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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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DA 1747/90

Date of decision: 3.1.91

HIRA LAL

.....APPLICANT

VERSUS

UNION OF INDIA & OTHERSRESPONDENTS

Shri J.P. Verghese,

..counsel for the applicant.

Shri Shyam Moorjani

..counsel for the respondents.

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER.

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI J.P. SHARMA)

The applicant moved this application under Section 19 of the Administrative Tribunal Act, 1985 being aggrieved by the non-declaration of the temporary status and removal from service without any order.

2. The applicant in the DA claimed the relief that a direction be issued to the respondents to reinstate the petitioner w.e.f. 23rd June, 1979 and to pay the arrears of salary from 15-8-1977 till 13th June, 1979 as applicable to a temporary Railway servant in accordance with the principle of 'equal pay for equal work'. He has also prayed for all consequential benefits after reinstatement.

3. The facts as alleged in the application ^{are} that the applicant was appointed as a casual Khalasi on 15th February, 1977 under IDW Tuglakabad, Northern Railway upto 13th December, 1977 at the rate of Rs. 6.50 per day as wages. A casual employee

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service card No.79899 was issued to him subsequently, when the applicant was working with IOW Shehadra, Saharanpur B.G. line (on or the same Chief Engineer since 4-12-1977). According to the applicant, from 15th August, 1977, he was entitled to payment of wages at regular scale of pay as are admissible to temporary Railway servants in view of Chapter 25 of the IREM as by the time the applicant has completed six months of service. In June, 1979, the applicant proceeded on leave till 23rd June, 1979 i.e. for 20 days and when he reported for duty on 25th June, 1979, the respondents refused to allow him to work on the ground that no job could be given to the applicant on scale pay rates and the applicant can be given job only on casual rate of wages. The applicant approached the Central Government Labour Court and filed LCA No.21/81 but the Labour Court did not order reinstatement as the application moved before the Labour Court was under Section 33(c)(2) of the Industrial Disputes Act, 1947. The petitioner made various representations but no reply has been received and hence this application has been filed before this Tribunal on 29th August, 1990.

4. The applicant also moved an application for Condonation of delay praying that the delay occurred in this case from 1-3-1989 till to date i.e. 10-12-1989 was due to poverty and inability to approach right forum as well as the fact that his power of Attorney did not give the correct advice, so in the interest of justice, the delay so caused be condoned. In this application, the applicant stated that he was not permitted to work w.e.f. 23rd June, 1979 and the applicant approached the Labour Industrial Court where the petition was disposed of on 2nd Jan., 1987. Thereafter the applicant made representation on 1-9-1987, 11-7-1988 and 29-5-1989. since for limitation, as alleged by the applicant himself, the first representation is to be reckoned so the applicant after getting the maximum period of 1½ year desired condonation

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of delay from 1st March, 1989. The respondents contested the application and filed a short reply restricted to the point of limitation alone, the respondents stated, that the applicant himself did not report for duty on 23rd June, 1979 and abandoned job and as such question of removal from service does not arise. The judgement of the Labour Court dated 2-1-1987 (Annexure A-1) is also clear on the point that the applicant was ^{not} allowed any wages from the period from 25th June, 1979 to 25th January, 1981 and it was also observed in the judgement that the applicant had no existing right as he did not perform any duty for this period, therefore, the claim was not tenable. The applicant, therefore, did not take any steps, though the cause of action arose to him in June, 1979. The passing of the order by the Labour Court, does not constitute any cause of action. Even taking the order of the Labour Court dated 21-1-1987 as the starting point of limitation, but not admitting the same ^{even then}, the present application is hopelessly barred by time. No representation of the applicant was received by the respondents and ^{neither} right for making ^{as} stated any representation was available to the applicant. The applicant has not given out any sufficient and reasonable cause as to why the application was not filed within the limitation.

5. We have heard the learned counsel of the parties at length and have gone through the records of the case.

The case of the applicant is that since June, 1979, he was not allowed to join service and as ^{such} the cause of action arose to him more than three years before coming into force of the Administrative Tribunal Act, 1985. Section 21 of the Administrative Tribunal Act, 1985 specifically lays down that the Tribunal shall not admit an application-

Sec 21(2)(a) The grievance in respect of which an application

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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 in which such order relates."

6. This clearly shows that the Tribunal cannot even condone the delay in such cases as held by the Calcutta Bench in Sheo Kumar Day Vs. U.O.I. (1987) 3 (ATC p.427. Thus, the applicant has not come in time for redressal of his grievance as the cause of action arose to him in June, 1979.

7. Even considering the grounds taken in the application for condonation of delay, no sufficient and reasonable cause is made out and it appears that the grounds for condonation of delay has been manufactured for the purpose of the application. The applicant in para 6 gives the reason for not filing the petition in time and the para 6 is reproduced:-

"That it is in the interest of justice that the delay occurred in this case from 1-3-1989 till todote was due to poverty and inability to approach the right forum as well as the fact that his power of attorney did not give the correct advice. Hence in the interest of justice the delay may be condoned taking into consideration that the applicant is only a daily wage employee."

The applicant has not given any specific instance as to whether he was given a wrong advice or that he was penniless, so he could not approach the Tribunal in 1979. The applicant has not given any reason whatsoever, as to why he did not pursue his remedy when his matter was decided by the Labour Court in January, 1987. The applicant desires to get time from 2nd January, 1987, the date of making first representation

in September, 1987 but no reason whatsoever has been given for waiting for all these eight months. Further, the applicant even after that did not file this application and was making successive representation which cannot in any way revive the limitation. It has been held in a number of cases and even by the Hon'ble Supreme Court in Dr. S.S. Rathore Vs. State of M.P. reported in AIR 1990 p.10 that the -representation or repeated non-statutory representation submitted subsequent to rejection of original representation does not give a fresh cause of action. The same view has been taken in a number of decisions of this Tribunal*. Thus, the applicant could not make out a case that the present application is within the time and therefore at the admission stage, the application is liable to be dismissed as barred by time.

8. We are therefore of the opinion that the application is not maintainable under Section 21 of the Administrative Tribunal Act, 1985 and is therefore dismissed, leaving the parties to bear their own costs.

Jomane
(J.P. SHARMA)
MEMBER (J)

C. Jain 3/1/91
(P.C. JAIN)
MEMBER (A)

* Satyabir Singh Vs. U.O.I. 1987 (3) ATC 924

V.S. Raghvan Vs. Secretary in the Ministry of Defence,
(1987) 3 ATC 602 Madras Bench.