

A.F.L.

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 1st DAY OF APRIL, 2001

Original Application No.1062 of 1997

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

1. Bal Krishna, son of Shri Sudama
R/o Village Rajendra Nagar
House No.646, district Orai
2. Jagdish prasad son of Sri hari Das
R/o House No.1574, Mohalla
Indira Nagar, district Orai

Both applicants are casual labourers
and worked under the Permanent Way
Inspector, District Orai.

... Applicants

(By Adv: Shri R.K.Rajan)

Versus

1. The Union of India through Secretary
Ministry of Railway, Rail Bhawan
New Delhi.
2. General Manager, Central Railway
Bombay V.T.
3. Divisional railway Manager
Jhansi.
4. Permanent Way Inspector,Orai

... Respondents

Original Application No. 1169 of 1997

Hasan Khan, son of Sattar Khan,
R/o Mohalla Mahmoodpura, Post Kalpi
District Jalaun

.... Applicant

Versus

1. Union of India through Secretary
Ministry of Railway, Rail Bhawan
New Delhi.
2. General Manager, Central Railway
Mumbai V.T.
3. Divisional Railway manager, Jhansi.

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4. The Communication Inspector
S.C.S.R, Central railway, Orai
5. Permanent Way Inspector
Chirgaon, Jhansi.
6. Chief Signal Inspector, Jhansi.

... Respondents

(By Adv: Shri G.P.Agrawal)

Original Application No. 568 of 1998

1. Mohammad son of Cheda Lal
2. Matadeen son of Mullu
3. Jagdish son of Raghubar
4. Ghanshyam son of Raja Ram
5. Chotey Lal son of Hari Ram
6. Magan son of Bhura

All the applicants are residents of
Village & Post Usargaon, district
Jalaun, Orai.

7. Rahim, son of Gulab, R/o Village
and post Tufayal Purwa, Orai.

... Applicants

(By Adv: Shri R.K.Rajan)

Versus

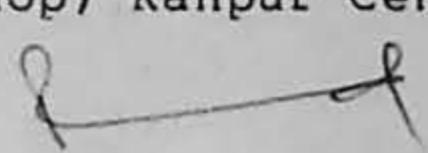
1. Union of India through its
Secretary, ministry of Railway,
Rail Bhawan, New Delhi.
2. The General Manager, Central railway
Mumbai V.T.
3. The Divisional Railway Manager
Jhansi.
4. The Permanent Way Inspector
Orai, Jalaun.

... Respondents

(By Adv: Shri G.P.Agrawal)

Original Application No.1281 of 1998

Kalka Prasad son of Mohan Lal
and Shyam Kumar son of Ganga
Narain have worked as Casual Safaiwala
at I.O.W.Workshop, Kanpur Central Railway

 ... Applicant

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(By Adv: shri Amrendra Kumar Srivastava)
Versus

1. Union of India through
General manager, Central Railway
Bombay.
2. Divisional Rail Manager
Central Railway, Jhansi Division
Jhansi.
3. Senior Divisional Engineer
Central Railway, Jhansi Division
Jhansi
4. Assistant Engineer
Central railway, Kanpur.

... Respondents

(By Adv: Shri G.P.Agrawal)

O R D E R (Reserved)

JUSTICE R.R.K.TRIVEDI, V.C.

In all the aforesaid OAs questions of law and facts involved are similar in nature and they can be conveniently disposed of by a common order against which learned counsel for the parties have no objection. O.A.No.1062 of 1997 shall be the leading case.

The applicants in the aforesaid OAs have claimed reliefs for a direction to respondents to reengage the applicants in the service and thereafter to regularise them. It is also claimed that respondents may be directed to include their names in Live Casual Labour Register according to their seniority and applicants may be absorbed in service against group 'D' posts. It is also prayed that respondents may be directed to verify from the original cards and pay slips and give them all privileges and benefits for which a casual labour with temporary status is entitled.

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Counter affidavits have been filed in all the OAs and the claims of the applicants have been stranously opposed on the ground of limitation. It has been submitted that applicants are not entitled for relief as the OAs are highly time barred and are liable to be dismissed on this ground alone. In order to appreciate the controversy the facts in brief giving rise to the controversy are being mentioned below separately in respect of each OA.

OA 1062/97

There are two applicants in this OA namely Balkrishna and Jagdish Prasad. This OA has been filed on 29.9.1997. The following chart shall indicate the period of work they have done as casual labourers.

| <u>Name</u> | <u>Period of work</u> | <u>Days</u> | <u>Total days</u> |
|----------------|--|-----------------------------|-------------------|
| Balkrishna | 3.5.1982 to 18.9.1982 2.7.1983 to 18.8.1983 | 139 48 | 187 |
| Jagdish Prasad | 25.1.1982 to 18.7.1982 25.11.1983 to 18.2.1984 28.3.1984 to 21.7.1984 23.8.1984 to 18.11.1984 | 175 86 2 116 88 | 465 |

Applicants have claimed that they were engaged for welding work and in open line. In counter affidavit, though the period of work has not been disputed but it is claimed that they were engaged against the project welding work. After the project work was over there was

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no work and so there were no question of further engagement of applicants.

OA 1169 of 1997

This OA has been filed on 28.10.1997. Hasan Khan applicant has claimed to have worked on following broken spells of period.

| <u>Name</u> | <u>Period of work</u> | <u>Days</u> | <u>Total days</u> |
|-------------|--|-------------------------|-------------------|
| Hasan Khan | 28.7.1977 to 18.9.1977 21.5.1978 to 18.9.1979 3.10.1980 to 18.4.1981 26.9.1981 to 18.3.1982 | 53 121 198 174 | 546 |

The applicant has claimed that he performed different types of work under the control of Telecommunication Inspector S.C.S.R, Central Railway Orai, Permanent Way Inspector Chirgaon, Jhansi and Chief Signal Inspector, Central Railway Jhansi.

In counter affidavit it has been said that the old records are not available and the working days claimed by the applicant cannot be verified from the record. However, it has been said that the date of birth of the applicant is 10.1.1959 and he is above 40 years old.

OA No.568 of 1998

This OA was filed on 20.5.1998. Seven applicants have claimed work under the respondents in Open Line for the following period.

| <u>Name</u> | <u>Period of work</u> | <u>Days</u> | <u>Total days</u> |
|-------------|-----------------------|-------------|-------------------|
| 1.Mahadev | 3.4.85 to 13.9.85 | 163 days | |

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| | | |
|---------------|---------------------|----------|
| 2. Mahadev | 3.4.85 to 13.9.85 | 163 days |
| 3. Jagdish | 3.4.85 to 13.9.85 | 163 |
| 4. Ghanshyam | 3.4.85 to 15.10.85 | 196 |
| 5. Chhote Lal | 3.4.85 to 15.10.85 | 196 |
| 6. Magan | 3.4.85 to 15.10.85 | 196 |
| 7. Rahim | 3.5.84 to 3.8.84 | 93 |
| | 19.10.84 to 3.10.85 | 350 |
| | | 443 |

In counter affidavit in paras 6, 7, 8, 9, 10 & 11 the days of working have been mentioned against each applicant except applicant Rahim and it has also been claimed that engagement was against the project. According to respondents Mahadev worked for 163 days under AIT Conch Railing. Matadeen worked for 130 days under the same project. Jagdish worked in two spells under the same project for 124 days, Ghanshyam worked under the same project for 164 days, Chote Lal worked for 130 days under the same project and Magan worked for 118 days under the AIT Conch Railing Project. In respect of applicant Rahim it has been said that he did not work under any project at all and from record it is not found that he worked anywhere.

OA No.1281 of 1998

This OA has been filed on 17.11.1998. Applicants have claimed to have worked on the following days.

| | | | |
|-----------------|--------------------|-----|-------|
| 1. Kalka Prasad | 3.3.87 to 18.6.87 | 108 | Total |
| | 19.8.87 to 18.1.88 | 153 | 261 |
| 2. Shyam Kumar | 3.3.87 to 3.6.87 | 93 | |
| | 19.8.87 to 18.1.88 | 153 | 246 |

In para 4 of the counter affidavit it has been said that the matter is more than ten years old and the record is not available hence the claim of the applicants about the work done could not be verified.

From the facts mentioned above it is clear that OA 1062/97 has been filed after 13 years. OA No.1169/97 has been filed after 15 years. OA No.568/98 has been filed after about 13 years and OA No.1281/98 has been filed after ten years. The aforesaid period has been calculated from the last date after which applicants were not allowed to work and cause of action arose to them after that date.

Serious preliminary question has been raised by Shri G.P.Agrawal counsel for the respondents that the OAs have been filed after period of limitation prescribed u/s 21 of the Administrative Tribunals Act 1985 and the OAs are liable to be dismissed on the ground of limitation.

I have heard Shri R.K.Rajan learned counsel for the applicants in all the OAs and Shri G.P.Agrawal learned counsel appearing for the respondents.

Learned counsel for the applicants has submitted that as applicants have worked for long time as casual labourers as mentioned in the OAs, their names were required to be mentioned in Live Casual labour Register and their non engagement gave rise to a continuing cause of action, hence applicants are entitled for relief and there is no question of OAs being time barred. Learned counsel also submitted that the similarly situated applicants who were disengaged like applicants have already been granted relief by this Tribunal and applicants are also entitled for similar relief. For this submission reliance has been placed in a Division bench judgement of the Principal Bench of the Tribunal in case of 'Hukum Singh Vs.Union of India and Others (1993) 24 ATC pg-747. Applicant has also placed an unreported judgement of Allahabad Bench of this Tribunal delivered on 10.12.1996 in OA

No.1550/92 'Prahlad and Others Vs. Union of India and Others and order dated 24.11.2000 in OA No.39/98 Virendra Kumar Tewari Vs. Union of India and Others. learned counsel has also relied on a judgement of Hon'ble Supreme Court in case of 'Union of India and Others Vs. Basant Lal and Others, 1992 SCC(L&S) 611 and judgement of Madras Bench of this Tribunal in case of 'G.Krishnamurthy Vs.Union of India and Others (1989) 9 ATC 158.

Shri G.P.Agrawal learned counsel for the respondents on the ~~other~~^{other} hand, submitted that there is no question of any continuing cause of action to the applicants as they were engaged against a project and after the project was over their engagement ~~came~~ to an end. It is further submitted that the applicants have approached this Tribunal in each case after more than ten years there is no explanation for the delay in the OAs. The applications are clearly barred by limitation and are liable to be dismissed. Reliance has been placed on the following judgements:

1. Bhoop Singh Vs. Union of India and Others
AIR 1992 S.C. 1414
2. Ratan Chand Samanta and Others Vs.Union of India and Others AIR 1993 S.C. 2276
3. Scooter India and Others Vs. Vijai E.V.Eldred
(1999) 81 FLR 87
4. Union of India and Others Vs. Nand Lal Raigar
AIR 1996 S.C 2206
5. Dakshin Railway Employees Union Thiruvananthapuram Division Vs.General Manager, Southern Railway & Ors
(1987) 1 SCC 677

I have considered the submissions of the learned counsel for the parties. Hon'ble Supreme Court in case of 'Bhoop Singh(Supra) while examining the question of limitation in other words latches on the part of the petitioner/applicant held as under:

"^{Another} There is ~~no~~ aspect of the matter. Inordinate and unexplained delay or latches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after [^] a period of 22 years, without any cogent explanation for the inordinate delay merely because others similarly dismissed had been reengaged as a result of their earlier petitions being allowed. Accepting the petitioners contention would upset the entire service jurisprudence and we are unable to construe Dharam Pal in the manner suggested by the petitioner. Article 14 of the principle ^{of} non discrimination is an equitable principle, and, therefore, any relief claimed on that basis must ^{be} ^{found on equity and not be} itself be alien to that concept.

In our opinion, grant of the relief to the petitioner in the present case would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that

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these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution."

From the aforesaid judgement of Hon'ble Supreme court it is clear that the applicants cannot claim similar relief granted to others. The learned counsel for the applicants placed much reliance on the judgement of Allahabad Bench of this Tribunal in case of 'Prahlad and others. In that case OA was filed in 1992. Applicants in that case thus had approached the Tribunal much before the present applicants. In my opinion, the orders of this Tribunal in case of Prahlad cannot help applicants in view of the judgement of Hon'ble Supreme Court. Hon'ble Supreme Court in case of 'Ratan Chand Samanta(Supra) rejected the claim on the ground of latches. Hon'ble Supreme Court in para 6 held as under:-

"Two questions arise,' one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railways and this court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this court that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioners that they may be permitted to produce their identity etc, before opposite

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parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this court in favour of a person who has some right. And not for sale of roving enquiry leaving scope for manoeuvring. 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. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979."

As clear from the facts narrated in case of Ratan Chand application was filed after 10 years. Hon'ble Supreme Court refused to grant relief. In another case Scooter India and Others(Supra) Hon'ble Supreme court refused to grant relief where the claim was filed after 6 years with the following observations:

"In the above facts alone are sufficient

to indicate that there was no occasion for High court to entertain the writ petition directly for adjudication of an industrial dispute involving the termination of disputed questions of fact for which remedy under Industrial Law was available to the work man. That apart, the writ petition was filed more than six years after the date on which the cause of action is said to have arisen and there being no cogent explanation for the delay, the writ petition should have been dismissed on the ground of latches alone

In case of Union of India and Others Vs. Nand Lal Raigar(Supra) Hon'ble Supreme Court observed as under:

"..... the limitation, therefore, would begin to run from the date of dismissal from service. If the dismissed delinquent employee does not avail of the remedy by impugning the order of dismissal within limitation, then it would not be opened to him to challenge in the suit that the order of dismissal is in violation of that rules, that he could ignore the order and then file the suit at any time at his pleasure.

If that contention is given acceptance startling consequences would follow. Under these circumstances, this court did not intend to lay down that even in a case of dismissal after due inquiry and where the order is allowed to become final, it would be ignored by the delinquent employee and contended that limitation does not stand as a bar to him

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It may be noted here that after judgement of Hon'ble Supreme Court in case of 'Indra Pal Yadav Vs. Union of India (1985) 2 SCC 648= 1985 SCC(L&S) 526, large number of cases were filed in various court by casual labourers claiming regularisation. This problem was placed before the Hon'ble Supreme Court in case of 'Dakshin Railway Employees Union Thiruvananthapuram Division, the Hon'ble Supreme Court after appreciating the problem held as under:-

"Shri Krishnamurthy, learned counsel for Railway Administration brings to our notice the difficulty which will be experienced by the Railway Administration if without any limitation persons claiming to have been employed as casual labour prior to Jan.1,1981 keep coming forward to claim the benefits of the scheme. We understand the difficulty of the administration and we therefore, direct that all persons who desire to claim the benefits of the scheme on the ground that they had been retrenched before January 1, 1981 should submit their claim to the administration before March 31, 1987. The Administration shall then consider the genuineness of the claim and process them accordingly."

hon'ble Supreme Court by this impliedly disapproved the concept of continuing cause of action in case of casual labourers.

A Full bench of this Tribunal in a case of 'Mahabir Vs. Union of India and Others O.A.No.706 of 1996 held as under:-

'Provisions of the relevant Railway Board's
Circular dated 25.4.1986 followed by the

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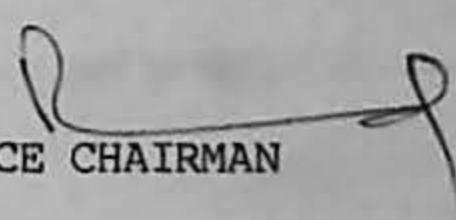
Circular dated 28.8.1987 issued by
General Manager, Northern Railway for
placing the names of casual labour on
the Live Casual Labour Register do not give
rise to a continuous cause of action
and hence the provisions of limitation
contained in Section 21 of the Administrative
Tribunals Act, 1985 would apply."

Thus the order of the Division Bench of this Tribunal relied on by the learned counsel for the applicant is no more a good law.

Under Section 21 of Administrative Tribunals Act 1985 law prescribes "period" of limitation within which OA should be filed before the Tribunal. In the present case, cause of action arose to the applicants in each case before ten years, in some cases even before 13-14 years. There is no explanation for this long and inordinate delay in approaching the Tribunal. The legal position is well settled that limitation for filing the claim in court or Tribunal starts running from the date of cause of action. Running of limitation cannot be stopped by filing representation before the authorities and waiting decision of the same for long time or for any period at the choice of the applicant. If the representation is filed long after expiry of the limitation and the representation is rejected that will not revive the period of limitation for the cause of action which had arisen long back.

After considering the facts and circumstances of each case I have no doubt that the present OAs have been filed long after the period of limitation and the applicants are not entitled for any relief. The OAs are dismissed as time barred. However, there will be no order as to costs.

A copy of this order shall be kept in each of the file.


VICE CHAIRMAN

April 12, 2001