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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

O.A.No.1981 of 1990 Date of Decision: 3.9.93

Jagbir Singh & 5 others .....Applicants.

Versus

Delhi Administration & another ...Respondents.

CORAM:

Hon'ble Mr.C.J.Roy, Member(J)
Hon'ble Mr.S.R.Adige, Member(A)

For the applicants: Shri J.P.Verghese, counsel.

For the respondents: Shri M.K.Giri, Counsel.

JUDGMENT
(By Hon'ble Mr.S.R.Adige, Member(A).)

This is an application dated 25.6.90 filed by Shri Jagbir Singh and five others, all Ex. Constables of Delhi Police against the impugned orders dated 30.6.66, 15.4.67, 17.4.67, 18.4.67 and 8.5.67 terminating their services under Rule 5(1) of CCS(Temporary Service) Rules, 1965(Annexure-I).

2. The applicants were enlisted as Temporary Constables in the Delhi Armed Police on different dates in 1964, 1965 and 1966. Their case is that their services were terminated by the impugned orders along with a number of other constables for participation in a mass agitation by a section of Delhi Police. Apart from terminating their services, many of those Police constables were put under arrest and some of them were prosecuted. Subsequently, as a result of the demand made by some members of Parliament a number of the dismissed constables were taken back as fresh entrants, and pursuant to this statement made in Parliament by the then Home Minister the prosecutions against them were withdrawn. Some of the dismissed constables who were not taken back

in service as fresh entrants filed writ petitions in the Delhi High Court in 1969 and 1970, which were allowed by the High Court on 1.10.75 quashing the orders of termination of those petitioners. Subsequently, some other Constables whose services were similarly terminated also filed writ petitionsin the Delhi High Court in 1978. These petitions were also allowed. Thereafter another set of similarly dismissed Constables filed writ petitions in the Delhi High Court challenging the order of termination of their services, on the ground that their claim was identical with that of the petitioners in the writ petitions filed in 1978. These writ petitions were transferred to this Tribunal, which in its judgment dated 26.11.87 in case Registration No.T 950/85(CWP 2521/83) Shri Dharampal & others Vs. Union of India & others' and connected cases held that the petitioners were entitled to the same relief as was granted to the petitioners in the writ petitions filed in 1978. The Delhi Administration preferred appeals before the Hon'ble Supreme Court against that decision. Those appeals were dismissed in the judgment in ' Lt.Governor & others Vs. Dharampal & others'(1990 (4) S.C.C. 13).Subsequently, in the judgment of this Tribunal dated 4.5.89 in C.A.No.634 of 1986 'Jaipal Vs. Union of India & others and judgment dated 23.3.90 in O.A.No.1276 of 1987 ' Chhida Singh Rawat Vs. U nion of India & others', the applicants, who were also temporary Police Constables, and whose services were terminated consequent to police agitation on 14.4.87 were ordered to be re-instated in service along with consequential benefits.

3. The applicants have now prayed that they should also be reinstated in service and all consequential benefits should be given to them as their calim is

similar to those of Police Constables in the cases cited above.

4. The respondents have contested the application and have stated in their counter-affidavit that the application is severely time-barred as it is filed after more than 23 years of termination of services of the applicants. It has been urged that the applicants were members of the Delhi Police as temporary Constables prior to their termination and their services were terminated under Rule 5(1) CCS (Temporary Services) Rules, 1965 as their services were no longer required. The order of termination was legal and justified and hence this application has no merit and is fit to be dismissed.

5. We have heard Shri J.P.Verghese, learned counsel for the applicants and Shri M.K.Giri, learned counsel for the respondents.

6. In so far as the question of delay is concerned, Shri Verghese has argued that the applicants ordinarily reside in different villages at some distance away from Delhi and, therefore, could not immediately come to know of the judgments in Dharampal case, Chhida Singh Rawat's case, Jaipal Singh's case etc where similar reliefs prayed for have been allowed. As soon as the applicants came to know of these judgments, they filed this O.A. He has also argued that although the Tribunal has held in a number of cases that under section 21 of the Administrative Tribunals Act, it has no jurisdiction to decide a case wherein the cause of action has arisen prior to 1.11.82, this interpretation of law is incorrect for the following reasons:-

i) The question of limitation is a matter

of procedure and not a substantive law. The Tribunal has jurisdiction not because of Section 21 but because of Sections 14 and 19 of the Administrative Tribunals Act.

ii) Section 21(3) of A.T.Act vests authority in the Tribunal to condone the delay and admit a case where the cause of action has arisen even prior to 1.11.82 provided it is satisfied that there is 'sufficient cause' within the meaning of Section 21(3). In the instant case, there exists sufficient cause within the meaning of Section 21 (3) for condonation of delay.

iii) The Hon'ble Supreme Court in the case 'Collector, Land Acquisition Vs. Katiji'1987 (2)SCC 107 has laid down certain principles, to apply to the facts of each case, to test whether there are sufficient reasons to condone the delay or not, and the instant case satisfies those tests.

7. Adverting to the legal prepositions mentioned above, which have been advanced by Shri Verghese, we find it difficult in agreeing with the same. Whether the law of limitation is procedural in nature or substantive in character, there can be a little doubt that this Tribunal is required to adhere to it scrupulously, more particularly as the period of limitation for admitting an application is embodied in the text of Act itself. Hence, the argument that the question of limitation is procedural in character, and hence due care and attention need not be paid to it, has absolutely no merit.

While Section 14 vests jurisdiction, and defines the power and authority of the Tribunal, and Section 19 prescribes the procedure for making an application to the Tribunal; Section 21 itself prescribes the period of limitation beyond which an application shall not be admitted.

8. Similarly, the argument that Section 21(3) gives unlimited authority to the Tribunal to condone the delay in filing the application and extend the period of limitation indefinitely where the Tribunal is satisfied that there is sufficient cause for doing so, appears to be based upon an erroneous interpretation of the law. Section 21 of the A.T.Act prescribes the period of limitation beyond which the Tribunal shall not admit an application. Sub-section(3) of Section 21 reads as follows:-

> "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 sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period".

9. This implies that notwithstanding whatever is contained in sub-section(1) or sub-section(2) of Section 21, an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section(1) or the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that sufficient cause exists. In Section 21(3) there is no mention of the three years' period referred to in Section 21(2) (a). There can be no doubt that this omission was intentional, which means that notwithstanding anything contained in Sub-

section(1) or (2) of Section 21, the three years period of limitation referred to Section 21(2)(a) cannot be extended. Therefore, any grievance whose cause of action lies beyond a period of three years immediately preceeding the date of inception of the Tribunal(1.11.82) lies beyond its jurisdiction. As admittedly, in this case, the cause of action, dates to April,1987 it would lie well outside the Tribunal's jurisdiction and the delay cannot even be condoned. We are fortified in this view by the judgments of this Tribunal in Sukumar Dey & others Vs. Union of India (1987(3) ATC 427(Cat.Callcutta) and V.S.Raghvan Vs. Secretary to the Ministry of Defence(1987 (3)ATC 602 CAT.Madras.

10. In this connection, the learned counsel for the respondents has cited before us the judgment of the Hon'ble Supreme Court in the identical case of 'Bhoop Singh Vs.Union of India & others' reproduced in JT 1992(3) SC 322.There too, the petitioner was appointed a Constable in the Delhi Armed Police in 1964 and his services were terminated consequent to his participation in the police agitation on 14.4.67. He referred to the writ petitions filed in the Delhi High Court in 1969 and 1970 which were allowed on 1.10.75 quashing the orders of termination of those petitioners; the writ petitions in the Delhi High Court in 1978 which were also allowed and the appeals preferred by the Delhi Administration against that decision before the Hon'ble Supreme Court which were dismissed by the judgment in Dharampal's case. Accordingly he filed O.A.No.753/89 in this Tribunal praying for reinstatement in service and all consequential benefits on the ground that his case and claim was similar to that of the police constables who had succeeded in the earlier litigations. The

Tribunal had rejected the petitioner's application on the ground that it was highly belated and there was no cogent explanation for the inordinate delay of 22 years in filing the application on 13.3.89 after termination of the petitioner's service in 196 Thereupon, the petitioner filed a SLP in the Hon'ble Supreme Court which was dismissed. While dismissing the SLP, the Hon'ble Supreme Court was pleased to observe that the real question was whether, the mere fact that termination of petitioner's service as a police constable in 1967 was alleged to be similar to that of other police constables so dismissed in 1967 and then reinstated, was sufficient to grant the relief of reinstatement, ignoring the fact that he had made the claim after the lapse of 22 years. The Hon'ble Supreme Court noted that while in Dharampal's case the Tribunal had apparently been satisfied with the explanation for delay, in the present case (Bhoop Singh) there had been a much longer delay and the Tribunal had stated that the same had not been explained. Hence, Dharampal's case did not help the petitioner to circumvent this obstacle. No attempt had been made by the petitioner to explain why he chose to be silent.. In Paragraphs 7 and 8 of its judgmen the Hon'ble Supreme Court was pleased to observe as follows:-

> 7. "It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been funtioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making

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the claim. Apart from the consequential benefits of reinstatment without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a state claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitions were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, Dharampal's case also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner.

8. There is another aspect of the matter. Inordinate and unexplained delay or latches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filed promptly. A person cannot be permitted to challenge the termination of his service after a period of 22 years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the

petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal in the manner suggested by the petitioner. Article 14 of the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to the concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution".

11. In the instant case before us also , no satisfactory explanation is forthcoming for the inordinate delay of 23 years in filing this application. No reasons for the delay have been mentioned in the O.A. and it is only during hearing that Shri Verghese advanced the plea that the applicants reside in different villages at some distance away from Delhi and could not immediately come to know of favourable judgments passed in Dharampal's case etc., and they filed this O.A.soonafter they came to know of these judgments. This can hardly be termed as a cogent explanation for the inordinate delay. It is difficult to believe that the applicants were really serious in pressing their claim for reinstatement, for if they were serious, surely they would have filed their applications for reinstatement latest by 1978 or so, but they failed to do so and waited for another 12 years before they filed the same. Meanwhile, it has been conceded by Shri Verghese that atleast one of the applicants has reached the age of superannuation.

12. Under the circumstances, manifestly this application is a highly belated one and no satisfactory explanation has been submitted for the inordinate delay of more than 23 years in filing the application, after termination of the applicants' services. The tests laid

down by the Hon'ble Supreme Court in the case of 'Collector,Land Acquisition Vs. Katiji'1987(2)SCC 107, where the subject matter and the facts are entirely different, would have no direct application in this case. Here, we have to be guided by the judgment of the Hon'ble Supreme Court in the identical case of Bhoop Singh Vs. Union of India (Supra) and applying the ratio of that judgment to the facts of this case, this application must fail.

13. Before concluding, we may advert briefly to some of the other arguments advanced by Shri Verghese. Firstly, he has argued that the respondents themselves should have taken back the applicants in service in the background of statement made by the then Home Minister in Parliament. Secondly, he has argued that the decisions of the Courts/Tribunal in the cases cited by him in favour of similarly placed constables who were reinstated in service, constitute judgments in rem and the applicants in this case too should,therefore, be reinstated in service. Thirdly, he has argued that denial of reinstatement to these applicants would be discriminatory and violative of Articles 14 and 16 of the Constitution. Lastly, he has argued that the termination of the services of these employees under Rule 5(1) CCS(TS) Rules,1965, without giving them an opportunity to show cause and without a proper enquiry is bad in law and is,therefore,fit to be set aside. In this

connection, he has cited certain rulings including

i) Dharampal & others Vs. Union of India 1988(6)ATC 396.

ii) Shamsher Singh Vs. State of Punjab & another.
1974(2)SCC 831.

iii) S.P.Ludhiana Vs. Dwarka Das

iv) Laxman Dass Vs. Union of India.
1988(6)ATC 609.

v) D.T.C. Vs. DTC Mazdoor Congress & others
1991 Suppl.(1) SCC 600.

14. All the above arguments and rulings, cited by Shri Verghese, relate to the merits of the case. However, as observed by the Hon'ble Supreme Court in Bhoop Singh(Supra), "inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim" (Emphasis ours). As we have already held that no satisfactory explanation has been submitted by the applicants for the inordinate delay in filing this application after their services were terminated, and as Bhoop Singh's case(Supra) is identical with, and fully covers the case before us, it does not appear to be necessary for us to go into the merits of the applicants' claim.

15. In the result, this application is dismissed, both on grounds of limitation as well as on grounds of lack of jurisdiction.

16. No costs.

(S.R.ADIGE)
MEMBER(A) 3.4.93

(C.J.ROY)
MEMBER(J)

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