madhav Panikar

CORAM :

The Hon'ble Mr N.V. Krishnan, Vice Chairman(A).

The Hon'ble Mr Dr. A. Vedavalli, Member(J).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?

(DR. A. VEDAVALLI)
MEMBER(J)

(N.V. KRISHNAN)
VICE CHAIRMAN(A)

2.6.1995

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

MA No.3076/94
OA No.1589/94

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New Delhi this the 2nd day of June, 1995.

Hon'ble Mr. N.V. Krishnan, Vice-Chairman
Hon'ble Dr. A. Vedavalli, Member (J)

Mrs. Ganga Saini,
Quarter No.22/1087,
Lodi Colony,
New Delhi-110003.

...Applicant

(By Advocate Sh. G.K. Aggarwal)

Versus

1. Union of India through
Secretary, Ministry of
Urban Development,
Nirman Bhawan,
New Delhi-110011.

2. Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi-110 011.

...Respondents

(By proxy Counsel Sh. C. Hari Shankar for Sh. Madhav Panikar)

ORDER

(Mr. N.V. Krishnan, Vice-Chairman (A))

When this OA came up for admission on 10.8.94, it was pointed out that, perhaps the issue of limitation would arise. The learned counsel for the applicant was granted permission to file a MA for condonation of delay. Accordingly, MA-3076/94 has been filed for condonation of delay. Notice thereof was given to the respondents who have also filed a reply. It is this MA that is under disposal.

2. The brief facts are that the applicant worked on daily wages, as a typist in the office of the Executive Engineer, Construction Division No.13, C.P.W.D. New Delhi continuously from 16.8.88 to

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October 1991 except for the period from December, 1990 to February, 1991 when she remained absent on maternity leave. In November, 1991 Division No.13 was closed. Though not so stated her service was terminated. It is stated that the other staff similarly situated were absorbed in other Divisions. The applicant too was given verbal assurances in this regard. She made several visits to the office of the respondent No.1, the Director General C.P.W.D. and made several representations beginning with a representation dated 18.5.92 followed by representations dated 3.7.93 and 16.8.93 (Annexures A-3 and A-4 respectively). Respondent No.2 sent a reply dated 2.9.93 (Annexure A-1) to the Annexure A-3 representation which reads as follows:-

"SUB:- Appointment as a Typists - Request for.

REF:- Your application dated 03.07.1993.

In this connection it is to inform you that this office is giving only offer of appointment as LDC through the dossiers received from Staff Selection Commission. Moreover it is added that there is total ban on recruitment of LDS's on casual/Hand Receipt/Adhoc basis in the department/"

3. In the circumstances, the applicant has sought a declaration that she is entitled to be treated as a quasi-permanent typist and to be restored the status of the typist in any of the offices in continuation of her service from 16.8.88.

4. As the termination was effected admittedly in November, 1991 and as the OA was filed only on 8.8.94, a question of limitation arose and hence the MA was filed.

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5. It is contended in the MA, that as a matter of fact, the application is well within the limitation, as prescribed in Section 21 of the Administrative Tribunals Act, 1985, Act for short. The impugned order being challenged is dated 2.9.93 (Annexure A-1). The application has been filed within one year on 8.8.94.

6. This is true as far as it goes. But the question is whether the representation to which Annexure A-1 is a reply was itself filed by the applicant belatedly (i.e. on 3.7.93) and whether on that account there is a delay, which requires condonation.

7. In this regard the MA states that the delay on this account was for the respondents to consider. When once the respondents decided to consider the representation on merits and gave a reply to it, it is not for this Tribunal to consider the question of delay in submitting the representation.

8. That apart, the first representation was filed on 18.5.92, a copy of which is not available. In terms of Section 21 of the Act, as no reply was given to that representation within six months, the OA should have been filed within one year from the expiry of such six months, i.e., on or before 17.11.93. On this basis there is a delay of 263 days which has to be taken up for condonation. The reasons given for condonation are that the applicant was being

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verbally assured in this regard, and she had pecuniary difficulties in approaching the Tribunal earlier. It was only when all hopes of departmental remedies disappeared with the issue of the Annexure A-1 letter that she approached the Tribunal. Hence the delay be condoned.

9. The learned counsel for the respondents submitted that the cause of action arose when the applicant's service was terminated in November, 1991. In respect of the termination, the first representation was made on 18.5.92 and admittedly, there is a delay of 263 days and the reasons given are not sufficient for condonation. The fact that the applicant made subsequent representations on 3.7.93 and 16.8.93 (Annexure A-3 and A-4 respectively) will not help to extend the period of limitation, as held by the Supreme Court in S.S. Rathore vs. State of M.P. (1989 (4) SCC 582). Annexure A-1 reply of the respondents will not give rise to a fresh cause of action when the OA itself is barred under Section 21 of the Act.

10. Arguments were heard on the following issues.

- a) Whether the service rules provide for representation to be made?
- b) If they do not provide for representation and yet a representation was filed (i) does limitation start from the date the cause of action arose or (ii)

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from the expiry of six months from the date of representation, if it has not been disposed of by a final order in the meanwhile, or (iii) from the date the representation was finally disposed, of whatever be the time taken for its disposal.

11. These questions become relevant in view of the pronouncements of the Supreme Court in S.S. Rathore vs. State of M.P. (1989) 4 SCC 582.

12. The issue involved in that case was whether, for the purpose of getting a declaration from a civil court that the order of dismissal of a Government employee was bad and that he continued to be in service, the limitation (to file a suit to obtain such declaration as provided in Article 58 of the first schedule to the Limitation Act) runs from the date on which the order of dismissal was communicated to the employee or from the date on which he was informed that the appeal filed under the service rules has been rejected by the competent appellate authority. It was held in para-18 of that judgement as follows:-

"18. 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."

13. Thereafter the Court further considered whether the relevant date is the date of disposal of the one (first) appeal or disposal of the entire hierarchy of reliefs provided for in the Service Rules. It is in this connection that it was observed

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that statutory guidance is given in Section 20 of the Administrative Tribunals Act, 1985 and it was held as follows:-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

14. This has been further reiterated in para-22 of the judgement as follows:-

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. 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."

15. We now proceed to consider the questions raised in para 11 supra.

16. The learned counsel for the applicant points out that the representations made by the applicant is an appeal under sub rule (2) (iv) of Rule 23 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rules for short. That rule reads as follows:-

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Subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) xxx xxx xxx

(iv) An order which - (a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or agreement or (b) interprets to his disadvantage the provisions of any such rule or agreement."

xxx xxx xxx

He further contends that as the Annexure A-1 order dated 2.9.93 has disposed of the representation permitted by the statutory rules, even in terms of the judgement of the judgement of the Supreme Court in Rathore's case, this OA is within limitation.

17. We have carefully considered this submission. We would have liked to consider the scope of para (iv) of sub rule 2 of Rule 23, but we refrain from doing so because the first question can be disposed of otherwise. We find that the representations filed (Annexure A-3 and Annexure A-4) are not appeals. A perusal of these documents show that a request was made to the Superintending Engineer for appointment as a typist, instead of challenging the termination of service in the Executive Engineer Division No. 13 on its closure. The request is based on the ground that others have been adjusted in other divisions. The concluding part of the representation seeks appointment on compassionate ground in the circumstances mentioned therein. Nowhere is any right either asserted nor any order challenged. Hence these

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Annexures A-3 and A-4 are not appeals under Rule 23.

They are representations not provided by the service Rules.

18. The second question raised in para 11 - i.e. when does limitation start when a representation not provided by the service rules is filed in various situation - stands answered by the law laid down by the Supreme Court in Rathore's case, extracts from which have been reproduced above. The filing of such a representation shall not be taken into consideration in deciding limitation (para 22 of the judgement). That also excludes the reply given to any such representation. Therefore, in such a case limitation counts from the date the actual cause of action arose.

19. We are, therefore, satisfied that the cause of action in this case arose in November, 1991 and the application should have been made within one year, i.e., on or before November, 1992. The OA was filed only on 8.8.94, i.e., a delay of nearly 20 months.

20. The question is whether the delay should be condoned. The reasons mentioned for condonation of delay are mentioned in para 8 supra. These are not satisfactory. Hence the MA is dismissed. Consequently, the OA is dismissed as barred by limitation. No order as to costs.

A. Vedavalli
A. Vedavalli
21.6.95

(Dr. A. Vedavalli)
Member (J)

N.V. Krishnan
N.V. Krishnan
21.6.95
Vice-Chairman(A)

'Sanju'