

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2601/92
T.A. No.

199

DATE OF DECISION 20.8.93

<u>Shri Pawan Kumar</u>	Petitioner
<u>Shri J.P. Verghese</u>	Advocate for the Petitioner(s)
Versus	
<u>Delhi Administration</u>	Respondent
<u>Shri M.K. Giri</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. SHARMA

MEMBER (J)

The Hon'ble Mr. S. GURUSANKARAN

MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT

This judgement was delivered by Hon'ble Shri
S. Gurusankaran, Member (A)

Briefly stated, the facts of the case are that the applicant applied for the post of Constable in Delhi Police and after the necessary formalities, was selected for the same. He also signed an agreement required under the rules before joining and being sent for training. However, finally instead of allowing the applicant to join the post for which he was

....2/-

7

selected, he was advised by letter dated 21.10.1987 (Annexure-I) that on scrutiny, it has been found that he has managed to seek appointment by deceitful means by erasing/changing the date of registration in his employment card as such his candidature was cancelled. Along with the letter, all the original documents of the applicant were also returned by registered acknowledgement due post. Aggrieved by the cancellation of his candidature, the applicant has filed the present C.A. on 29.9.1992. The applicant^{Shri} also filed M.P. for condonation of delay. On issue of notice on admission and M.P. for condonation of delay, the respondents have filed their reply resisting the application. The reliefs claimed by the applicant are:

- i) to set aside the impugned order dated 21.10.1987 as violative of Article 14, 16 and 21 of the constitution of India;
- ii) to recruit and appoint the petitioner in Delhi Police from the date of termination with all consequential benefits.
- iii) to pass such other order or order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

He also prayed for interim order directing the respondents to permit the applicant to resume duty forthwith.

2. We have heard Shri J.P. Verghese for the applicant and Shri P.K. Giri for the respondents and perused the pleadings. The basic facts of the case are not in dispute. The only facts, which are in dispute, are (i) the applicant has stated that on receipt of letter dated 21.10.1987, he had submitted an appeal dated 23.11.1987 (Annexure-III) for which there was no reply, whereas the respondents have denied receipt of any such

10

appeal. (ii) the applicant has stated in the O.A. that he is similarly situated as one Vinod Kumar, who had filed O.A. 2311/88 and which was allowed vide order dated 26.4.1991. The respondents have submitted that the facts are not similar. The applicant has not been able to produce any proof whatsoever to show that he had submitted any representation dated 23.11.1987. Hence, we are of the opinion that the applicant never submitted any representation against the order dated 21.10.1987 and only after he came to know about the orders of this Tribunal dated 26.4.1991 in Vinod Kumar's case sent a representation dated 27.7.1991 to save the period of limitation and then filed this O.A. Similarly, we find that the applicant has not produced any proof whatsoever to show that he had actually joined duty and worked even for a day. In the reliefs claimed by the applicant and reproduced in para 1 above, the statements are contradictory. He has prayed for recruiting and appointing him from the date of termination and also interim relief of permitting him to resume duty, whereas the problem as we see it, is that even though he was selected, his candidature was cancelled and he was never allowed to join the post. Thus, the facts of the case differ from that of Vinod Kumar's case, wherein the applicant had joined the post and worked for some time.

3. Since the applicant has filed MP for condonation of delay and the respondents have vehemently opposed the case, the same was considered. In the M.P., the reasons given for condonation of delay are that he had submitted representation dated 23.11.1987 and he had not received any reply for the same. Secondly, he came to know only in April, 1991 that similarly situated persons had been appointed and Vinod Kumar's case was decided in his favour. The applicant has submitted that the

.....4/-

limitation starts again from April, 1991 as a fresh cause of action has arisen from the date of such knowledge. We find no merit in these submissions. It is by now well settled from the ~~retained~~^{void} down by the Apex Court in the case of State of Punjab Vs. Gurdev Singh reported in (1991) 4 SCC 1 that limitation applies to all suits conceivable and that even a void or illegal order has atleast defacto operation unless and until it is declared to be void or nullity by a competent body or court. The apex court further observed that if an act is void or ultravires, it is enough for the court to declare it so and it collapses automatically. It need not be set aside. At the same time, the court cannot give such a declaration if the statutory time limit has expired. These observations were made in that case, where an order of dismissal was impugned. Assuming, but not admitting, that the order dated ~~12.5.1988~~²¹⁻¹⁰⁻¹⁹⁸⁷ is void or illegal, this application filed in August, 1991 is hopelessly beyond the limitation period laid down. We have already held that there is no proof of applicant having submitted any appeal in November, 1987 and even if one had been submitted he should have filed this OA before May, 1989. The applicant has not given any satisfactory reason for the delay of over 40 months. It is not even as though the applicant, according to his own averment, was waiting for the outcome of cases filed by similarly situated persons. He came to know about them only in April, 1991. The applicant has not given any reason whatsoever as to what prevented him from approaching this Tribunal before April, 1991. The learned counsel for the applicant referred to the case of Collector, Land Acquisition Vs. Katiji ((1987) 2 SCC 107) and submitted that there was "sufficient cause" to condone the delay in this case. We find no merit in this submission. In

.....5/-

17

that case also, the Supreme Court has held that while considering the question of delay, the approach should not be pedantic and a rational common sense approach should be adopted in a pragmatic manner. When the applicant has been keeping absolutely quiet and not taken any action whatsoever even to send a representation till July, 1991, if it is to be held that the rational approach should be to condone the delay, it will render section 21 of the Administrative Tribunals Act illusory and Otiose.

4. Even though in the M.P., the applicant has contended that the knowledge about the outcome of cases of similarly situated persons gives him a fresh cause of action, the learned counsel for the applicant did not rightly press that line of argument. However, he strongly argued that the inaction of the respondents in not considering the case of similarly situated persons should be considered as "sufficient cause" for condoning delay. We also find no merit in the submission. The inaction of the respondents or the knowledge of judgement in a similar case cannot give any fresh cause of action, since the knowledge or inaction can be said to have taken place at any later date and thus would make the provisions of the section on limitation meaningless. Further, the "sufficient cause" to be considered is from the point of view of the applicant's actions as to what prevented him from approaching the appropriate forum from the time the "right to sue" accrued to the applicant. It has nothing to do whatsoever with the outcome of the cases of similarly situated persons, who have been diligent enough to take action in time or the inaction of the respondents in not extending the benefit of the judgement in the case of similarly situated persons to the case of the applicant. In any case, the case of Vinod Kumar is different in that the applicant therein had actually joined duty and worked for some time, whereas in the present case, the candidature was cancelled even before the applicant joined duty. Further, the apex court in the case of R.C.Samantha Vs. UOI (JT 1993 Vol 3 page 418) has held that the delay defeats a legal remedy and also a right unless there

is a specific legislation on the point.

5. Further, the observations of the Supreme Court in the case of Ashok alias Somanna Sourder Vs. State of Karnataka ((1992) 19 ATC 68) are very relevant to the present case. That was also a case concerning recruitment and the main issue was regarding the criteria applied for the selection. This is what the Supreme Court observed in para 3 of the judgement. "Learned counsel appearing on behalf of the State of Karnataka pointed out that there are many other candidates, who had secured much higher marks than the applicants, in case the above criteria is applied for selection. In view of the fact that the appointments under the impugned rules were made as far back as 1987 and only the present appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached the Tribunal within reasonable time. We are thus inclined to grant relief only to the present appellants, who are vigilant in making grievance and approaching the Tribunal in time." Thus even in that case, where the rules were impugned the Supreme Court did not agree to extend the relief of appointment to the other similarly situated or even better situated candidates, who did not make grievance in time. The present case is also one of recruitment and the appointments were made as far back as 1987 and the applicant did not ^{lift} ~~lift~~ his little finger even till 1991, when actually his candidature was cancelled before actual appointment in October, 1987 on the basis of adequate evidence to prove that the applicant had tampered with the date of registration in his registration card, when that was one of the essential conditions of recruitment.

6. Shri Varghese also referred to the judgement of a Full Bench of this Tribunal in the case of John Lucas Vs.

.....7/-

Additional Chief Mechanical Engineer, South Central Railway and ors ((1987) 3 ATC 328). In that case, what was under consideration was the remedy available to an applicant, who was not a party and is affected by a decision of the Tribunal and it was held that such an applicant can file a Review application under section 22(3) (f) of Administrative Tribunals Act, 1985. But the same question of relief for similarly situated persons came up before a Full Bench of this Tribunal in the case of Abraham Titus & Ors Vs. Union of India & Ors reported in (1992) 19 ATC 722. It was held that when a court enunciates law after considering rival pleas and allows certain reliefs, normally it behoves the Government to extend them to other similarly situated employees, but this does not apply when the claim is time barred or in a subsequent decision it is held that all facts were not appraised in the earlier decision, otherwise conclusion would have been different. In the case of N.P.Shett Vs. Union of India & Ors (CA 767/89 of CAT Madras), a Full Bench of this Tribunal has observed "The question of applying the principles laid down in the case of one employee for all others similarly placed can arise before a court of record provided that there is a joint application or petition on behalf of each of them. It is not open to a court of record to pass an order in respect of persons, who are not even present before it by any application or petition. In this view of the matter, the view taken in the case of one or more employees by a judicial forum cannot be ipso facto made applicable to all other employees in the same cadre, rank, or situation by another judicial forum." We have already held that the case of the applicant is not similar to Vinod Kumar's (supra) and it is also hopelessly time-barred.

15

We also find that we have taken the same ~~issue~~ ^{point} in identical case of Shri Rakesh Kumar Vs. Delhi Administration in OA No.2840/91 decided on 18.8.1993.

7. In view of the above, the M.P. for condonation of delay is rejected and since the M.P. for condonation of delay is rejected, we are not going into the merits of the case and reject the application at the admission stage itself.
No costs.

[Signature]
20/8/93
S. GURUSANKARAN
MEMBER (A)

[Signature]
20/8/93
J. P. SHARMA
MEMBER (B)