

(A4)

Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.1316 of 1988

Om Prakash Sahu Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice K.Nath, V.C.

Hon. K.J.Raman, A.M.

(By Hon.K.Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing a decision of opposite party No.4 taken on 11.9.82 that the applicant was ^{and} ~~overage~~ ^{w/} for regularisation against the post of a Mail Man. The petition was filed on 18.11.88. The question is whether the delay in filing the petition may be condoned.

2. The reason stated in the application for condonation of delay is that the applicant was ignorant of the time during which application should have been filed and had received wrong advice.

3. Affidavits have been exchanged on the question of limitation. Shri Deva Sharma appearing on behalf of the applicant has referred to a decision in the case of Ram Sumiran and Others Vs. Dy.D.C. and Others 1984 ALL CJ 116 extracted in para 11 of the application for condonation of delay. That was a case for substitution of legal representatives and the observation of the Hon'ble Supreme Court appears to have been that the appellants there were admittedly from the rural

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areas and in a country like ours ~~where~~ it would not be fair to presume that everyone knows that on death of a respondent, the legal representatives have to be brought on record within a certain time. He has also referred to a decision in the case of Collector, Land Acquisition, Anantnag Vs. Katiji 1987 SC 1353 which says that the Courts should take a liberal approach in matters of condonation of delay in filing cases.

4. The applicant had been working as a Casual Labour between 1978 and 1982 whose details are contained in Annexure-A.12, a letter of the Supdt. RMS to the Director General of Postal Services. If that is the only period during which the applicant worked he would have been admittedly over age on 13.6.82 unless the appropriate date for determination of the age was not 30.6.82 but 19.9.82 when the regularisation test was scheduled to be held, and the applicant was not permitted to take it because he was over-age. Applicant's counsel has referred to clause of para 1 of Circular Annexure-A.6 to show that a Daily Wage Worker would be eligible in respect of maximum age limit on the date of appointment to the regular post. For this purpose, the period spent by him as daily wage worker is deducted from his actual age. *Prima facie* the date of appointment on a regular post is not same thing as the date of holding a regularization test.

5. In addition to the applicant's period of working as Casual Labour set out in Annexure-12, the applicant has relied upon a certificate, Annexure-A.4 whose date is not quite legible purporting to have been issued by the Head/Clerk to the RMS. This certificate

gives out several dates between 9.4.77 and 22.7.77 between which the applicant was mentioned to have worked for 31 days. This part of the applicant has been totally denied in the Counter Affidavit and it is emphasized that the applicant had worked from 23.5.78 and not from 9.4.77. Reference is also made by the counsel for the opposite parties to the letter dated 14.12.87, Annexure-A.14 issued by an official of the RMS employees Union to the Deputy Director General Posts and Telegraphs in which it is stated that the applicant had been in service since 1978. The Union men did not mention any period of the year 1977 of the applicant's working period.

6. It is not necessary to go into ~~any~~ further details of the facts because we are not entering into merits of the case; the above facts have been indicated only to see how the things *prima facie* stand in order to find out whether the applicant has substantial cause.

7. What is important for the purpose of the present case is that the applicant was treated to be over age on 13.6.82 by the Department and for that reason he has been refused permission to appear on the regularisation test scheduled for 1982 and was discharged from service on 28.9.82. The period of limitation would commence from 28.9.82. By the time this Tribunal was established more than three years ^{had passed} and therefore his claim could not be entertained on account of the delay. However cognizance may be taken to the fact of the applicant's making representations. It is own

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case of the applicant that by an order dated 25.3.86, Annexure-A.12 his representation had been rejected. But Annexure-A.12 is not the rejection order. It mentions clearly that the applicant's case had been examined earlier and he had been found over age and that he had been fully informed of that position by letter dated 27.5.85. Annexure-A.12 of March, 1986 is only a report of the Supdt. RMS to the Postmaster General; by itself it does not contain any decision. The letter of 27.5.85 is annexed to the counter as Annexure-CA.IIA. It is the letter of the Supdt. RMS addressed to the applicant mentioning that in the matter of regularization of Casual Labour, as submitted by the applicant, had been thoroughly examined and he was found to be over age on 30.6.82. He was informed that no further action could be taken in his case and it was treated as closed by the Department. The cause of action, even if it could be extended on account of the applicant's representation arose last, in view of Annexure-CA.II, in May, 1985, this petition having been filed on 18.11.88. The only reason stated in the application for condonation of delay is that the applicant is an illiterate person and was ignorant of the law relating to limitation and that a liberal view of the limitation is ought to be taken. We do not think that the material on the record shows that he was illiterate person and was ignorant of the law. He was in the service of P & T since 1978. He could approach the Union of the Postal service; he could make representations after representation. It is not the case of ignorance.

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It is a case of dead issue. We are not satisfied
of the ^{ground} taken by the applicant and the application
is dismissed as barred by limitation.

RKM
Member (A)

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Vice Chairman

Dated the 23rd Jan., 1990.

RKM