

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

ORIGINAL APPLICATION NO. 240/03.

Monday this the 17th day of March 2003.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.

1. Sri Pati Ram
aged about 44 years
Son of Munna Lal
Resident of T-8, Out House Quarter No.F,
Station Colony,
Moradabad.
2. Kallo
aged about 43 years
Son of Shiv Charan
Resident of Village Meerpur Majhauli,
Moradabad.
3. Ram Avtar
aged about 43 years
Son of Lakhan Singh
Resident of Linepar Ram Taliaiya,
Moradabad.
4. Kuldeep Singh
aged about 39 years
Son of B.N. Prasad
Resident of Hanuman Temple Rati Estate,
Moradabad.
5. Ram Avtar Singh
aged about 43 years
Son of Tulsi Singh
Resident of Durgesh Nagar
Double Gate, Moradabad.

.....Applicants.

(By Advocate : Sri T.S. Pandey)

- Versus.

1. Union of India
Through General Manager,
Northern Railway Headquarter
House Baroda House,
New Delhi.
2. Divisional Railway Manager
Northern Railway
Moradabad Division,
Moradabad.
3. Assistant Personnel Officer (M)
Northern Railway
Moradabad.

Respondents.

(By Advocate: Sri A.K. Gaur)

O R D E R

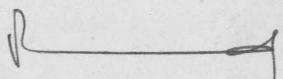
By this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicants have challenged the order dated 1st July/August 1997 by which ~~they~~ ^{their} re-engagement as substitute Safaiwala was ~~not~~ found illegal and they were discharged from service with immediate effect.

2. This Original Application has been filed on 10.03.03, thus there is a delay of more than 5 years. There is no separate application seeking condonation of delay, only in para 3 of the O.A., it has been declared by the applicants that the O.A. is within the prescribed period of limitation provided under section 21 of the Central Administrative Tribunal Act 1985. O.A., has been filed admittedly after more than 5 years, thus, it cannot be said ^{that} it has ~~not~~ been filed within one year period of limitation prescribed under section 21 of Central Administrative Tribunal Act 1985.

3. Learned counsel for the applicant, however, tried to explain long and inordinate delay on the ground that the applicants have been granted liberty by Hon'ble Supreme Court on 24.01.03. While deciding writ petition(Civil) No.57/01 alongwith contempt petition No.329/01 in SLP(C) No.14048/2001, Writ petition(Civil) No.58/2001, The order of Hon'ble Supreme Court reads as under:

"Liberty is granted to the petitioners to withdraw the petitions and approach the Tribunal for redressal of his grievance in accordance with law. The Writ petitions are accordingly dismissed as withdrawn.

Contempt petitions is also dismissed".



4. It may be mentioned here that applicant No.1 Pati Ram, before filing this O.A., filed O.A. No.950/97 in this Tribunal which was dismissed as not pressed on 19.05.99 by this Tribunal. The order reads as under:

"....Sri Bijendra Kumar Mishra on behalf of Sri B.K. Srivastava, counsel for the applicant submits that the applicant does not want to pursue this O.A. and, therefore, he is not pressing this O.A. This statement is recorded and the O.A. is dismissed as not pressed".

5. The legal position is well settled that once O.A. is filed and it is dismissed as not pressed without granting liberty to file a fresh O.A. another O.A. on same cause of action is not maintainable. Hon'ble Supreme Court in case of Sarguja Transport Service Vs. State Transport Appellate Tribunal, Gwalior, A.I.R 1987 S.C. 88 has held that if such a course permitted it shall be ^{be} against the public policy. The relevant paragraphs of the judgment are ^{are} being reproduced below:-

"....The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will lose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of R.1 of O. XXIII. The principle underlying the above rule is founded on public policy....."

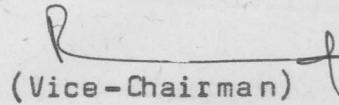
"....The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case (supra) is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res-judicata but on the ground of public policy as explained above. It would also discourage the

litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art.226 of the Constitution once again....."

6. Now coming to the order of Hon'ble Supreme Court dated 24.01.03, it is noticeable that the contempt petition, S.L.P. and writ petitions all were filed in 2001 i.e., long after the impugned order dated 1st July 1997/1st August 1997 was passed against the applicants, thus, the applicants approached the Hon'ble Supreme Court after about 4 years, there is nothing on record explaining the aforesaid by long period, when the applicants were not pursuing remedy either before the Tribunal or before Hon'ble Supreme Court, except applicant No.1 who had filed O.A. No.950/97 in this Tribunal, which too was dismissed on 19.05.1990 as not pressed. Thus, the applicants cannot claim any benefit from the order of Hon'ble Supreme Court for explaining long and inordinate delay in filing this O.A.

7. In the above facts and circumstances, it is difficult to accept that applicants have placed before this Tribunal any cogent explanation explaining long and inordinate delay. The O.A. is accordingly dismissed as time barred.

8. There will be no order as to costs.


(Vice-Chairman)