

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.101 of 1990

This 29th day of July, 1994

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. B.K. Singh, Member (A)

Udai Bhan Singh,
Malli Khallasi,
Under Assistant Engineer,
Horticulture,
Northern Railway,
D.r.M. Office,
New Delhi.

.....

Applicant

By Advocate: Shri B.S. Maine

VERSUS

Union of India, through:

1. The Divisional Railway Manager,
Northern Railway,
Straight Entry Road,
New Delhi.

2. The Assistant Engineer,
Horticulture,
Northern Railway,
Near Karnail Singh Stadium,
New Delhi.

.....

Respondents

By Advocate: Shri Shyam Moorjani

Contd.....2/-

5

O R D E R
(By. Hon'ble Mr. B.K. Singh, M(A)

This application has been filed against the impugned orders (i) No. 22-/347/UB/Misc./P6, dated 30.3.1987 (annexure A-1) and No.220-E/347/UB/Misc./P-6 dated 27.5.1989 (annexure A-2).

2. The uncontroverted facts of the case are these. The applicant joined as casual labour on 17.3.1977. He was screened on 30th May 1979 (annexure A-5). His name is at Sl. No.77. He was arrested under Section 394 of IPC by the Kamla Market Police on 17.11.1979. Subsequently he was released on bail on 20.11.1979. After release on bail he approached the Assistant Engineer (Hort.) for resumption of duty (annexure A-6). The AE (Hort.) simply forwarded the application of the applicant to the D.R.M., Northern Railways vide his letter No. 101-H/79/E-4 dated 13.12.1979 (annexure A-7). The applicant was acquitted by the Metropolitan Magistrate, Shri Z.S. Lohat on 31.1.1987 for want of evidence and for the guilt not being proved beyond all shadow of doubt (annexure A-8).

3. The applicant approached the Sr. Divisional Personnel Officer, Northern Railway, DEM's Office, New Delhi, with a representation along with a copy of the judgment of the Metropolitan Magistrate. In para 6 of this representation dated 13.4.87, which the respondents denied having received, he refers to a letter (annexure A-1) wherein the respondents are reported to have informed the applicant that it was decided that he would be deemed to be discharged due to his long absence from duty for more than 7 years. This refers to letter (annexure A-1) dated 26.3.87. It seems this letter was signed on 26.3.87 but was received by the applicant on 30.3.1987. In this representation he admits having been given



the job of casual worker but prays for regular appointment on the basis of having been screened and on the ground that his juniors have been given regular grade. On the basis of the representation, vide letter No.349/UB/Misc./P-6 dated 4/1987 he was directed to be medically examined. Vide annexure A-12 the applicant refers to his working on daily wage basis but prays for regularisation. The same is reiterated in the letter submitted to the Divisional Personnel Officer through the Assistant Engineer (Hort.) on 28.9.87 (annexure A-13). Again vide representation dated 6.5.1988 (annexure A-14) the same request is repeated. Last reminder in this connection is dated 7.7.1989 and this also repeats the same request made in earlier representations/reminders. 20

4. The applicant has prayed for the following reliefs:

(i) The respondents be directed to give him the benefit of his earlier service since his screening was done in 1979;

(ii) the respondents be directed to regularise his services from the date his juniors were regularised on the basis of screening held in 1979;

(iii) to pay him salary at scale rate of pay from the date he had completed 120 days of service after his appointment in March 1977;

(iv) to direct the respondents to pay him wages for the period he was arrested to the date of his acquittal; and



Contd.....4/-

(v) to direct the respondents to pay all consequential benefits, and award him cost of the proceedings.

5. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for.

6. We heard the learned counsel, Shri B.S. Mainee for the applicant and Shri Shyam Moorjani for the respondents at great length and also perused the record of the case.

7. The learned counsel for the applicant argued that the applicant had been screened and that after his release on bail he approached the AE (Hort.) for assignment of work but the applicant was not assigned any work and no reasons were given therefor. A perusal of the record of the case shows that after approaching the AE (Hort.) after release from the judicial custody, the applicant did submit representation but after that there is total silence on the part of the applicant and he never agitated the matter regarding his right to resume duty on being released on bail. Since he did not agitate the matter any further, the respondents also did not bother either to suspend him or to grant him any subsistence allowance. After 26.11.79 the applicant was aroused from his dogmatic slumber only on 13th April 1987 when he demanded for being engaged on daily wages basis again and also prayed for his regularisation like his juniors. This delay of more than 7 years is totally unexplained. The applicant seems to have gone in hibernation and a man who sleeps over his rights loses it, so goes the famous saying.



Contd....5/-

22

8. The respondents have rightly taken the plea that this application is hopelessly barred by time. The cause of action arose in 1979 and the applicant did not agitate the matter before the competent forum with the result that the respondents considered that he has abandoned the job and that is the reason why in their letter dated 26.3.87 (received by the applicant on 30.3.87) to which he refers in his representation, he was informed that due to his long absence from duty for more than 7 years he would be automatically deemed to have been discharged from service. This may also be called abandonment of his duties and responsibilities attached to his job.

9. The Hon'ble Supreme Court also in a catena of judgment has held that if a party aggrieved does not approach the court in time, the remedy open to him is lost and so the right also. In the State of Punjab vs. Gurdev Singh (1991) 17 ATC 287 = (1991) 4 SCC 1 it has been laid down that:

"The party aggrieved by an order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him within the prescribed period of limitation since after the expiry of the statutory time-limit the court cannot give the declaration sought for."

10. In V.K. Mehra vs. the Secretary, Ministry of I&B, Delhi, ATR 1986 (1) CAT 203, it has been held that:

"The Administrative Tribunals Act does not vest any power or authority to take cognizance of a grievance arising out of an order made prior to 1.11.82. The limited power that is vested to condone the delay in filing the application within the period prescribed is under Section 21 provided the grievance is in respect of an order made within 3 years of the constitution of the Tribunal."

Thus this case does not fall within the ambit of Section 21 of the CAT Act, 1985 because the cause of action arose in 1979 i.e. much before 1.1.82 and as such the Tribunal is not competent to take cognizance of the grievance agitated before it on 23.1.1990.



Contd.....6/-

11. In the case of S.S. Rathore vs. State of M.P., AIR 1990 SC 10 = 1989 (11) ATC 913, it has been clearly stated that the cause of action shall be taken to arise on the date of the order of the competent/appellate authority. Unfortunately there is no order of the competent/appellate authority in the present case and as such the learned counsel for the respondents has rightly pointed out that there is no order under challenge and as such filing of the application under Section 19 of the CAT Act, 1985 is misconceived.

12. The Supreme Court has further said that repeated unsuccessful representations do not extend the period of limitation. It has been further held in the Judgment Today, 1992 (3) SCC 322, Bhoop Singh Vs. Union of India that the judgment and orders of the court in other cases do not give cause of action. The cause of action has to be reckoned from the actual date when the order is passed by the competent/appellate authority. In this case, as stated above, there is no order of the competent/appellate authority and as such the admissibility of the application under Section 19 of the CAT Act, 1985 is barred.

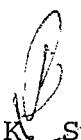
13. Similarly, the judgment of Bombay Bench of CAT in Ratan Chandra Samanta & Ors. vs. Union of India & Ors., JT 1993 (3) SC 418, was reversed by the Hon'ble Supreme Court on ground of limitation and this case also related to a casual labourer working with the Railway Administration.

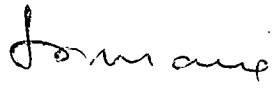


Contd....7/-

14. In addition, it is clear from the perusal of the applicant's representations that he acquiesced in his supersession by his juniors by accepting a job given as daily wage earner. Thus none of the reliefs prayed for can be granted on grounds of merit, limitation, delay and laches and also on grounds of non-maintainability of the application under the AT Act.

In view of the above facts and circumstances, the application is dismissed on ground of limitation and its non maintainability but without any order as to costs.


(B.K. Singh)
Member (A)
29/7/10


(J.P. Sharma)
Member (J)

29/7

vpc