

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 788 of 1993

Allahabad this the 30th day of April 1998

Hon'ble Mr. D.S. Baweja, Member (A)  
Hon'ble Mr. J.P. Sharma, Member (J)

Anil Kumar Sharma, S/o Sri K.P. Sharma, R/o 506 Phoota  
Kuan, Swami Para, Meerut City.

Applicant

By Advocate Sri H.S. Srivastava

Versus

1. Union of India through Secretary, Ministry of Defence(Finance), New Delhi.
2. Controller General of Defence Accounts, West Block-V  
R.K. Puram, New Delhi.
3. Controller of Defence Accounts, Central Command,  
Meerut Cantt.

Respondents

By Advocate Sri N.B. Singh

Q R D E R

By Hon'ble Mr. D.S. Baweja, Member (A)

This application has been filed seeking the following reliefs;

- (a) to quash the order dated 10.11.97 and to give direction to the respondents to re-instate the applicant in service and treat him in continuous service from the date of initial appointment.
- (b) to issue direction to the respondents to regularise the services of the applicant and grant him all consequential benefits including arrears which are

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....pg.12/-

admissible to the regular group 'C' employee of the same grade from the date of appointment.

2. The applicant has stated his case as follows;

The Controller of Defence Accounts, Central Command Meerut Cantt. through the letter dated 08.5.86 asked the Regional Employment Exchange Office, Meerut to send the names of the candidates for the post of Hindi typist.

The Employment Exchange sponsored 19 names which included the name of the applicant. All the candidates were subjected to typing test as well as interview and the applicant was finally selected. He was appointed as a typist on daily wages for a period of 89 days as per order dated 27/5/86. The applicant worked thereafter in various spells of 89 days from 27.5.86 till 19.11.87.

The applicant was relieved from the service from 20.11.87 in terms of respondent's order dated 10.11.87 and thereafter the applicant was not given employment. The applicant made a representation alleging that juniors to the applicant are still working as casual labour<sup>ers</sup> but he did not get any response. The applicant further contends that he did work for more than 206 days during 1986 and 1987 and, therefore, in terms of Ministry of Home memorandum dated 26.10.84, he was entitled for regularisation but the same was denied to the applicant. The applicant has averred further that he was paid daily wages of Rs.21/- per day but other typists doing the same work were being paid in the scale of Rs.950-1500. Thus, the applicant was denied equal pay for equal work. The applicant submits that <sup>the</sup> action of the respondents in denial of these benefits is arbitrary, illegal and discriminatory. The applicant submits that he continued to represent and only on 14.2.90, respondents replied to his <sup>one of the</sup> representations rejecting his request for employment and regularisation. .... pg.3/-

3. The applicant has further stated that in 1985 some of the casual typists who were similarly placed as the applicant in the Office of Controller of Defence Accounts, Allahabad filed a<sup>h</sup>O.A. 750 of 1987, V.K. Manocha Vs. Union of India and Others<sup>1</sup> when their services <sup>were</sup> being terminated, challenging the termination and also making a prayer for regularisation of their services. This O.A. was allowed as per order dated 22.10.1991 with the direction to regularise the services of the applicants. The respondents had filed S.L.P. against the same before the Hon'ble Supreme Court and the same was also dismissed as per order dated 25.11.1992. When the applicant came to know that some casual typists were continuing in service in Allahabad office, he represented on 06.3.92 <sup>also</sup> <sup>stating</sup> that he should be allowed to continue in service as Hindi typist. However, this request was also rejected by the respondents as per order dated 12.8.92. When the applicant came to know of the order in the case of 'V.K. Manocha and Others' (supra), the applicant again represented on 08.1.93, seeking the benefits of the order in the case of V.K. Manocha as the applicant was similarly placed. However, this request was also turned down by the respondents as per order dated 02.2.93. Feeling aggrieved, the present application has been filed on 17.5.93.

4. The respondents have contested the application through the counter-affidavit. The respondents at the outset <sup>have</sup> opposed the O.A., stating that the same <sup>is</sup> not been maintainable as it is highly time barred and, therefore, hit by limitation. On the merits of the case, the respondents admit that the applicant was engaged as a casual Hindi Typist. However, the respondents submit

that there was a complaint against the appointment of the applicant to Controller General of Defence Accounts New Delhi with the allegations that the father of the applicant who is working in the Hindi Cell has appointed his son as Hindi Typist and he himself <sup>has</sup> issued a certificate of working and good conduct. The matter was investigated and a report was sent to the higher authorities. As per order dated 12.11.1987, the Headquarter advised that engagement of the Hindi Casual Typist is not covered under the rules and no further extension beyond 19.11.87 should be allowed. Accordingly the applicant was disengaged from 20.11.87. The applicant made a representation on 21.11.87 and the same was considered by the competent authority and the reply was given to the applicant through letters dated 30.11.87 and 21.12.87, rejecting his request as the appointment of the applicant was not authorised by the rules and there was no post of Typist available. The respondents further contend that the instructions dated 26.10.84 based on which the applicant claims regularisation apply to the group 'D' staff and not for regularisation in group 'C' category. In view of this, the applicant's case is not covered by these instructions. As regard the plea of 'equal pay for equal work', the respondents opposed the same, stating that the applicant was not regularly appointed and, therefore, he cannot be equated with the regular incumbents of the post of typist who were appointed through the process of selection. With regard to the claim of the applicant of the benefit of the order in the case of V.K. Manocha and Others, the respondents have stated that he is not similarly placed as the applicants in the O.A. under reference, had been continuing as casual typist for more than 6 to 7 years

and had become over-ages. On the other hand, the applicant's services were terminated when he had not worked for even 2 years. The respondents further contend that dis-engagement of the applicant was done as his engagement was not covered by the rules and not by way of any arbitrary, illegal and discriminatory action. Relying on these submissions, the respondents plead that the application is devoid of merits and the same deserves to be dismissed.

5. The applicant has filed the rejoinder-affidavit, rebutting the averments of the respondents. The applicant has contested the submissions of the respondents with regard to the complaints against his appointment made to the higher authorities by bringing on record the document dated 24.4.92 on record. The applicant contends that as per letter dated 24.4.92, the complaint made was baseless and false. The applicant has <sup>al.</sup> reiterated his grounds taking in the O.A.

6. We have heard Sri H.S. Srivastava, learned counsel for the applicant and Sri Satish Mandyan proxy to Sri N.B. Singh, learned counsel for the respondents. The material brought on record <sup>have been</sup> also carefully considered.

7. The applicant during the hearing relied upon on the following judgments;

(i) Indra Pal Yadav Vs. Union of India and Others  
1985(2) S.L.R. 248

(ii) Dhirendra Chamoli and Other Vs. U.O.I. & Others  
1986 S.C.C.(L&S) 187.

(iii) Johan Lucas and Others <sup>vs</sup> Additional Chief  
Mechanical Engineer, South Central Railway  
1987(3) A.T.C. 328(F.B.)

(iv) 1988 S.C.C.(I&S) 785 Jaipal and Others vs.  
State of Haryana and Others.

(v) Haryana State Electricity Board Union vs.  
Haryana Electricity Board 1989(3) S.L.R.515(P.H)

8. Before going into the merits of the case, we will consider the issue of limitation raised by the respondents. The applicant has averred that his services have been terminated from 20.11.87 as per the impugned order dated 10.11.87. The present application has been filed on 17.5.93 making a prayer to quash the impugned order dated 10.11.87 and to re-instate the applicant in service and treat him in continuous service since the date of appointment. The applicant has submitted that he made a representation against his termination on 21.11.87 but he did not get any reply. He has contended that he continued on making representations and only through the letter dated 14.2.90, he got a reply from the respondents rejecting his representation. The respondents on the other hand, have stated that representation of the applicant dated 21.11.87, had been considered by the competent authority and reply had been sent to the applicant through the letters dated 30.11.87 and 21.12.87. Though the respondents have not brought on record the copies of the letters through which the representations have been replied, but the applicant has also not specifically denied the receipt of these replies. The applicant has brought on record at R.A.-1 with the rejoinder, a copy of the report sent by the Accounts Officer(Administration) to support his contention that there was nothing irregular in the engagement of the applicant as a casual typist. On perusal of this document, it is noted that reference to the disposal of the representation dated 21.11.87

of the applicant through letters dated 30.11.87 and 21.12.87, has been made. Since this document has been brought on record by the applicant himself, we have no hesitation to accept the contention of the respondents that the representation of the applicant dated 21.11.87 had been disposed of. Thus, the cause of action arose when the representation of the applicant was rejected by the respondents and the applicant was free to seek legal remedy for redressal of his grievance. However, the applicant kept quiet and went on making further representations and it is noted that one of his representation was again disposed of on 14.2.90, rejecting his request, and the same has been brought on record by the applicant. Even at this stage, the applicant did not agitate the matter for legal remedy. These facts clearly bring out that the applicant has been sleeping over his right for almost 6 years. No prayer has been made for condonation of delay by way of filing the appropriate application. Infact the applicant has stated in the O.A. that the same has been filed within the limitation period. The applicant has perhaps, based on this averment on taking the disposal of his last representation seeking the benefit of the order of the Tribunal in another O.A. as per letter dated 02.2.93, as reference. Whether the applicant is entitled for the benefit of the order in O.A. 750/87 V.K. Manocha, or not, has been deliberated subsequently but at this stage it is suffice to say that filing of the present O.A. with reference to the reply of the respondents dated 02.2.93, does not explain the delay in seeking legal remedy for the cause of action which arose with disposal of his representation against termination of services in 1987. The reply dated 02.2.93 will, therefore, not extend the limitation period when

the cause of action had arisen in 1987. Further the repeated representations made by the applicant after the respondents have disposed of his representation in 1987 will not give the benefit of extended limitation. In this connection we refer to what is held by the Hon'ble Supreme Court in the judgment in the case of 'Administration of Union Territory of Daman and Diu and Others Vs. R.D. Valand 1996 S.C.C. (L&S) 205'. Keeping in view the above discussion we come to the conclusion that the present O.A. is barred by limitation and, therefore, deserves to be dismissed on this account alone.

9. The applicant has filed the present O.A. claiming that he is similarly placed to the applicants in O.A. 750/87 V.K. Manocha and Others Vs. U.O.I. & Others decided on 22.10.91 and, therefore, entitled for the same benefits allowed as per order dated 22.10.1991. Copy of this order has been brought on record. As indicated earlier, the cause of action arose in 1987 and the present O.A. has been filed in 1993. The question that now arises for consideration is whether the applicant is entitled for the benefits as allowed to the applicants in O.A. 750/87 as per order dated 22.10.91 and whether the claim of benefit of the order in O.A. 750/87 is barred by limitation. The applicant during the hearing argued that the order dated 22.10.91 is in 'rem' and not in 'personam'. Since the applicant is similarly placed, therefore, he is entitled for the benefits as allowed in this order. In view of this, the applicant contends that the limitation should not come in the way of granting reliefs as prayed for. The applicant has cited two judgments in support of his contention namely 'I.P.Yadav and Others Vs. U.O.I. & Others and Johan Lucas and another Vs. Additional Chief General Mechanical Engineer, South Central Railway, which have been detailed earlier. <sup>Before</sup> examining

made the merits of the claim by the applicant, we will briefly review these orders/judgments. In the case of Inder Pal Yadav, we note that Hon'ble Supreme Court while considering the case of casual labour employed under the projects in railways, has observed that those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to a similar treatment if not by anyone else at the hands of the court. These observations of their Lordships are to be seen in the context of the facts of the case before the Apex Court. In this case large number of petitions had been filed by the project casual labourers of the railways who are being disengaged <sup>on</sup> completion of the project without any chance of being re-engaged. When the petitions were being heard, the Railway Board offered to frame a scheme for the project casual labour. The scheme framed by the Railway Board was examined by the Hon'ble Supreme Court and the scheme was approved ~~to~~ with the modification that cut off date would be 01.1.81 instead of 01.1.84 proposed in the scheme framed by the Railway Board. This scheme was to be applicable to all the project casual labourers from 01.1.81 and, therefore, Hon'ble Supreme Court provided that those who did not approach the court, will be also allowed the benefits of the scheme if similarly situated. In the present case such a situation is not existing. On going through the order dated 22.10.91 in O.A. 750/87 we note that the relief has been granted to the applicant on the facts of the case considering that the applicant had been working as a casual labour for several years initially and then on grant of interim stay order and they had become over-age. In the present case, the

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applicant had not even completed 2 years service as a casual typist before his services were terminated in 1987. Therefore, on the facts of the case, the ratio of the judgment in Indra Pal Yadav's case does not apply to the case of the applicant.

10. The second order relied upon by the applicant is with regard to the contention of the applicant that order dated 22.10.91 is in rem and not in personam. In the case of John Lucas, the applicant drew our attention to the observations made by the Full Bench in para-9 of the order. It is observed by the Bench that in service matter any judgment rendered except perhaps in ~~the~~ disciplinary proceedings, ~~will affect someone or~~ other members of the service. The interpretation of the rules governing a service by the Tribunal, while it may benefit one class of employees may adversely affect another class. So also upholding the claim of seniority or promotion of one may infringe or affect the right of another. The judgments of the Tribunal may not, in that sense be strictly judgments in personam affecting only the parties to that petition; they would be judgments in rem. On going through the order, it is noted that issue under consideration before the Full Bench was whether the O.A. filed under Section 19 to set aside the final order rendered by the Tribunal upon an earlier application under Section 19, is maintainable. The above referred observations have been made by the Full Bench in context of this question and the Full Bench has finally concluded that if any person feels aggrieved by an order of the Tribunal, he is not entitled to file another original application under Section 19 to set aside the earlier order of the Tribunal but can seek redressal of his grievance by

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filling review application. As indicated earlier in the present case, the relief in O.A. 750/97 has been allowed on the facts and circumstances of the case and no interpretation of the rules has been done. No law has been laid down with regard to regularisation of the service of the casual typist. Keeping these deliberations in view, we are of the view that what has been observed by the Full Bench in the case of 'John Lucas and another' does not lend support to the case of the applicant.

10.11.91 We have concluded above that the plea of the applicant that order dated 22.10.91 in O.A. 750/97 is not tenable and the claim of the applicant that he is entitled for the same benefits being similarly situated, is not sustainable. Even looking from the other angle any O.A. filed on coming to know of order/judgment in another O.A. and seeking similar relief filed after several years after arising of the cause of action, will hit by the limitation provisions. As stated earlier, the applicant averred that the O.A. has been filed within the limitation period on the plea that the same has been filed after the representation of the applicant seeking the benefits of the order dated 22.10.91, has been rejected by the respondents as per order dated 02.2.93. Such an explanation for delay in filing the O.A. for which the cause of action arose on 20.11.87, is not the proper explanation. The explanation must relate to the failure to avail the remedy within the limitation period with reference to the cause of action. There is no such explanation given by the applicant. In this connection, we seek the support of what is held by the Hon'ble Supreme Court in the case of 'State of Karnataka and Others Vs. S.M. Kotrayya and Others 1996 (6) S.L.R. 665.'

In this case the respondents in the appeal had filed O.A. before the Tribunal seeking the relief as allowed to the other similarly placed who had agitated the matter and their claim was allowed in August, 1989. The issue related to the recovery which was made during the period from 1984 to 1986. The Tribunal had allowed the application and condoned the delay. The Hon'ble Supreme Court quashed the order of the Tribunal with the following observations made in para-8 of the judgment;

"Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub section(1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not proper explanation at all. What was required of them to explain under Sub Sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section(1) or (2). That was not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

In the present case as indicated earlier, no explanation was given for the delay in filing the O.A. with reference to the cause of action arisen in the year 1987. We also refer to the judgment of the Hon'ble Supreme Court in the case of Bhoop Singh Vs. Union of India and Others 1992(21) A.T.C. 675, wherein their Lordships of the Supreme Court have held that denial of the benefits of the judgment to similarly placed persons is not violative of Article 14 and 16 of the Constitution of India, if such persons are sleeping. In another case Ram Chandra Samatha and Others

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vs. Union of India and Others 1993(2) S.L.R. 811, the Apex Court had held that delay deprives the person of his remedy available in law. In the 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. In the case of Union of India and Others vs. Harnam Singh 1993 S.C.C.(L&S) 375, their Lordships of the Hon'ble Supreme Court in para -7 have held that the law of limitation may operate harshly but it has to be applied with all its rigour and the Courts or Tribunals cannot come to the aid of those who sleep over their rights and allow the period of limitation to expire.

12. Keeping in view what is held in the above referred judgment, of the Hon'ble Supreme Court, the present O.A. filed in 1993 for the cause of action arising on 20.11.87 on the basis of coming to know that <sup>the</sup> in similar case the relief had been granted by the Tribunal, is not maintainable as being barred by limitation.

13. Since we have concluded that the present O.A. is barred by limitation both with regards to the cause of action arising in 1987 as well as with regard to the claim of seeking the same relief as allowed in other O.A. <sup>750/87</sup> we are not going into the merits of the <sup>other</sup> reliefs prayed for. Accordingly the judgment, cited and referred to above, are not reviewed.

14. In the result of the above deliberations we hold that the present O.A. is barred by limitation and therefore, is dismissed accordingly. No order as to costs.

Member (J)

/M.M./

Member (A)