

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 08th DAY OF JANUARY, 2010)

PRESENT:

HON'BLE MR. ASHOK S. KARAMADI, MEMBER - J

ORIGINAL APPLICATION NO. 1148 OF 2005

(Under Section 19, Administrative Tribunal Act, 1985)

Man Mohan Son of Ram Kihan Kushwaha Resident of Village -Sindey Ki Chhawni, District Jhanasi.

.....Applicant.

By Advocate: - Ms. A. Basheer

Versus

1. The Union of India through G.M. N.C.R. Allahabad.
2. D.R.M. Jhansi.
3. Station Superintendent, N. C. R. Jhansi.

.....Respondents

By Advocate: - Shri Avinish Tripathi

O R D E R

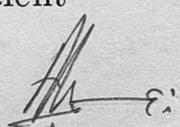
Heard the learned counsel for the applicant and the Respondents. This O.A. filed seeking direction to the Respondents for appointment of the applicant on the post of Group 'D' and to consider the application of the applicant which is pending before the Respondents. It is stated in the O.A. that he has worked upto 19 July 1991. Applicant filed an annexure which is produced to show that the applicant approached to the Respondents on 17.08.2004. Further the applicant states that one person was appointed on 29.11.2004 having regard to the same the applicant approached to



the Respondents and the Respondents did not accept the request of the applicant for appointment, thereby, committing discrimination against the applicant in not giving him the appointment and further it is stated that several representations were made by the applicant to the Respondents but they are not accepted nor any reply was given by the Respondents' Authority. Having regard to the same applicant claims for the above relief/s.

2. The learned counsel for the applicant has also filed the Rejoinder Affidavit. In the Rejoinder Affidavit it is reiterated that the applicant has made several representations to the Respondents, but the Respondents have committed discrimination in not considering his representation and the case of the applicant and further it is reiterated to grant him the above relief. The applicant has also filed the M.A. for condonation of delay in filing the O.A., subsequently.

3. On notice, Respondents have filed their Counter Affidavit and also objection to the ~~O.A.~~ ^{for} ~~After~~ Condonation of delay, and contended that the claim of the applicant is belated and barred by limitation. Further it is stated in the Counter Affidavit and in the objections that the applicant has not explained the delay with sufficient cause. Further it is stated that even though cause of action for the applicant has arisen in the year 1991 when he was worked upto July 1991, having regard to the same the applicant has not furnished sufficient



reasons for condonation of delay, Respondents have stated in para 4 & 5 of the 'Objection' for 'Condonation Of Delay Application' filed by the applicant is as follows:-

"4. That the applicant as per his own averment in paragraph No. 5 of the delay condonation application and the original application has stated that he was engaged as a casual waterman in the year of 27.05.1985 and worked upto 22.07.1991 in broken spell through the Annexure filed by the applicant as Annexure A-1 page 11 to the O.A. clearly denotes and established that he worked in the broken spell and the last working in the establishment as per his own averment in the year 1991 upto 1992 but the original application has been filed in the year 2005 after a lapse of Thirteen years and no cogent reasons was stated for not filing the original application within time as such the original application filed by the applicant is highly time barred and the same is liable to be dismissed as none of the ground taken by the applicant in the delay condonation application is sufficient to condone the delay in filing the original application as such the delay condonation application as well as original application filed by the applicant is liable to be dismissed in favour of answer respondents.

5. That the respondents have took the decision for regularization the service of casual labour and issued the notification on 30.08.2001 by calling the application from the casual laborers worked in the earlier department whose name has been find placed in the casual live register may submit their application in prescribed format along with require document and submit their application before the last working authority where the casual laborers worked lastly upto 30.09.2001 and the said application be verified by the last working authority and the same may be submitted in the office of Divisional Railway Manager Jhansi upto 01.10.2001 an no application shall be entertain by the office which were received after 10.10.2001 and the said notification was broadly published by the office of D.R.M. (P) Jhansi and the information was given to the concerned union and the same was pasted by the concerned authorities in the notice board and the several person applied and they have been screened and given the appointment in the department buy the applicant did not submit any application nor applied for the post and



claiming the appointment/regularization without submitting the application against notification clearly denotes and establish that the applicant has been slept over his right and only interested to get the appointment by filing the O.A. which also time barred as all the selection process has been completed in the year 2003, screening has been done and the persons were appointed who have submitted their application in pursuance of the notification. It is also relevant to mention here that the applicant in the paragraph No. 8 of the delay condonation application has stated that the applicant has submitted his application against the notification dated 30.08.2001 and have also stated the said fact in paragraph no. 4.2 in the original application. In this regard it is also mention here that the said persons namely Ramesh Singh applied against the said notification and he was called for screening test and thereafter he was appointed but the applicant did not applied against the said notification as such the question for his appointment/regularization against the said notification does not arise at all. The Annexure No. A-1 filed by the applicant in the original application did not received in the office of the D.R.M. (P) Jhansi as such the question for taking any action on the said application and calling the applicant for appearing in the screening test and giving him appointment/regularization against the said notification does not arise at all. It is also worthwhile to mention here that the hole selection process has been completed in the year 2003 and the applicant filed in the instant original application in the year 2005 after lapse of two year from the date of completion of the said selection. As such the original application filed by the applicant is highly time barred and is liable to be dismissed in favour of the answering respondents.

On this Respondents have prayed for dismissal of M.A. and the O.A.

4. On perusal of the pleadings and contention raised by the rival parties it is to be noticed that this O.A. is not filed within the time prescribed and M.A. is filed for condonation of delay alongwith the O.A. Even though representation was filed by the applicant but

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there is no proper explanation regarding the delay by the applicant either in his submission, in the pleadings, or in the M.A. filed for condonation of delay, having regard to the same, and in view of the contentions of the applicant that several representations are submitted to the respondents authority for considering his claim. This contention of the applicant does not hold good in view of the propitiations of law lay down by the Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh AFR 1990 S.C. (10) is reproduce as under:-

"(B). Limitation Act (36 of 1963), Art. 58 – Service disputes – cause of action – Date of first accrual – Not date of original adverse order but date of order higher authority entertaining statutory remedy and where no order is made by higher authority within 6 months from the date remedy availed, the date on which 6 months' time expires – Principle applies only if remedy is statutory.

AIR 1958 SC 1036, Overruled.

Decision of M. P. High Court, Reserved.

Administrative Tribunals Act (13 of 1985), Ss 14, 21.

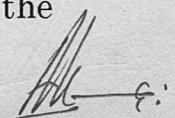
Service disputes – Cause of action – When first arises – Doctrine of – Merger – Applies to decisions of Departmental Tribunals.

In the case of a service dispute the cause of action must 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 entertaining the appeal or representation is made and where no such order is made, through the remedy has been availed of, a six months' 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.

This principle has no application when the remedy availed has not been provided by law."



5. It seen from the record that this O.A. is filed on 25.08.2005 at that time no application for condonation of delay has been filed alongwith O.A., but subsequently the applicant has filed the application for condonation of delay on 06.12.2007 which was numbered as 2647 of 2007. The Respondents have filed the objection for the said application on 08.09.2008 in the application for condonation of delay the applicant has stated that no objection is raised by the Registry at the time of filing, therefore, the condonation of delay application has not filed alongwith the O.A. and further it has been stated that due to financial hardship to approached the Tribunal. After furnishing the information from the other persons to whom the order of appointment was issued on 29.11.2004 i.e. to Shri Ramesh Singh, thereafter, he approached to the Respondents and as such there is no delay in approaching the Tribunal and, if there is any delay the same shall be condoned in view of the reasons stated in the application. For this Respondents have filed objection denying the contention of the applicant and stated that the cause of action arose in the year 1991-92 and this O.A. was filed in the year 2005 after laps of 13 years and the reasons shown by the applicant are not sufficient for condoning the delay as the O.A. is filed highly time barred and the relief/s of the applicant can not granted on this ground. The applicant has submitted his application in pursuance of the notification as several other persons submitted their application with regard to person named Ramesh Singh it is stated that he applied against the



said notification and he was called for screening test and, thereafter, he was appointed, as the applicant did not applied against the said notification and as such considering the case of the applicant for regularization or appointment in view of the said notification does not arise. This contention of the respondents is acceptable, accepting the same the M.A. for condoning delay in filing the O.A. is dismissed, consequently the O.A. is dismissed. No Costs.



Member-J

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