

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 99 of 1996
this the 22nd day of November 2002.

HON'BLE MR. S. DAYAL, MEMBER (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Munnu Lal, S/o Sri Vijay, R/o Village & Post Niwa,
District Allahabad.

Applicant.

By Advocate : Sri C. prakash.

Versus.

1. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Engineer-in-Chief, Army Headquarters, New Delhi.
3. Commander Works Engineer, Military Engineering Service (MES), Behind High Court Building, Allahabad.

Respondents.

By Advocate : Sri S.K. Anwar.

O R D E R

MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., the applicant has sought the following reliefs:

"In view of facts stated in para 4 of this application the applicant prays that this Hon'ble Tribunal may be pleased to allow this application commanding the respondents to post the applicant as Mazdoor and to pay the entire back wages and consequential benefits admissible to them from time to time and allow seniority and promotion given to juniors to the applicant already posted."

2. It is alleged by the applicant that he was engaged as Mazdoor in the year 1979. He worked as such upto 1981-82 and completed more than 360 days. Thereafter, in the year 1988 a trade test was held, wherein the applicant ~~was~~ also appeared and since he was selected, he was placed in the panel at serial number 10 as a selected candidate (result is at page 13 of the O.A.). The grievance of the applicant



is that even though he was selected, but could not be appointed as the respondents have banned the fresh recruitment in the meantime. It is stated by the applicant that he gave number of representations after the ban was lifted in the year 1994 to give him appointment, but since no reply was given to him by the authorities, he had no other alternative, but to file the present O.A. in the year 1996. The applicant has relied on some earlier judgments given by this Tribunal, whereby in a similar circumstances ~~that~~ the person ~~was~~ though selected, ~~but~~ was not appointed on the ground that they were over age and ban was imposed in the meantime, the Tribunal vide its order dated 25.4.94 gave directions to the respondents to appoint the applicant therein on the post for which recruitment test was held and it was also clarified that for the purposes of seniority his appointment will date back to the same period for which persons junior to him in the panel ~~were~~ appointed. It was also directed that the pay of the applicant on the date of his appointment will be fixed after adding the increments (page 18 of the O.A.). A similar order was also passed in O.A. No. 893/91 on 25.4.94 wherein the same direction was given in the case of Jeet Narayan & Others (page 21). Apart from it, he also relied on the judgment given by this Tribunal in O.A. No. 792/96 vide its order dated 20.9.2002 and O.A. No. 147/96. ^{on} ~~under~~ the basis of these judgments, it was submitted by the applicant's counsel that in the present case also, when the applicant enquired from the office, he was told that he is not being appointed as he has become over age for the said post. Therefore, he submitted that the same directions be issued in the present O.A. also.

3. The O.A. is opposed by the respondents, who have stated that the present O.A. is barred by limitation, since the applicant had last worked with the respondents



in the year 1981 as a casual Mazdoor and since the applicant was engaged on Muster Roll for couple of days on casual basis in order to complete the emergent work, his services were terminated as soon as the work was over ~~and~~ as such he had no lien or right for further employment in the department. They have further submitted that the Ministry of Personnel, Public Grievances & Pensions issued an O.M. dated 8.4.1991 as a one time measure for regularisation of services of casual personnel with the following conditions:

- "(a) To consider the cases of casual personnel who were recruited prior to issue of O.M. dated 7.6.1988 regarding qualification for employment and renumberation of casual personnel.
- (b) To consider the cases of casual personnel who were in service on the date of issue of O.M. dated 8.4.1991 regarding one time measure."

4. Basing ~~on~~ this O.M., the respondents have submitted that though the applicant was recruited prior to 17.6.88, but he did not fulfil the second condition as ~~well as~~ he was not in service on 8.4.1991. Therefore, his name could not be considered for regular appointment. More-over, they have stated that the petitioner was over age at the time of regularisation of his services and the respondent no.2 has no authority to appoint him being over age, unless the upper age limit is relaxed by the Ministry of Defence. They have, thus, submitted that since the applicant's case was not covered under the O.M. dated 8.4.1991, he is not entitled to any relief and the O.A. is liable to be dismissed.

5. As far as the select list is concerned, they have stated that merely having been selected, one does not ~~get~~ any right to be appointed on the post as well. However, it was submitted that the Ministry of Defence was requested through proper channel for release of vacancies as well as relaxation in upper age limit, but the same was not accepted by the Ministry of Defence. They have, therefore, submitted that the O.A. is without any merit and is

liable to be dismissed. The respondents have also relied on two judgments given by this Tribunal, wherein after considering all the aspects of the matter, the said O.A.s were dismissed by the Tribunal on the ground that O.A.s are barred by limitation. ^{B judgments in O.A.} Nos. 1182/97 and 1191/97 decided on 12.2.2002 and 21.1.2002 are annexed as Annexure nos. 1 & 2 with the Supplementary Counter affidavit. It is further submitted by the respondents' counsel that both these judgments were carried ~~out~~ ^{to} on the Hon'ble High Court by the applicants therein, but the Hon'ble High Court also rejected the Writ Petitions upholding and agreeing with the reasons given by the Tribunal on merits. The order of the Hon'ble High Court is annexed as Annexure A-3. On the other hand, the respondents' counsel also informed us that the judgments relied-upon by the applicant's counsel have been challenged by the union of India before the Hon'ble High Court at Allahabad and in one of the writ petition No. 40713/2002 filed against the judgment dated 13.5.2002 passed in O.A. no. 147/96, the Hon'ble High Court has stayed the operation of the judgment and order dated 13.5.2002 passed in O.A. no. 147/96. A copy of the order passed by the Hon'ble High Court has been produced and the same is taken on record.

6. We have heard both the counsel and perused the judgments relied-upon by ~~the~~ ^{the} both sides.

7. It is seen that the judgments which are relied-upon by the respondents are on identical points and facts and they are dismissed, as stated above, on the ground of limitation as it was held that the applicant's services were terminated in March'85, therefore, the cause of action had arisen in March'85. Even if, it was accepted that there was ^a ban on recruitment, the applicant should have taken the legal action within one year of ^{the} lifting of the ban, which he did not do so. Therefore,



the Tribunal has held that the O.A. is barred by limitation. It is important to note that this judgment was challenged by the applicant before the Hon'ble High Court at Allahabad by filing Writ petition, but the same has been dismissed after agreeing with the findings given by the Tribunal on merits. Therefore, these judgments are upheld by the Hon'ble High Court, whereas the judgments relied-upon by the applicant have been challenged in the Hon'ble High Court by the respondents and, as stated above, the Hon'ble High Court has been pleased to stay the operation of the judgment and order passed in O.A. no. 147/96. Therefore, naturally, we are bound by the judgments, which have been upheld by the Hon'ble High Court at Allahabad. In the instant case also, admittedly, the applicant had worked on Muster Roll only from the period 1979 to 1981 and as per the applicant's own averments, he was selected in the year 1988, but he was not appointed on the ground of over age. There is nothing on record to show that the ban was imposed in the year 1988 and was lifted in the year 1994. we do not find any justification or cause of action for the applicant to file the present O.A. in the year 1996. Infact, on perusal of the representation said to have been given by the applicant, though the same was denied by the respondents, the applicant had not ~~added~~ ^{mentioned} any single word with regard to imposition of ban, all ^{was} that it ~~was~~ talked about ^{is} that the posting was postponed on the ground that he was over age at the time of appointment. In his representation also, he had referred to the judgment given in the case of Jeet Narayan & others, but the same ^{been} ~~was~~ stayed by the Hon'ble High Court at Allahabad, therefore, there ~~was~~ ^{is} no cause of action for the applicant to file the present O.A. in the year 1996, as such we would agree with the judgments given by the Tribunal relied-upon by the respondents that the present O.A. is barred by limitation, therefore, the same is liable to be dismissed on this ground alone.

VS

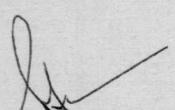
However, on merits also since the respondents have explained that the Department of Personnel had issued an O.M. on 8.4.1991 as a one time measure to regularise those who were in service on that date. Naturally, the applicant could not have given the said scheme as he did not fulfil the second condition and was admittedly not in service on 8.4.1991. It would be relevant to refer the latest judgment of the Hon'ble Supreme Court passed in the case of Union of India & Others Vs. Mohan Pal & others reported in 2002 (1) SLJ 64 wherein while discussing the scope of O.M. dated 1.9.93 issued by the DOPT, the Hon'ble Supreme Court has clarified the position by saying that the scheme was only one time measure and was not on going scheme. The same ratio would apply to the present case also because in the O.M. dated 8.4.1991 also one of the condition was that it would apply to those casual labourers who were in service on that date.

8. In view of the above, the applicant has not made out any case for interference by us. Therefore, the O.A. is dismissed without any order as to costs.



MEMBER (J)

GIRISH/-



MEMBER (A)