IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

OA No.1043/2006

This the 21 day of November, 2011

Hon'ble Mr. A.K. Bhardwaj, Member(J)

1. Raghuveer
S/o Ram Sahai,
R/o Village Bhura, Tehsil Rajgarh,
District Alwar, Rajasthan.
2. Devi Singh
S/o Tota Ram,
R/o Village Ninwaya, Post-Achnera,
District Agra, U.P. - 283101

..... Applicants

(By Advocate: None)

Versus

1. The Union of India,
Through General Manager,
North Central Railway, Allahabad.

2. General Manager,
North Western Railway,
Jaipur.

3. Dy. Railway Manager Personnel,
Western Railway Jaipur.

4. Dy. Railway Manager,
North Central Railway, Agra.

5. P.W.I.(R) Bandikui, North Western Railway,
District Dausa (Jaipur).

6. IOW, Achnera, Locoshed, Jaipur Division
Jaipur, now it has been shifted at Agra IOW,
N.C.R. Agra (division from September, 2003)

....Respondents.

(By Advocate: Sh. Anil Dwivedi)

ORDER

By Sh. A.K. Bhardwaj

Claiming to have worked in Northern Central Railway for 225 days during the period from 17.11.1982 to 06.01.1983 and from July, 1985 to August, 1986, applicants have filed present Original Application seeking

issuance of directions to respondents to screen and absorb them against existing vacancies in Group 'D' category.

2. In the counter reply filed by respondents, it is pleaded that mere placement of name of casual labour in Live Casual Labour Register would not give a casual labour continuous cause of action to approach the Tribunal. Pleading so, respondents have submitted that the OA is barred by limitation. They have relied upon the decision of this Tribunal in the case of ***Mahabeer and Ors. Vs. UOI & Ors. (2000 (3) ATJ 1)*** and also on the decision of Full Bench of Hon'ble Delhi High Court in UOI vs. Ramesh Chand in W.P. (C) No. 22542-43/2005, said order of Hon'ble Delhi High Court reads as under:-

> "1. Argument in this Writ Petition (Civil) No.22542-43/2005 were heard on 31st October, 2007 along with Writ Petition (Civil) No.21387 of 2005 and the judgment reserved. There was another Writ Petition (Civil) No.3678-79 of 2006 which was also heard along with the aforesaid two writ petitions on the same day. Question of law involved in all these three writ petitions was common and that was the reason that these writ petitions were heard together. Judgment in the Writ Petition (Civil No.21387/2005 was pronounced on February, 15, 2008 and it appears that due to inadvertence Writ Petition (Civil) No.22542-43/2005 was not included while pronouncing the judgment in Writ Petition (Civil) No.21387 of 2005.
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> 2. We have allowed the Writ Petition (Civil) No.21387 of 2005 holding that the respondents had no right to get their names included in the Live Casual Labour Register. For the reasons stated in the said judgment, this petition is also allowed and the impugned judgment of the Tribunal is set aside. A copy of the judgment passed in Writ Petition (Civil) No.21387 of 2005 be placed in this file as well."

3. Even otherwise having worked as Casual Labour for sometime during the period from 1982 to 1983 and 1985 to 1986 respectively, applicants cannot seek any better entitlement for their regular appointment. In SLP No.3185/2009 (Tahir Vs. UOI, decided on 07.07.2010) Hon'ble Supreme Court viewed that the petitioner was dis-entitled for any relief on the sole ground that he had approached the Tribunal after

seven years from the date of issue of order dated 28.02.2001 by Railway Board. Said order reads under:-

> "It is true that after his removal from service as a casual employee the petitioner was not taken back in service in pursuance of the Railway Board Scheme No.R.B.E. No.42-2001, dated 28.02.2001 even though a person junior to him, namely, Iqbal Ahmed was absorbed in regular service. But, there is another aspect of the matter that dis-entitles the petitioner from any relief from this Court. Undeniably, the cause of action arose in the year 2001, but the petitioner approached the Central Administrative Tribunal as late as in the year 2008.
>
> There is not explanation for this inordianate delay of seven years. The Tribunal and the High Court have denied relief to the petitioner, primarily, on the ground of the aforesaid inordinate delay.
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> We do not see any justification to interfere in this matter. The special leave petition is, accordingly, dismissed."

In the case of '**C Jacob Vs. Director of Geology and Mining and Another,** (2008) 10 Supreme Court Cases 115, Hon'ble Supreme Court has categorically ruled that this Tribunal should not give fresh lease of limitation by directing the departments to decide old representations. Relevant portion of the order in 'C Jacob Vs. Director of Geology and Mining and Another, reads as under:-

> "Where an employee unauthorisedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.
>
> We are constrained to refer to the several facets of the issue only to emphasise the need for circumspection and care in issuing directions for "consideration". If the representation on the face of it is stale, or does not contain

particulars to show that it is regarding a live claim, courts should desist from directing "consideration" of such claims.

The present case is a typical example of "representation and relief". The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 09.04.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was alive claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the petitioner has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.07.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the Department of Mines and Geology, for failing to prove that a termination made in 1982, when the Department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new Department had no records of his service".

Recently in the case of Union of India & Ors. Vs. A. Durai Raj (dead) By Lrs. Through LRJT 2011 (3) SC pg. 254, it has been held by Hon'ble Supreme Court that if a person having a justifiable grievance allows the matter to become stale and approaches the Court / Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer. In the said case Hon'ble Supreme Court further viewed that where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and / or the relevant records relating to the matter may no longer be available. In the said matter Hon'ble Supreme Court also ruled "The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. Para 13 & 14 of the judgment is excerpted as under:-

"**13.** It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the Court/Tribunal as early as possible. If a person having a

justifiable grievance allows the matter to become stale and approaches the Court/Tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This court had occasion to examine such situations in "Union of India V. M.K. Sarkar (JT 2009 (15) SC 70: 2010 (2) SCC 58) and held as follows:

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications...."
When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court / Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such directions, will extend the limitation, or erase the delay and laches.

A Court or Tribunal, before directing 'consideration' of claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. It is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the Court or Tribunal deciding to direct 'consideration' without itself examining of

the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect".

The Original Application is accordingly dismissed being barred by limitation. No costs.

(A.K. Bhardwaj)
Member(J)

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