

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

Original Application No. 977 of 1998

this the 12th day of March 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Indresh Kumar, S/o Rodha, R/o Village Dawaki Kala (Maheshwari)
post Khas, Tehsil Laksar, Pargana Mangalour, District Haridwar.

Applicant.

By Advocate : Sri R.M. Singh (Absent)

Versus.

1. Union of India through General Manager, N.R., New Delhi.
2. D.R.M., N.R., Moradabad.

Respondents.

By Advocate : Sri G.P. Agrawal.

ORDER (ORAL)

By this O.A., applicant has sought the following relief(s):

"(a) to direct respondent no.2 to treat the applicant as temporary employee and pay him CP Scale and other benefits admissible under law.

(b) to direct the respondent no.2 to regularise the services of the applicant as permanent and regular employee.

(c) to direct the respondent no.2 to provide work to the applicant and pay him salary regularly.

(d) -----."

2. It is submitted by the applicant that he joined the railway department w.e.f. 3.7.1978 and was issued a Casual Labour Card till 24.3.1989. Thereafter, he was not allowed to work in the railway department. He has, thus, submitted that he had worked continuously for about 11 years as such he is entitled to get the benefit as per the judgment of Inder Pal Yadav vs. Union of India & Ors. Being aggrieved, he gave a representation dated 18.6.1992, but since the same was not decided, he filed O.A. no. 291 of 1993 before this Tribunal, which was dismissed on 29.1.1996 by holding

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that it being highly time barred. However, an observation was made therein that the applicant's representation dated 18.6.1992 may be considered and disposed of in accordance with rules (Annexure A-1). The said judgment was sent by the applicant to the respondent no.2, but since even that representation was not decided, therefore, he filed a writ petition no.21838 of 1997 in the High Court of Judicature at Allahabad, which was decided on 14.7.1997 by giving a direction to the respondent no.2 to decide the representation dated 18.5.1992 within two months by passing a speaking order (Annexure A-2). Thereafter, the respondent no.2 decided the representation of the applicant by passing an order dated 26/29.9.97 and his name was kept on Live Casual Labour Register on the basis of his working from 29.11.1980 to 14.8.1986 taking a lenient view in the matter (Annexure A-3). It is submitted by the applicant that by virtue of his working, he had acquired the status of a permanent and regular employee on the basis of his length of service and in any case he had acquired the status of temporary railway employee having served for more than 120 days continuously with the railways, but instead of giving him permanent regular/temporary status, the respondents merely kept his name in the Live Casual Labour Register, neither provided to him any work, nor paid him salary since 24.3.1989, although he was entitled for the same. Therefore, he again sent a representations to the respondent no. 2 on 20.11.1997 and 16.12.1997 requesting him to provide work and pay salary to him as he is out of employment and his family at the verge of starvation. However, no reply was given to him, but since persons junior to him were appointed, he filed another writ petition no.22416 of 1998 seeking a direction to the respondent no.2 to provide work to the applicant and to pay salary regularly admissible under law. The said writ petition was dismissed on 16.7.1998 by the Learned Single Judge (Annexure A-4). Being aggrieved, applicant filed Special Appeal no. 612 of 1998 in the High Court, which

was disposed of on 13.8.1998 by directing the applicant to seek remedy before the Central Administrative Tribunal (Annexure A-5).

3. The applicant has submitted that it is pursuant to this order passed by the Hon'ble High Court, he has filed the present O.A. It is submitted by the applicant that on the basis of his length of service, the applicant is entitled to be regularised in service as permanent/regular employee. He has, thus, prayed that he may be given the relief(s) as prayed for in the O.A.

4. The respondents have, on the other hand, opposed the O.A. and have submitted that this O.A. is not at all maintainable in view of the fact that even when the applicant had first approached this Tribunal by filing O.A. no. 291/93, the said O.A. was dismissed by giving a clear finding that this O.A. is highly time barred and once the O.A. was dismissed by a Division Bench of this Tribunal, this case cannot be re-agitated now. The said order passed by the Tribunal was not challenged by the applicant, therefore, it had attained the finality as far as the question of O.A. being time barred is concerned. Thereafter, the applicant filed writ petition in the High Court on the ground that in spite of the directions given by the Tribunal, the respondents had not disposed of his representation; therefore, the said writ petition was disposed of by giving a direction to the respondents to dispose of his representation by passing a speaking order. On the basis of the directions given by this Tribunal as well as High Court, the respondents disposed of the applicant's representation by passing a speaking order on 26.9.97 wherein it was clearly held that the action taken by the railway administration for not giving him employment from 15.8.86 is in order. However, taking a lenient view in the matter, the applicant's name was directed to be kept on the Live Casual Labour Register on the basis of his working from 29.11.1980 to 14.8.1986 (Annexure A-3).



The applicant challenged this order by filing yet another writ petition bearing no. 22416 of 1998 before the High Court, which was dismissed by holding therein that the petitioner has no legal right to get appointment. They have, thus, submitted that once the Hon'ble High Court had held that the applicant has no legal right to get appointment, this Tribunal cannot sit on ~~the~~ appeal over ~~the~~ order passed by a Single Judge of Hon'ble High Court. They have, thus, submitted that this O.A. should be dismissed at the outset on these grounds itself. On merits, they have submitted that as per ~~the~~ applicant's own averments, he had last worked till 1989 and if be that so, then he ought to have approached the court immediately thereafter, but since he approached the court only in the year 1993 for the first time that is why the Tribunal had held ~~that~~ his case to be time barred and it was rightly dismissed. They have also relied on the judgment given by the Hon'ble Supreme Court in the case of Rattan Chand Sammanta AIR 1993 SC 22 and the Full Bench judgment decided by Principal Bench to state that this case is hopelessly barred by limitation as such cannot be entertained at this stage at all. They have also submitted that once this point was already decided by this Tribunal in O.A. no. 291/93, this case would be barred by the principle of res judicata as such the same points cannot be re-agitated by filing a subsequent O.A. More-over, in this O.A. also, the applicant has not challenged the order passed by the respondents on 26.9.97 and the applicant has merely asked to give a direction to the respondents to treat the applicant as temporary employee and pay him C.P. Scale and other benefits and to direct the respondents to regularise his services as permanent and regular employee and to provide work to him and pay him salary regularly, whereas these matters cannot even be looked into since the applicant's first O.A. stood dismissed as being time barred.

5. I have heard the respondents' counsel and perused the pleadings as well.

6. Admittedly, as per ~~the~~ applicant's own averments show that he was last allowed to work till 24.3.1989 and thereafter he was not allowed to work. If that be so, than his cause of action had arisen in the year 1989 and he ought to have filed the O.A. within one year from the date of his cause of action. ^{Time} Infact O.A. no. 291 of 1993, the Tribunal had already recorded categorically that the application is highly time barred (page 11). It was only while dismissing the application the Tribunal observed that incase a copy of the representation dated 18.6.1992 was available with the respondents, it would be just and appropriate on the part of the respondents to consider the same and dispose of it in accordance with the rules. In the next very sentence, it was made clear that no direction in this regard are being given as prayed for in the relief clause. Therefore, if the judgment is seen in totality the relief claimed by the applicant was dismissed outright and once the first O.A. itself was dismissed being time barred, naturally the applicant cannot be allowed to file the second O.A. for re-agitating the same issue ~~as already over~~ again. It seems that when the Special Appeal was decided on 13.8.98, it was not brought to the notice of the Hon'ble High Court that it was not only the High Court, which has dismissed the writ petition of the petitioner, but earlier even the Tribunal had also dismissed his O.A. after holding the same as highly time barred. The Division Bench of the Hon'ble High Court was not informed by the petitioner that he had already approached the Tribunal as well, which is evident from the order itself because in the order dated 13.8.98 it is recorded that "the petitioner filed the writ petition without approaching the Tribunal for relief. The writ petition was not maintainable as held by the Supreme Court in L.Chandra Kumar vs. Union of India (AIR 1997 SC 1125). Therefore, Sri R.M. Singh stated that the appellant will seek remedy before the Central Administrative Tribunal. The Division Bench of the Hon'ble High Court made it clear by saying that it was open to do so



in accordance with law, meaning thereby that after he approached the Tribunal, it was to be seen by the parties concerned as well as the Tribunal as to whether the O.A. would be maintainable before the Tribunal in accordance with law or not.

7. The respondents have raised two preliminary objections to the maintainability of this O.A. itself and I am of the considered view that both the objections are valid in as much as the first objection relates to the question of limitation and the second with regard to the principle of res-judicata. As stated above, when the applicant had first approached this Tribunal by filing O.A. no. 291 of 1993, the said O.A. was dismissed by holding ~~as~~ it was time barred. That order was not challenged by the applicant in any higher court, therefore, as far as finding was concerned that the O.A. is barred by limitation that had attained finality, therefore, the applicant could not have raised the same grounds all over again by filing a writ petition either in the Hon'ble High Court or by filing a subsequent O.A. in the Tribunal. As far as the question of res-judicata is concerned, the applicant could have filed a fresh writ petition or another O.A. only if he had to challenge the subsequent order passed by the respondents, which has not been done by the applicant. Even in the present O.A. ~~as~~ he has no-where challenged the order passed by the respondents on 26.9.97 and all that he ~~has~~ claimed that he should be allowed to continue to work, regularised and be given the salary as well. In the case of Ramesh Chandra Sammanta (supra) when the petitioner, therein, had approached the court after a long period of about 15 years, the Hon'ble Supreme Court refused to interfere in the matter by holding that the delay itself deprives a person of a remedy available in law and direction is can be given to the respondents only if the petitioner/able ^{to show the court} ~~as~~ ^{thek} there exists any legal right in his favour leaving scope for manoeuvering. no direction can be given to hold roving enquiry. Similarly,



in the recent judgment decided by Hon'ble High Court of Delhi reported in 2002 (3) ESC 576 (Full Bench) ~~in which~~ it has been held that limitation would apply even to the cases of casual labour and the period of limitation as laid down under Section 21 of the A.T. Act, is one year. More-over, it is also seen that the respondents had already entered the applicant's name in the Live Casual Labour Register and have also stated that when-ever his turn comes, he shall be considered for giving him the work. The applicant has not shown any-where in the O.A. that any person junior to him has been given ~~the~~ work except making a bald statement that persons junior to him have been given regular appointment, which is a very vague averment and definitely no positive reply could have given by the respondents to the said averment except ~~on~~ merely denial which has been done by them. Apart-from it, since the applicant had not worked as per his own averments from 24.3.1989 onwards, either he cannot claim as a matter of right ~~to be~~ appointed or to be given salary for the said period.

8. In view of the above discussions, this O.A. is dismissed not only on the question of limitation, but also on the question of merits of the case. NO order as to costs.



MEMBER (J)

GIRISH/-