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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1774/93
T.A. No.

199

DATE OF DECISION 10-1-96

Shri Subash Kumar Kar Petitioner
Shri B.S. Mani → Advocate for the Petitioner(s)
Versus
Union of India Respondent
Shri B.K. Aggarwal → Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N.V. Krishnan, Acting chairman
The Hon'ble Mr. Dr A. Vedavalli, Member (J)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

AV
(Dr A. Vedavalli)
Member (J)

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1774/93

New Delhi this the 10 ¹⁵ Day of January, 1996

Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Dr A. Vedavalli, Member (J)

Shri Subash Kumar Kar,
S/o Shri Sushil Ranjan Kar,
Ex-Mobile Booking Clerk
Railway Station, Fatehgarh,
North Eastern Railway. Applicant

(By Advocate : Shri B.S. Mainee)

VERSUS

UNION OF INDIA, THROUGH

1. The Secretary,
Ministry of Railways
Rail Bhawan, New Delhi.
2. The General Manager,
North Eastern Railway,
Gorakhpur.
3. The Divisional Railway Manager,
North Eastern Railway,
Izatnagar. Respondents

(By Advocate : Shri B.K. Aggarwal)

ORDER

(By Dr A. Vedavalli, member (J))

This is an application filed under section 19 of the Administrative Tribunals Act, 1985.

2. The short question to be considered now is whether this application is barred by limitation as contended by the respondents in the preliminary objections raised by them in their counter.

3. We have heard the learned counsel for both the parties. The documents and papers placed on record have been perused.

4. The facts briefly are that the applicant Subash Kumar Kar worked as a volunteer/mobile booking clerk at the Railway Station Fatehgarh, North Eastern Railway from 1.5.1983 to 31.5.1983. His grievance is that he has not been re-engaged as a mobile booking clerk in spite of the instructions issued by the Railway Board on 6.2.1990 regarding the re-engagement of all the mobile booking clerks who had worked prior to 17.11.1986 (Annexure A-4). He has contended that those instructions were valid upto 30.9.1992 (Annexure A-5) and all those mobile booking clerks etc who worked prior to 17.11.1986 should be re-engaged as and when they approach the Railway Administration for such engagement and that he has not been re-engaged inspite of his representations dated 10.5.1990 and 23.7.1992 (Annexure A-6)

5. The applicant has challenged the failure of the respondents to re-engage him as being illegal, discriminatory, arbitrary and void ab initio, inter alia, on the grounds mentioned in the O.A. and has prayed inter alia for directions to the respondents to re-engage him.

(3)

6. The respondents in their counter have raised a preliminary objection regarding limitation as noted above. The main contention of the respondents is that the cause of action arose on 1.6.1983 whereas the present O.A. has been filed after 8 years on 13.8.1993. They have submitted that there is no record to show that the applicant had approached the concerned authorities to re-engage him though the applicant was not dis-engaged in view of the Railway Board's instructions dated 17.11.1986 (Annexure A-1) or any other letters. Further, the order of the Railway Board dated 6.2.1990 (Annexure A-4) is not applicable to the applicant since he was not dis-continued as a result of scheme contained in the Railway Board's letter dated 17.11.1986 above mentioned (Annexure A-1). Moreover, the applicant hardly worked for 31 days and was dis-engaged due to no work available.

7. The respondents have cited the decisions of the Hon'ble Supreme Court in Ratan Chandra Samanta & Others Vs Union of India (AIR 1993 SC 2276) in support of their contentions as to limitation. They have also alleged that the representation of the applicant dated 10.5.1990 (Annexure A-6) is false and is prepared now as an after thought and that there is no evidence as to its despatch or receipt. The respondents contended that the application is liable to be dismissed on this limited point.

By

(14)

8. The applicant has filed his rejoinder. Re the preliminary objection raised by the respondents it is submitted by the applicant that it is wrong and denied. He contended that the judgement of the Hon'ble Supreme Court mentioned supra is not applicable to the present case since there is a fresh cause of action which has arisen on 6.2.1990 as well as on 31.3.1992 when the Railway Board issued instructions to all the Railways to re-engage services of the mobile booking clerks who had worked prior to 17.11.1986. He reiterated that in pursuance of the said order he had made representations but was not re-engaged in spite of the aforesaid instructions of the Railway Board.

9. The matter has been considered by us carefully. The applicant claims his rights only based on the aforesaid Annexure A-5 order dated 6.2.1990 where re-engagement was discussed in Para-3 therein. He contended as already noted that he approached the Railway Administration on 10.5.1990. Even assuming that his contention is correct the limitation under the Administrative Tribunals Act starts running from that date. The period of 18 months takes to 10.11.1991. While the present O.A. was filed on 13.8.1993. Though this preliminary objection regarding limitation was raised by the respondents no Miscellaneous Application praying for condonation of delay has even been filed by the applicant. Hence, no justification for the delay has been established

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or raised by him. In this connection the decision of the Hon'ble Supreme Court in S.S. Rathore Vs State of M.P. (AIR 1990 SC 10) is very much relevant wherein, it was held, inter alia, (at para 20 & 21 of J.T) thus:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertainig the appeal or representation is made and where no such order is made, though the period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated un-successful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

10. In the facts and circumstances of this case and in view of the aforesaid decision of the Hon'ble Supreme Court in S.S. Rathore Vs State of M.P. and in Ratan Chandra Samanta case

(Supra), we are of the opinion that the present application is hopelessly time barred under Section 21 of the Administrative Tribunal's Act, 1985.

11. This application is, therefore, dismissed on the preliminary ground of limitation. No costs.

A. Vedavalli
10/1/96

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(Dr A. Vedavalli)
Member (J)

(N.V. Krishnan)
Acting Chairman

SSS