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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A.NO.95/91

New Delhi, this the 10th day of March, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Khen Raj,
s/o Lachman Singh
Ex. Ty. Khalasi,
under Shop Supdt.
Electric Construction Division,
Delhi Division, N. Railway,
State Entry Road, New Delhi

R/o 7/3, Railway Colony,
Dayabasti, Delhi.

... Applicant

By Advocate: Shri R.K. Ralen

Vs.

Union of India
through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Dy. Chief Electrical
Engineer (Const) DRM Office (Special Works),
Chelmsford Road, New Delhi.
3. The Shop Supdt., Electric
Construction Division,
Northern Railway, Delhi Division,
State Entry Road, New Delhi.

... Respondents

By Advocate: Shri Rajesh

ORDER

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

The applicant on the basis of casual labour service card showing that he was engaged in the IOW/Horticulture, Baroda House, Northern Railway from 1.10.77 to 10.3.78 was given employment as a casual labour on 8th March, 1980 on a daily wage of Rs.12.50 p. per day. A verification was done in the year 1985 that the casual labour service card on the basis of which the applicant sought employment in the year

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1980 was fraudulent and forged one and IOW/Horticulture by letter dated 15.4.85 informed that the applicant did not work in the aforesaid period and a copy of that letter is enclosed as Annexure R-2 to the counter.

2. The case of the applicant is that the applicant was ceased from service w.e.f. 17.6.85 and he was told verbally that his termination from service was necessitated owing to shrinkage of construction activities and that as and when the requirement arises the applicant would be recalled.

3. The applicant filed this application under section 19 of the A.T. Act, 1985 on 9.1.91 and he prayed for the grant of the reliefs that the order of the respondents orally terminating his services w.e.f. 17.6.85 be quashed and the applicant be deemed to continue in service since then and treated at par with persons engaged in service alongwith applicant and he should also be given back wages from 17.6.85 besides the cost incurred in pursuing this application. This application was admitted on 10.1.91 subject to question of limitation to be left open to be heard at the time of final hearing. It was also directed that the respondents may consider the engagement of the applicant as casual labourer in any of the available vacancy in the construction work or otherwise, in preference to his juniors and outsiders. The applicant has since then not engaged.

4. The applicant has also filed M.P. No.107/91 for condonation of delay purported to be u/s 21(3) of the A.T. Act, 1985. In this Misc. application, paras 1 to 4 only give certain facts narrated to application for delay for coming to the Tribunal. In para 5 of the said application, the applicant has stated that on the

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belief that the respondents in compliance with the judgement giving certain directions by the Hon'ble Supreme Court in the case of Inder Pal Yadav and in the case of Ram Kumar, the applicant will be engaged in accordance with the scheme of absorption drawn up and notified by the Railway Board in the Northern Railway Administration. In para 6 it is stated that the applicant is making every attempt to persuade the Railway authorities and visiting every office in the hope that the department would come to his rescue and provide him necessary employment and in para 7 it is stated that the applicant has no enough means to knock at the door of the Courts to seek justice in the absence of the financial resources. Thus in paras 5,6 and 7: ~~XXXXX~~ the applicant explains the delay in coming to the Tribunal in filing this application in January, 1991 while he was, according to him, ceased from service in June, 1985.

5. The respondents in their reply have taken the objection that the applicant has no case as he obtained employment in March, 1980 on the basis of fraudulent and forged, casual labour service card which has been established as such by ION/Horticulture, Baroda House, Northern Railway, who had clearly denied the working of the applicant under him for the period from 1.10.77 to 10.3.78 and a copy of the letter has been annexed with the counter as R-2. It is further stated that the applicant, when the forgery was detected and letter dated 15.4.85 was received by the Shop Supdt., Electric Construction No.1, Northern Railway stopped giving work and himself abandoned the job apprehending that he may be prosecuted

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for having filed a forged and fraudulent casual labour service card. The applicant in the application that he was verbally terminated from service or given an assurance that his services be dispensed with on account of shrinkage of work in the construction division, is totally wrong and incorrect and the applicant himself did not report for duty apprehending his prosecution on account of filing a false and forged casual labour service card.

6. The respondents have also filed reply to the MA for condonation of delay and stated that the applicant did not sought judicial review obviously because of his own having left the service and the applicant never approached the respondents Railway authorities since 17.6.85.

7. We heard the learned counsel for the parties at length and perused the records. The objection to the maintainability of this application is with regard to the limitation. While the application was admitted on 10.1.91, the point of limitation was kept open. The power and jurisdiction of the Tribunal is governed by the provisions of the Administrative Tribunal Act, 1985. Section 21 of the Act provides for the limitation. The said provision provides that a Tribunal shall not admit an application, in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made; further in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired

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thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. Sub-section 3 of Section 21 further provides that 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 (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for making the application within such period. Now coming to the case in hand, as per averments in the application the applicant was terminated from service as a casual labour w.e.f. 17.6.85. After 17.6.85 he was not engaged by the respondents and it is averred in the original application that because of shrinkage of work he has been discharged from service as casual labour. In the application for condonation of delay the only cause shown by the applicant of not pressing his claim within the period of limitation as provided u/s 21 is that the applicant was having the belief ^{of re-engagement by} that the respondents in compliance with the Hon'ble Supreme Court judgement in the case of Inder Pal Yadav and in the case of Ran Kumar. He has also taken the reason that he was making every attempt to persuade the Railway Administration and was visiting every office in the hope that the department would come to his help and that he could not approach the Tribunal because of financial resources. Any of the three reasons given by the applicant do not make a reasonable cause. If the applicant can approach the Tribunal almost after six years of having been discharged from service as alleged by him, he could have approached earlier. Further his bonafide is to be judged as to the steps he has taken after he has ^{been} discharged in June, 1985. The averment made in the

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original application goes to show that the applicant was only making verbal requests without making any written representation or placing his case before the higher authorities, knowing well that the persons who were engaged after him have been retained by the respondents. After 4 years i.e. in August, 1989 he gets a letter written by a Member of Parliament to General Manager, Northern Railway, in November, 1989 he gets a notice issued by his Advocate Shri R.K. Ralen to General Manager, Northern Railway and 2 others. Thereafter, he filed this application in January, 1991. The bonafide of the applicant becomes doubtful regarding his financial position as well as an assurance given by the respondents because the applicant has even utilised the political measure as well as the legal notice in approaching the respondents to give him re-engagement as casual labour. We cannot side track the plea taken by the respondents inasmuch as it is stated that the applicant has procured engagement in the year 1980 on the basis of showing that he has earlier worked with IOW/Horticulture, Baroda House for some days from October, 1977 to March, 1978 and on enquiry it was found that the applicant had never worked and his initial engagement itself was procured by fraudulent representation and by forging a casual labour service card. The applicant has to make out any of the grounds which should be convincing inasmuch as to give the bonafide of the applicant that he was prevented in approaching the Tribunal or another judicial forum on the reasonable ground. This fact is totally missing in the case. Merely filing an application and taking the grounds which appeared to be after thought would not be itself condoned the delay of about 5 years or so in entertaining this

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application when the respondents have raised the issue and the Tribunal while admitting this application have left the matter of limitation open to be considered at the time of final hearing of the application.

8. The applicant's counsel has placed certain reliance on the decision of the case of State of Mysore V. Boramma reported in 1971(1) SLR 801 to the effect that the order passed against rule is void from very inception as limitation is not directed but the legal position otherwise is held by Hon'ble Supreme Court in the case of State of Punjab V. Gurdev Singh reported in (1991) 4 SCC 1. The Hon'ble Supreme Court held 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. In this reported case, the Hon'ble Supreme Court has considered the authority of Qamar Ali reported in AIR 1967 S.C. and said that even Qamar Ali who was Constable in the State of M.P. has filed the civil suit within the limitation before the City Civil Judge. There was certain observationⁱⁿ that case regarding the void orders and that they can be challenged irrespective of the period of limitation but the law has been clarified and broadly laid down in the case of Gurdev Singh. The learned counsel for the applicant has also referred to the case of A.K. Khanna V. UOI decided by the Principal Bench reported in AIR (1988) (2) CAT 518 stating the proposition that the applicant has a continuing cause of action.

If it is so then the very prayer for invoking the provisions of sub-section (3) of section 21 remains unexplained. Similarly, the learned counsel for applicant has placed certain reliance regarding the notice or retrenchment compensation and that juniors were retained and in that connection referred to the case of Rameshwar & another Vs. UOI reported in 1992(2) ATJ 404 and the case of Raj Prakash V. UOI reported in 1993(1) ATJ 466. He has also placed the reliance in the case of Nand Lal Vs. UOI reported in 1993(1) ATJ 168. All these cases are placed on their own facts and circumstances. The Hon'ble Supreme Court considered the matter of limitation in the case of Bhoop Singh V. UOI reported in (1992) 3 SCC 136 and para 6 is quoted below:-

"If the petitioner's contention is upheld that laches of any length of time is of no consequence in the present case it would mean that such police constable can choose to wait even till he attains the age of superannuation and then assailed the termination of his service and claim monetary benefits for the entire period on the same ground that would be a startling proposition. In our opinion, this cannot be the true import of Article 14 or the requirement of the principle of non-discrimination embodied therein which is the foundation of petitioner's case."

It was further observed in the same context that

"Article 14 on 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 that concept.... "It was therefore held "that the grant of relief to the petitioner in the said case would be inequitable instead of its refusal being discriminatory."

9. There is another recent decision of the Hon'ble Supreme Court in the case of Ratan Chandra Samanta V. UOI. The petitioners before the Hon'ble Supreme Court in that case were casual labourers of South Eastern Railway.

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They were alleged to have been appointed between 1964-69 and retrenched between 1975-78. They through their petition sought a direction to be issued to the opposite parties to include their names in the live casual labourer register after due screening and to give them re-employment according to their seniority. A further prayer was made to restrain the opposite parties from filling vacancies from open market. The basis for the claim made in the petition was two fold.

- (i) circulars issued by the Railway Board in 1981 laying down guidelines regarding recruitment/retranchment and employment of the casual labourers;
- (ii) Judgements delivered by the Apex Court in 1985 and 1987 directing the opposite parties to prepare a scheme and absorb the casual labourers in accordance with their seniority.

The petitioners who were retrenched due to completion of Halda Project between 1975-78 appeared to have made a representation in 1990 to the authorities. In the representation it was alleged that the Railway authorities are not following the orders of the Supreme Court, High Court of Calcutta and Central Administrative Tribunal, Calcutta Bench. In the facts of the said case the Hon'ble Supreme Court in view that no explanation has been given as to why the petitioner did not approach till 1990 and held that two questions arise;

- (i) if the petitioners are entitled as a matter of law to re-employment and other if they had lost their right, if any due to delay.

While dealing with the said questions the following observation was made;

"Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation, a person who has lost his remedy by lapse of time loses his right as well."

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10. In the present case the learned counsel for the applicant has also referred to the same circular of 1981. He has also placed reliance on circular of 1986 on the subject of Project Casual Labour - terms of employment. This circular was issued by the Railway Board after the decision of Inder Pal Yadav and others Vs. UOI decided by the Hon'ble Supreme Court in its judgement dated 18.4.85. Having given a careful consideration and to the facts of the case and placing a contradictory case in the body of the application itself, where once it is said that it is a termination and at other point of time it is said that due to shrinkage of work the applicant was discharged, no conviction can be placed to certain averments for condonation of delay. The applicant has also invoked the provisions of section 25(f) of the Industrial Dispute Act, 1947. But that section could not have been invoked if the applicant was discharged because of no job requirement on which the applicant could be engaged and allowed to work. This all goes to show that the applicant has tried to manufacture a case to bring within the rule 301 of the Indian Railway Establishment Code Vol.1. The applicant's case is not at all covered either by the judgement of the Hon'ble Supreme Court in the case of Ram Kumar V. UOI decided on 2.12.87 or by the decision of Inder Pal Yadav decided in the year 1985 by the Hon'ble Supreme Court. The applicant, therefore, has not made out any reasonable and probable cause for condoning the delay and did not explain six years' period when he filed this application. The application is therefore hopeless, barred by limitation.


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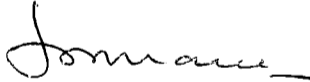
11. We have also heard the applicant on merit. The learned counsel for the applicant argued that the case of the respondents that he abandoned the service cannot be accepted and he has referred to a number of decisions on the point in the Principal Bench as well as of other Benches of CAT. These are G.T. Lad and others V. Chemical Fibres of India Ltd. The case was decided by Hon'ble Supreme Court on abandonment reported in AIR 1979 SC 582. He has referred to the case of Managing Committee of Khalsa National Higher Secondary School, Ludhiana and another Vs. Presiding Officer School Tribunal Punjab and others reported in 1989(6) SLR 80 of Punjab and Haryana High Court. He has also referred to the decision of Beer Singh Vs. UOI and others of the Principal Bench reported in 1990(3) SLJ 53. The law cited by the applicant has no application to the present case because in para 4.9 of the application it is stated that the services of the applicant were abruptly dispensed with orally without assigning any reasons and without following the provisions of the mandatory statutory rules. While the case taken by the learned counsel for the applicant is that the services of the applicant has been terminated arbitrarily, the respondents have taken a clear stand that the applicant himself has left the services in June, 1985 fearing his prosecution on account of detection of forgery in getting employment on the basis of casual labour service card. In the rejoinder, the applicant has not stated as to how he has worked with IOW/Horticulture, Baroda House from October, 1977 to March, 1978. He has kept the whole thing in dark and only reiterated the facts that he was terminated from service.

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12. In fact the proper course for the respondents would have been to issue a show cause notice to the applicant and proceed with him departmentally but when the applicant himself has absented and the record goes to show that only in the year 1989 he got a letter written by the Member of Parliament and in October, 1989, he has given a legal notice through the advocate, the applicant kept silent for all these years from 1985 onwards.

13. In view of the above facts, we find that there is no case for interference after 10 years when the record of that period would also not be available. The applicant is equally at fault in not approaching the Tribunal or the legal forum at the earliest. Now he wants to get the relief which is barred by delay and laches and the remedy also is lost in view of statutory provisions referred to above. The applicant has also taken a divergent stand in the matter. In view of this, the application is barred by time as well as delay and laches and the relief prayed for by the applicant cannot be granted both barred by limitation as well as devoid of merit.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA)
MEMBER(J)

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