

⑤
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

1. OA NO.2255/1988 DATE OF DECISION:18.7.1991.

SHRI DEVI RAM ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

2. OA NO.2273/1989

SHRI RANBIR SINGH ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

3. OA NO.753/1989

SHRI BHOOP SINGH & ANOTHER ...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

4. OA NO.2296/1989

SHRI KIRAN SINGH ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI A.P. SINGH WITH

SHRI K.N. RAI, COUNSEL.

FOR THE RESPONDENTS

S/SHRI O.N. TRISAL, T.S. KAPOOR,
M.C. GARG, MRS. AVNISH AHLAWAT,
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The above four OAs, filed under Section 19 of the Administrative Tribunals Act, 1985 challenge the termination of services of the applicants under Rule 5 (1) of CCS (TS) Rules, 1965 for having participated in the 1967 agitation of

d

6
the Delhi Police Personnel and seek the benefit of reinstatement in service with back wages in accordance with the judgement of the Tribunal dated 26.11.1987 in T-950/85 (CWP-2521/83) etc. As the issues of law and fact raised are common, we proceed to deal with these OAs through this common judgement.

2. The OAs Nos. 2255/88, 2273/89 & 2296/89 are filed individually by Shri Devi Ram, Shri Ranbir Singh and Shri Kiran Singh respectively while OA No. 753/89 is filed by S/Shri Bhoop Singh and Shri Jaipal Singh jointly. The applicants in all the four cases were employed as Constables during the period 1964, 1965 and 1966 and their services were terminated in 1967 allegedly as a sequel to their participation in the agitation of the Delhi Police Personnel in 1967. The brief particulars of the four applications are given below.

(i) Shri Devi Ram, the applicant in OA No. 2255/88 was appointed as a Constable in Delhi Armed Police (DAP for short) in 1964 and his services were dispensed with vide order No. 3310-16/EST/DAP dated 19.4.1967 under Rule 5 of CCS (TS) Rules, 1965 with immediate effect, allowing him payment of a sum equivalent to the amount of his pay and allowances of one month in lieu of the prescribed notice period. The impugned order of 19.4.1967, terminating his service along with 24 other Constables was quashed by the Delhi High Court in a Writ Petition filed by some of the affected Constables. The applicant submits that similar termination orders issued against hundreds of other Constables of Delhi Police were also quashed by the Delhi High Court in separate Writ Petitions. He claims that he had made requisite representations along with others to the respondents against termination of his service with a view to seek reinstatement in service, but they were of no consequence. Further he was under the impression that after the termination order was

el

quashed by the Delhi High Court, he would be called upon to rejoin the service. This impression was further strengthened when in identical cases Constables who were party in T-950/85 and six other OAs were reinstated in service in accordance with the judgement of the Principal Bench of the Central Administrative Tribunal delivered on 26.11.1987. He further submits that he could not afford to approach a Court of Law, as he was unemployed and was in straightened financial condition which did not permit him to enter into litigation.

By way of relief he has prayed that he should be reinstated as Constable in Delhi Police with back salary with interest and other benefits like promotions, as may be due to him.

(ii) The applicant in OA-2273/89, Shri Ranbir Singh was appointed in DAP in 1964 and his services were terminated as vide order No.3065-72/Est/DAP dated 15.4.1967 alongwith 31 other Constables under Rule 5 of C.C.S. (T.S) Rules, 1965. He was also paid a sum equivalent to the amount of one month's pay plus allowances in lieu of notice period. The facts and circumstances of the case in this O.A. are identical to the case in OA-2255/88. The reliefs claimed are also identical to those as prayed for in OA (i) above.

(iii) The applicants in OA-753/89 claim that they were appointed in 1964 as Constables in DAP. The service of applicant No.1, Constable Shri Bhoop Singh was terminated as vide order No.7456/61/Est/DAP dated 3.8.1967 after giving him one month's notice and that of applicant No.2, Constable Shri Jaipal Singh vide order No.3065-72/Est/DAP dated 15.4.1967 under which services of 32 Constables (including the applicant) were terminated under Rule 5 of CCS (TS) Rules, 1965 with immediate effect, authorising payment of a sum equivalent to the amount of pay plus allowances for one

2

month in lieu of the notice period. The reliefs prayed for are the same as in OA (i) above.

(iv) Applicant in OA No.2273/89 Shri Kiran Singh states that he was appointed as Constable in DAP in 1964 and submits that he took part in the agitation in Delhi Police alongwith more than a thousand other Police Constables which took place on 14th April, 1967. His services however were terminated by order No.22481-88 PR/SPL dated 20.9.1967. The reliefs prayed for herein too are identical to those asked for in the other three OAs.

3 (i) In their written statement in OA-2255/88 the respondents submit that the applicant was enlisted as a temporary constable in the DAP on 17.4.1965 and not in 1964. His appointment was purely temporary and he was liable for termination under Rule 5 of CCS (TS) Rules, 1965 when his service was no longer required. In fact his service was terminated by the then Commandant, DAP on 19.4.1967 under Rule 5 of CCS (TS) Rules, 1965, as the applicant was not found fit for retention in Delhi Police Force. The respondents further submit that the applicant had not approached the High Court within the reasonable time and he should not be allowed now to agitate the matter, after 22 years without any basis. The application, accordingly, is barred by limitation and laches and deserves to be dismissed. They further urge that the Tribunal has no jurisdiction to entertain any application with reference to any cause of action which arose three years prior to the commencement of the Tribunal nor can it condone the delay for want of jurisdiction. They further maintain that there is no record to establish that the services of the applicant were terminated as a sequel to agitation by DAP in 1967. The respondents also distinguish the case of the applicant from those ex-Constables who were reinstated by the Delhi High Court for the reason that the applicant herein had not

9

approached the Court within a reasonable period of time. They also affirm that as per their records, no representation appears to have been received from the applicant against the termination order. Had he filed any representation, the applicant would have enclosed a copy thereof with the OA as proof of having made the representation to the respondents. He cannot, therefore, claim the benefit of the decision of the Delhi High Court automatically. The respondents admit that some of the constables who had filed C.W 26/1969 & 106/1970 were reinstated in service from the date of termination in accordance with the Delhi High Court's order, whereas some other Constables terminated in 1967 were taken back in 1971 as fresh entrants. As the applicant did not file any CWP or representation in this respect, he was not considered for the re-appointment. The respondents further contend that they have not violated any law or infringed any right of the applicant by terminating his service in accordance with the rules.

The applicant has not filed any rejoinder.

(ii) In OA-2273/89 the respondents submit that the applicant was enlisted as temporary Constable in DAP on 28.12.1966 and not in 1964, as stated by the applicant and admit that his service was terminated under Rule 5 of CCS (TS) Rules, 1965 vide order dated 15.4.1967, as he was not fit to be retained in Delhi Police. Identical grounds of delay and laches have been taken by the respondents as in OA-2255/88 for seeking dismissal of the application.

No rejoinder has been filed by the applicant.

(iii) The respondents in OA-753/89 have stated that Shri Bhoop Singh and Shri Jaipal Singh were enlisted as temporary Constables in DAP on 16.11.1964 and 28.12.1966 respectively. Their appointments were purely temporary and services were liable to be terminated when no longer required. As they were not found fit to be retained in the Delhi Police, their

10

services were dispensed with under Rule 5 of CCS (TS) Rules, 1965. The main ground taken by the respondents in resisting the application is the delay and laches in approaching the account within reasonable time from the date of termination. They submit that the applicants cannot be allowed to agitate the petition after a lapse of 22 years without any valid basis. They also state that the orders of the High Court in a particular case cannot be applied to other cases suo motu.

In the case of Ex-Constable Shri Kiran Singh in O.A. 2296/89 the stand of the respondents however varies from the stand taken in the other three OAs discussed hereinbefore. They submit that the applicant Shri Kiran Singh had absented himself on various occasions during the period 8.7.1965 to 20.2.1967, details of which have been furnished in paragraph 1 of the counter. They further submit that the applicant on 21.2.1967 had tendered resignation from service w.e.f. 1.3.1967 of his own volition, as the climate of Delhi did not suit him. His resignation was accepted and he was directed to deposit Rs. 142.10 paise as capitation charges with Accountant/Lines but he failed to do so. He however submitted that he can deposit only two months pay. His case was closed on 5.4.1967, as the applicant could not deposit the capitation charges. The applicant neither deposited the capitation fee nor did he show any improvement in his attendance. He again started absenting himself and the respondents have furnished details of five such occasions when the applicant was absent during the period 29.4.1967 to 10.9.1967 for periods varying between minimum of 15 hours, 52 minutes to 22 days, 7 hours and 25 minutes on different occasions. If the applicant had started absenting habitually, his Supervising Officer submitted a report on 14.8.1967, recommending termination of

d

his services. This was approved by the then Superintendent of Police, as the applicant was a temporary Government servant and his services were dispensed with w.e.f. 23.9.1967 vide order dated 20.9.1967. The respondents, therefore, contend that the case of the applicant herein is in no way connected with those ex-Constables who participated in the agitation of the Police Personnel. They also affirm that no representation from the applicant against the termination order dated 21.8.1967 had been received in the department. They have also taken the preliminary objection that the application is belated and, therefore, deserves to be dismissed under Sections 20 and 21 of the Administrative Tribunals Act, 1985.

4. The core of the argument of the learned counsel for the applicants in all the four OAs is that their services could not be terminated under Rule 5(1) of CCS (TS) Rules, 1965 for participation in the agitation of the Delhi Police Personnel in 1967, without giving them a reasonable opportunity to explain their conduct and that they were entitled to protection under Article 311(2) of the Constitution of India. The Termination orders are not orders simpliciter but they are punitive in character and they cast a stigma on the applicants.

5. Shri Trisal, the learned counsel for the respondents in OA-2255/88 submitted that the applicant had failed to move the court when he should have done to enforce his right if indeed he has such right. The Court cannot give him any protection when he himself has neglected to do something which he ought to have done to enforce his right at the appropriate time. He further submitted that the Tribunal had no jurisdiction in the matter, as the cause of action arose in 1967, prior to 1.11.1982. Further the applicant had not made any representation, as no such representation is on the

2

records, although he professes to have done so vide paragraph 6.10 and 6.11 of the application. The learned counsel concluded that the application was patently time barred and placed his reliance on the following cases which are briefly examined below:-

a) **Mahendra Nath Banerjee v. UOI & Ors. 1988 (5) SLR CAT 213.**

The applicant in this case had retired from service w.e.f. 28.2.1982 (AN). He filed his application before the Tribunal on 4.3.1986. The Bench observed that the Tribunal came into being only on 1.11.1985. The applicant should have, therefore, filed writ application in the High Court within a reasonable time and therefore rejected the claim of the applicant in the OA, as the cause of action had arisen prior to 1.11.1982.*

(b) Relying on **State of Bihar v. Radha Krishna Singh AIR**

1983 SC 684 the learned counsel referred to paragraphs 132 and 133 of the said judgement. However, for better appreciation of the observation of their Lordships we also quote paragraph 130 of the said judgement in addition to paragraphs 132 and 133.

"130.....The Privy Council deprecated this practice of relying on judgments which were not inter partes in the sense that a judgment in which neither the plaintiff nor the defendant were parties, and in this connection Lord Russell observed thus:

"The learned President relied on this judgment "as very formidable support to the plaintiff's contention thatthere is likelihood of confusion"; but in their Lordship's opinion he was not entitled to refer to or rely upon a judgment given in proceedings to which neither the plaintiff nor the defendant was a party, as proving the facts stated therein." (Emphasis supplied)."

2

"131. We entirely agree with the observations made by the Privy Council which flow from a correct interpretation of Sections 40 to 43 of the Evidence Act."

"132. Same view was taken by a Full Bench of the Madras High Court in Seethapati Rao Dora v. Venkianna Dora (1922) ILR 45 Mad 332: (AIR 1922 Mad 71) where Kumaraswami Sastri, J. Observed thus:

"I am of opinion that Section 35 has no application to judgments, and a judgment which would not be admissible under Sections 40 to 43 of the Evidence Act would not become relevant merely because it contains a statement as to a fact which is in issue or relevant in a suit between persons who are not parties or privies. Sections 40 to 44 of the Evidence Act deal with the relevancy of judgments in Courts of justice."

133. The cumulative effect of the decisions cited above on this point clearly is that under the Evidence Act a judgment which is not inter partes is inadmissible in evidence except for the limited purpose of proving as to who the parties were and what was the decree passed and the properties which were the subject matter of the suit. In these circumstances, therefore, it is not open to the plaintiffs-respondents to derive any support from some of the judgments which they have filed in order to support their title and relationship in which neither the plaintiffs nor the defendants were parties. Indeed, if the judgements are used for the limited purpose mentioned above, they do not take us anywhere so as to prove the plaintiffs' case."

The above observations of the Hon'ble Supreme Court are in the context of Indian Evidence Act, and are relevant as judicial precedent in the matters before us. *[Signature]*

14

Shri M.C. Garg, the learned counsel of the respondents in OA-783/89 submitted that the application does not bring out the manner in which the order of termination is considered to be bad in law. The learned counsel submitted that the first writ petition was decided by the Delhi High Court in 1983 while the second judgement again delivered by the Delhi High Court was available in 1984. The applicants filed the petition on 13.3.1989. There is no cogent and logical explanation for the applicants to have kept quiet for over 22 years. He added that now when they are due to retire from service they have approached the Court possibly with a view to obtain back wages hoping that their application will be entertained.

Shri T.S. Kapoor, the learned counsel for the respondents in OA-2273/89 adopted the arguments urged by the learned counsel for the respondents in OAs 2255/88 & 783/89.

Mrs. Avnish Ahlawat, the learned counsel for the respondents in OA-2296/89 submitted that the services of the applicant were terminated not for participating in the agitation but on account of his unsuitability for retention in the Police service. The applicant herein was a habitual absentee and had not shown any improvement in his attendance. Besides he himself had resigned from the service and his resignation had also been accepted, subject to his refunding the capitation fee. He, however, could not refund the capitation fee amounting to Rs.1412.10 and, therefore, he continued to be on the roll. His case, therefore, is distinguishable from the cases of the other applicants in the three OAs earlier referred to. Further the applicant herein never filed any appeal against the order of termination. He has now taken the plea that he is one of those Constables who were involved in the Police unrest. There is no record to show his involvement in the Police unrest. On the other hand, his letter of resignation (copy enclosed with the counter at Annexure R-1) clearly

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states that the climate of Delhi did not suit him and his family circumstances were such that he could not discharge his duties satisfactorily. He, therefore, prayed for acceptance of his resignation. A mild objection was raised by the learned counsel for the applicant that the resignation letter was in Hindi whereas the signature of the applicant was in English. This, however, was of no consequence as the letter of resignation was not disowned by the applicant. Further other documents filed by the respondents also supported the respondents contention that he was not involved in the agitation of 1967 of Delhi Police Personnel.

6. We have heard the learned counsel of the parties and perused the record very carefully. It is an admitted fact that the cause of action in all these cases arose in 1967 when their services were terminated under Rule 5 of CCS (TS) Rules, 1965. Some of the Constables who were involved in the Police agitation in 1967 had filed writ petitions as early as in 1969 and 1970 in the Delhi High Court. They were reinstated in service vide the judgement of Anand J of Delhi High Court vide judgement dated 1.10.1975. This stimulated some other similarly placed ex-Constables to file writ petitions Nos.270/1978 and 937/1978. The learned judge of the Delhi High Court extended the benefit of his judgement dated 1.10.1975 subject to certain conditions, as prescribed herein vide order dated 18.7.1983. The LPAs filed against the said order were dismissed on 29.8.1983. This decision, however, further led to filing of two CWPs in 1983, three in 1984 and two in 1985 in the Delhi High Court. All these C.W.Ps. were transferred to the Central Administrative Tribunal under Section 29 and were registered as T-950/85 etc. and these petitions were decided by the Tribunal vide judgement dated 26.11.1987. The four appli-

On the other hand, the letter of resignation was filed in Hindi and the signature was in English.

16

cations before us have been filed, 2255/88 on 24.11.88, 2273/89 on 9.8.89, 753/89 on 13.3.89 and 2296/89 on 19.11.89. There is merit in the argument that these applications are highly belated and suffer from laches and, therefore, the benefit of the judgement of the Tribunal dated 26.11.1987 cannot be extended to the applicants. As observed earlier, the Tribunal had given the benefit of the decisions of the Delhi High Court to the applicants who had filed their writ petitions in 1983, 1984 and 1985. These were not the applications which were filed in the Tribunal.

These writ petitions were admitted by the Delhi High Court in exercising its discretion under Article 226 of the Constitution in absence of any statute prescribing any period of limitation for such discretion. Thus even though the respondents had taken the plea of delay and laches, the Tribunal had not considered the argument as weighty enough to merit dismissal of the case. The Tribunal's decision dated 26.11.1987, therefore, does not constitute a judicial precedent for us and these cases have to be considered on their merits. Besides, while there was no statute circumscribing the jurisdiction of the High Court, the Administrative Tribunals Act makes a specific provision under Sections 20 and 21 prescribing limitations. We, therefore, have to consider the matter, keeping in view these specific provisions of Sections 20 and 21 of the Administrative Tribunals Act also came in for consideration of the Hon'ble Supreme Court in the case of **S.S. Rathore v. State of M.P.** 1989 (2) SCALE 510 where His Lordship Ranganath Misra, J. (as he then was) speaking for the Constitution Bench observed:

"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

16

2

19

...not 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 the 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. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Courts jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed as representation was made. 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."

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The applicants have not explained the delay of 22 years in filing the applications, particularly when their colleagues had approached the Delhi High Court in 1969, 1970, 1978 and again in 1983, 1984 and 1985. They were fully aware or ought to have been aware of the two successive decisions given in favour of the similarly placed ex-Constables by the Delhi High Court in 1975 and 1983 and the petitions filed by their colleagues as late as in 1983, 1984 and 1985 and yet this did not move them to approach the appropriate Court. They filed these applications only in November, 1988 and in 1989. These applications cannot be sustained on the basis of 1987 decision of the Tribunal as the Tribunal in that judgement dealt with the petitions which were admitted by the Delhi High Court, invoking their extraordinary discretionary jurisdiction under Article 226 of the Constitution. The jurisdiction of the Tribunal, on the other hand, is circumscribed by the provisions made in Sections 20 and 21 of the Administrative Tribunals Act. The law on limitation has been very clearly brought out by the Hon'ble Supreme Court in the case of **S.S. Rathore** (supra). Equity aids the vigilant and not those who slumber on their rights. Accordingly, we are of the view that the applications are highly belated and suffer from the laches and they cannot be entertained at this point of time by the Tribunal. They are, accordingly, dismissed, with no order as to costs.

(I.K. RASGOTRA)

MEMBER(A)
18.7.91.

(AMITAV BANERJI)

CHAIRMAN
18.7.91.

'SKK'

- * 1988 (7) SLR CAT 186 Amitava Roy v. UOI & Ors.
- * 1988 (7) SLR CAT 785 Sudhir Chandra Pramanik v. UOI & Ors.
- * 1987 (2) SLR CAT 792 Paramu Gopi Nathan Achary v. UOI & Ors.