

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
N.B.W.X.D.E.LxHxI

(W)

O.A. No. 154
T.A.C.Dex

1987

DATE OF DECISION 19-3-1991

Shri Bachu Rana

Petitioner

Mr. G. K. Badheka

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. R. M. Vin

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi

: Vice Chairman

The Hon'ble Mr. R. C. Bhatt

: Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri Bachu Rana,
Ingoral Village (Gagania)
Via Damnagar.
(Adv: Mr.G.K.Badheka)

: Applicant

Versus

1. The Union of India
Through:
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Divisional Railway
Manager, Western Railway,
Bhavnagar Division,
Bhavnagar Para.
3. The Asstt. Engineer,
Western Railway,
Dhola Junction,
Dhola.

: Respondents.

(Adv. Mr.R.M.Vin)

JUDGMENT

O.A. 154/87

Date: 19.3.1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the applicant praying that he may be immediately taken on duty as regular Gangman in scale Rs.196-232 under PWI, Savarkundla and that he be paid all arrears in that scale right from the date of Shri Kanji M and others have been taken up in service.

2. The main hurdle in the way of the applicant is about the limitation. The respondents have taken a contention in the written statement that the same is barred by limitation. The learned advocates for the parties have submitted the written arguments. None of them have made any oral submissions. Now so far as the question of limitation is concerned, the applicant in his application has averred that the application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985. The applicant in his application has not mentioned any order against which he has filed the application nor any date about any order ^{is} against which he aggrieved. Perusing the application, it appears that he was originally working as casual labour

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Gangman under PWI in Savarkundla since 1968 and the xerox copy of the service card produced by the applicant along with his rejoinder shows that he worked at intervals from 1968, 1971, 1972 and 1974 and the last day on which he worked as per this service card is 20th May, 1974. The case of the applicant is that he was called for interview for recruitment of Class IV staff in the office of Assistant Engineer, Dhola by letter produced at page-6 with the application and he was called to appear before the Selection Committee for interview on 26.6.1971. It is the case of the applicant that he and one Junior employee Mr. Kanji M both ~~were~~ passed the selection test and therefore names were placed on panel of Class IV staff for appointment and both ~~passed~~ medical examination at Railway Hospital Bhavnagar on the same day but while Kanji M. was taken, the applicant was left behind and he was not taken and he has not been called since 10 years. He has mentioned in his application that he made written representation but no reply was given to which the respondents in their written statement have contended that no representation was ever made by the applicant. Therefore having regard to the averments made by the applicant in his application, when he was not called during the period of 10 years and he having not made any representation ~~has~~ no representation is produced by him though denied by the respondents, the present application is hopelessly barred under Section 21 of the Administrative Tribunals Act. The present application is filed on 31.3.1987 while the applicant had lost work with the respondents on 20.5.1974. Therefore, the present application is barred by limitation and hence it requires to be dismissed on that ground alone.

2. In view of our finding that the application is barred by Section 21 of the Administrative Tribunals Act, 1985, it is not necessary to go into the merits of this

application. However, in order to give finality to the judgment we proceed to decide the application on merits also. The applicant seems to have started work originally on 21.1.1968 with the respondents as casual labourer. It appears from the service card produced by the applicant that he worked in intervals from 1968 to 1972 and the total working days upto that period is shown as 513. Thereafter he worked for 19 days from March to May, 1974. It is the case of the applicant that he is not granted temporary status and he was given break of a day which was against the rules. According to the applicant, he was called for interview for recruitment of Class IV staff in the office of Assistant Engineer, Dhola vide letter dated 20.6.1971 along with one Junior employee Shri Kanji Meghji. Both of them have passed the selection test and their names were placed on panel for Class IV staff for appointment, that he and Shri Kanji Meghji both have passed medical examination at Railway Hospital ~~was also~~ Bhavnagar Para and certificate/issued by the Divisional Medical Officer that inspite of these facts, Kanji Meghji was taken up as regular gangman in scale Rs.196-232 and he is working since last 10 years while the applicant was left behind inspite of numerous requests and prayers made. It is also his case that other two persons M/s. Ganshyam Babu, Doria Swami S. and Gobar Chhagan were taken on job though they were juniors to him. The applicant has not produced any other documentary evidence except the letter dated 20.6.1971 by which he was called for interview and the copy of the service card.

3. The contention on behalf of the respondents is that Shri Kanji Meghji was not junior to the applicant, that his name did not figure in the panel of 1971 or 1979

and not in 1971. It is also contended that mere a call for interview in screening cannot be treated as a proof of having been selected. Shri Kanji Meghji was appointed as Gangman vide Assistant Engineer, Dhola's Memorandum No. E-891/1 dated 5th September, 1979 in terms of the Divisional Superintendent, Bhavnagar's letter dated 1st September, 1979 under which the approved panel of General Manager was not available. Thus the plea of the applicant that he was selected in 1971 is not correct. The name of the applicant was not available in 1979 panel and therefore he could not be considered senior to Kanji Meghji. Regarding medical certificate, no such medical certificate was submitted by the applicant and is not available on record also.

4. Therefore, it appears clear that Kanji Meghji was posted as Gangman in 1979 in view of his qualifying in screening while the applicant was not given regular post of Gangman with Kanji Meghji as his name was not available in the said panel.

5. The respondents have also produced Annexure R, dated 9.3.1979 showing the names of the persons who had left the service at their own accord and at Sr.No.52 the name of the applicant is shown. The respondents have also produced Annexure R-I. The pairwise remarks stating therein that the respondents office has started to search the old case of screening of the Sub-division of 1971 and after searching of all cases, the old case of screening of 1971 was searched and it is found that the applicant had attended the screening of 1971 but he was not placed on the panel by the Screening Committee nor the name of Kanji Meghji was also placed on panel by the Screening Committee of 1971 but Kanji Meghji was appointed as regular Gangman on the basis of screening of 1979. So far the applicant is concerned, it is

mentioned in the Annexure that he was not called for the screening of 1979 as he had left the job at his own accord while Kanji Meghji was working as casual labour till the screening of 1979. The contention taken by the respondents is that the documentary evidence supports the case of the respondents that the applicant was not called for the screening of 1979 as he had left the job at his own accord. The applicant would not have remained silent for number of years after 1974 if he was not given any work thereafter by the respondents in case he had offered himself for the work. He has kept silent for number of years and there is no documentary evidence worth the name to show that he made any representation to the authorities concerned pointing out his any grievance. The applicant had been issued medical memo on 22.3.1974 but whether he had passed the medical examination or failed is not found from the old record of the medical memo, while the fitness certificate of Kanji Meghji is available in the office and the same is attached with the service sheet of Kanji Meghji.

6. We have perused the written arguments of both sides and have considered all the contentions taken and we see no substance in the contention of the applicant.

7. The applicant has relied on the decision given by this Tribunal in Narsingh Kadwa vs. Union of India & Ors. in OA/104/1986. But the said decision does not help the applicant for the simple reason that the sole controversy in that matter was that the applicant in that case was discontinued from his service from 1st April, 1984 and he had made this plea known to the authorities by making several representations but the respondents in that case had not paid heed to the said representations. It was only for the first time in that case the respondents took plea in defence that the applicant had left his work on his own accord but the documentary evidence in that case was sufficient to show

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that the said defence of the respondents ran entirely counter to the facts stated categorically in the statement produced by the respondents namely that the applicant in that case was discontinued from 31.3.1984 due to non-availability of work and E.L.A. In the instant case as observed earlier, the applicant has not mentioned in the application the date on which he was refused to give work by the respondents nor he has produced any representation made to the respondents but on the contrary the service card produced by him shows that he last attended the work as back as on 20.5.1974 and at the cost of repetition, we mention here that a person would not remain silent as many as 13 years, if he had any legitimate grievance against the respondents. There is nothing on record to show that he had asked for the work and the respondents refused to give work nor has the applicant established that he had passed the medical test and that his name was shown in the screening of 1979. On the contrary the documentary evidence produced by the respondents shows that the applicant with many others had left the job on his own accord. Thus, the applicant miserably fails also on merits, as he has failed to establish his case.

8. The result is that the application stands dismissed with no orders as to costs.

Renu
(R.C.Bhatt)
Judicial Member

P.H.Trivedi
(P.H.Trivedi)
Vice Chairman