

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...
Registration O.A. No. 233 of 1992

Mahesh Upadhyay Appellants.

Versus

Union of India
and others Respondents.

...
Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. T.L. Verma, J.M.

(By Hon. Mr. S. Das Gupta, Member(A))

Through this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has approached this Tribunal praying that the order dated 16.2.1981 (Annexure- A 16) terminating the services of the applicant be quashed and he be reinstated in service with all consequential benefits.

2. The facts of the case giving rise to this application are that the applicant who was an Ex-service-man was selected along with others by the Handicrafts Board and the applicant was directed to join at Janki Nagar which ^{he} did on 27.7.1979. He was latter transferred from Janki Nagar to Sewapuri. In February, 1981 the applicant received a letter from the Chief of Cane and Bamboo Division that the training centre at Sewapuri in which the applicant was posted is going to shift at Baster, a District of Madhya Pradesh and he was asked to indicate his willingness or otherwise for transfer to Baster. The applicant, in

reply, stated that he was not willing to go to the new station since he had a lot of liabilities. Thereafter, the applicant received the impugned letter dated 16.2.1981 by which his services stood terminated w.e.f. 13.3.1981. Thereafter, the applicant submitted a series of representations to various authorities including Commerce Minister and the President of India. The applicant also filed Original Application No. 906 of 1991 which was disposed of by this Tribunal with the following observations;

"The applicant was an ex-serviceman and was employed in the year 1979. His services were terminated in the year 1981. He approached the department through representation. He also filed the appeal which has not been disposed of. We cannot enter to in this application but there appears to be no reason why the representation filed by the applicant cannot be considered by the Government. The Government was, therefore, decided the same within a period of 4 months. With these observations, the application ~~is~~ is dismissed."

In compliance with the direction contained in the above quoted order, the Deputy Director (H) of the office of the Development Commissioner, Handicrafts informed the applicant vide letter dated 23.1.1992 (Annexure-A 1) that he has already been informed suitably by the office letters dated 22/23.8.1991 and 30/31.10.1991. These two letters which are at Annexure-A 2 and Annexure-A 3 indicate that the respondents regretted that his request for re

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reinstatement could not be acceded to. The applicant has, therefore, approached this Tribunal seeking the relief aforementioned.

3, In their written reply, the respondents have averred that the applicant's representation dated 13.5.1981 which is submitted immediately after the termination of his services was disposed of by the respondents as far back as in May, 1981, and the applicant could have challenged the said order at that time itself but he did not do so. Instead, he went on representing to various authorities and at present, the petition is highly time barred. On the substantive issue of the termination of his services, the respondents have averred that the advance training centre at Sewapuri where the applicant was posted was run ~~by~~ for two years and latter the controlling officer recommended that this centre be either closed or shifted to any other area out of his jurisdiction since the work of training was nearing completion. On the basis of this recommendation, it was decided to shift this centre from Sewapur to Baster. Had this decision to shift the centre not been taken, ~~on~~ the staff of Sewapuri centre would have been rendered surplus. However, before shifting the centre to Baster, the respondents asked all the staff members to offer their willingness or otherwise to move to Baster and the petitioner expressed his inability to move to the new station as he had a lot of liabilities. The respondents contend that in view of this, there

was no other alternative but to terminate the services of the applicant. They have further averred that according to terms and conditions of appointment, the applicant had a liability to serve anywhere in India and thus he could have verywell been transferred to Baster, particularly when the work had come to an end at Sewapuri.

4. We have heared the applicant in person and the counsel for the respondents and carefully perused the records of the case.

5. The first issue which engaged out attention is whether the application is barred by limitation or not. Admittedly, the termination order was issued as far back as in 16.2.1981. The cause of action, therefore, arose in February, 1981, whereas the application has been filed on only 27.2.1992. The applicant has sought to rely on the decision given in the case of S.S. Rathore Vs. State of M.P.A.I.R. 1990, SC 10 to contend that the application is not barred by limitation. The relevant observations of the Supreme Court in S.S. Rathore's case on the point of limitation is reproduced below;

"We are of the view that the cause of action shall 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 ~~re~~ remedy is provided entertaining the appeal or representations is

made and where no such order is made, though 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. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsucessful representations not provided by law. Repeated unsuccesful representations not provided by law are not covered by this principle."

It is clear from the principle laid down in the above observation that the cause of action shall be taken to arise on the date when the order of higher authority is made but this is in the context of those cases where statutory remedy is provided. In the present application, the applicant has not made out any case that there was statutory remedy against the order of termination. In any case, the representation dated 13.5.1981 against the order of termination was disposed of in May, 1981 itself vide order dated 26.5.1981, a copy of which has been placed at Annexure-C.A. 1. The applicant's case is that this letter was not written by the authority to which the representation was addressed ^{but} by a sub-ordinate authority. That may be so. Infact, that could have been one of the grounds for assailing the letter dated 26.5.1981 rejecting his representation for reinstating him in service. However, the cause of action in this case cannot be said to have been

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extended till the issuance of the letter dated 23.1.1992 which was ~~not~~ merely in compliance with the direction of this Tribunal ~~on 20.1.1992~~ given under the impression that the applicant's representation dated 13.5.1981 was still pending disposal. We are, therefore, of the view that the application is clearly time barred and is not maintainable.

6. Even on merits, we find that the appointment of the applicant was admittedly on adhoc basis and his services were liable to be terminated at any time without notice and without any reason being assigned. The applicant was also liable to serve in any part of India. When the decision was taken to shift the training centre to Baster, a letter was issued to him in which he was asked to indicate his willingness to move to Baster. The respondents have claimed that in this letter, all staff members were clearly told that if they are not willing to move to Baster and also if there is no possibility to adjust them in any other centre, then their services to be will have terminated. A copy of this letter has neither been produced by the respondents nor by the applicant. Since, however, there is no specific denial on the part of the applicant that such stipulation was there in the letter, his indication of unwillingness to move to Baster was clearly with the knowledge that in that case, his services would be terminated. In that view of the matter,

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there was no need for giving him a further opportunity to show cause why his services would not be terminated. Therefore, a denial of opportunity to him to show cause cannot be taken as a factor in initiating the termination of his services.

7. In view of the foregoing, we find that the applicant has no merit and the same is, therefore, dismissed. There will be no order as to costs.

J. Kherme
Member (J)

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Member (A)

Dated: 11 April, 1994.

(n.u.)