

Central Administrative Tribunal
Principal Bench: New Delhi

MP-2032/93
OA No.2080/91

New Delhi this the 9th Day of March, 1994.

Tej Pal s/o Sh. Girdhari
r/o Vill. & P.O. Chand Nagar,
Tehsil Amroha,
Distt. Moradabad.

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C/o Sh. B.S. Mainee,
Advocate, 240 Jagriti Enclave,
Vikas Marg Extension,
Delhi-110092.

...Applicant

(By Advocate Sh. B.S. Mainee)

Versus

1. Union of India through:
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The P.W.I.,
Northern Railway,
Amroha.

...Respondents

(By Advocate Sh. N.K. Aggarwal)

ORDER

(Mr. N.V. Krishnan)

This applicant filed this OA on 9.9.91 for a direction to the respondents "to engage the service of the applicant from the date from which he was declared fit for duty with all consequential benefits."

2. It is stated in the OA that the applicant was engaged as a casual labour under the P.W.I. Hapur and had worked for various periods upto 1984. On 4.7.1984 he met with an accident while on duty. He was admitted to the Railway hospital. He was discharged on 5.1.85 by the letter of the D.M.O. Moradabad (Annexure A-2). The applicant was declared fit for duty and it is alleged that

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he applied to the D.R.M., Moradabad to take him back on duty. It is stated that the DRM, Moradabad by his letter dated 3.2.88 (Annexure A-3) advised that he would be considered for further engagement in accordance with the seniority. In spite of this assurance the applicant has not been engaged and he alleges that his juniors are continuing. Hence, the O.A.

3. The respondents have contended, inter alia, that the application is barred by limitation, as the applicant remained absent after he was discharged from hospital from 5.1.85 for a very long time. He never turned up and abandoned his services. Therefore, filing this application in September, 1991 is barred by limitation. It is also stated that the applicant's name has been entered in the Live Casual Labour Register in accordance with the standing instructions and he was intimated on 2.2.88 that his name is registered at serial No.20 and that as and when there would be a recruitment he would be called according to his seniority. As there is a ban on recruitment of the casual labour, the applicant ^{could not} be recruited.

4. On seeing this reply the applicant has filed MP-2032/93 for condoning the delay in filing the application. The MP refers to certain instructions of the Railways according to which casual labours who have worked on the Railways are entitled to get their names placed on the Live Casual Labour Register and are further entitled to be called for reengagement whenever vacancies of casual labour arise in order of seniority.

The cause of action is of a recurring nature as the denial of re-engagement is continuing.

4.A The respondents have filed a reply, opposing the MP. They have relied on the judgement of the Supreme Court in R.C. Samanta Vs. Union of India (JT 1993 (3) SC 418).

5. MP-2032/93 seeking condonation of delay was finally heard. The learned counsel for the applicant submitted that in the judgement of the Tribunal dated 16.7.93 in Moti Ram and Anr. vs. Union of India (OA-2614/91) it has been held that the termination of the services of a person who has attained temporary status without following the proper procedure is ab initio void and that the bar of limitation will not apply in such cases.


6. The issue is simple. The applicant's prayer in para 8.1 of the OA from which extract has been reproduced in para-1 above is that the respondents should be directed to engage him from the date he was declared fit for duty. On the facts of the case mentioned above, admittedly, the declaration about his fitness for duty is contained in Annexure A-2 letter of the DMO, which dated 5.1.85. Therefore, it requires no argument that the cause of action arose on 5.1.85. If he was not engaged he could have filed a representation and then sought a legal remedy or he could have sought a legal remedy straightway. He cannot agitate this matter in an O.A. filed as late as on 9.9.91.


7. This is not a case where any void order exists. On the contrary, the applicant himself has failed to ensure in time that he was engaged again after the Annexure A-2 order was received. It is in this context that the respondents state that by not reporting for duty he had abandoned engagement.

8. In the circumstances, it is quite clear that the prayer in this OA is barred by limitation. The judgement cited by the applicant has no relevance to this particular case.

9. He has tried to make it appear that the Annexure A-3 letter dated 12.2.88 was given to him by the authorities when he pursued the matter regarding re-engagement after being declared fit for duty. The Annexure A-3 letter does not bear this out. It is stated in Annexure A-3 that his name has been registered at serial No.20 of the Live List of Casual Labour and that he would be considered for engagement on the basis of the seniority whenever vacancy arises and recruitment takes place. That is a separate matter. The applicant has no grievance in this OA about the failure of the respondents to take any action on Annexure A-3 letter as would be clear from the prayer reproduced about in para-1. He has also no case that any person in the Live Register junior to him has been engaged by the Railways and in fact no direction has been sought based on the Annexure A-3 letter. This itself shows that he was no more in service, a position which he is deemed to have accepted by not raising any grievance against the Annexure A-3 letter.

10. In the circumstances, we find no merit in the MP for condonation of delay and accordingly the MP is rejected. Automatically the OA stands dismissed, as being barred by limitation.


(B.S. Hegde)
Member(J)


9.3.94
(N.V. Krishnan)
Vice-Chairman

Sanju.