Yes. CL. Retenchment

(2)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. Nos 328/88, 329/88, 331/88, 332/88
~~TA Nos~~ 333/88, 334/88, 335/88.

DATE OF DECISION 27-9-1991.

Bhanji Popat & Ors. Petitioners.

Mr. C.D. Parmar, Advocate for the Petitioners)

Versus

Union of India & Ors. Respondents.

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

(2)

O.A.No.328/88

Bhanji Popat,
Hindu, Aged about 25 years,
District: Jamnagar,
To: OKHA. .... Applicant.

Versus.

1. Union of India, owning and representing Western Railway, through The General Manager, Western Railway, Churchgate, Bombay - 20.

2. Chief Executive Engineer(Const.) Western Railway, Railway Station, Ahmedabad.

3. Executive Engineer (Const.) Western Railway, Kothi Compound, Rajkot.

4. Executive Engineer (Const.) Western Railway, Jamnagar. .... Respondents.

O.A.No. 329/88.

Ambadgan Addagappan,
Hindu, aged about 24 years,
C/o. S.J. Vyas,
Opp. Lali Bhavan,
Shastrinagar, Rajkot. ..... Applicant.

Versus.

1. Union of India owning and representing Western Railway, through General Manager, Western Railway, Churchgate, Bombay - 20.

2. The Divisional Manager, Western Railway, Kothi Compound, Rajkot.

3. Executive Engineer (C) Western Railway, Jamnagar.

4. Chief P.W.I., Western Railway, Surendranagar. ..... Respondents.

O.A.No. 331/88

Ilias Abla,
Mohmedian, aged about 26 years,
District : Jamnagar,
To : Okha. ..... Applicant.

Versus.

1. The General Manager, Western Railway, Churchgate, Bombay.

2. Chief Executive Engineer (Const.) Western Railway, Railway Station, Ahmedabad.

H H

... 3/-

3. Executive Engineer (Const.)
Western Railway, Kothi Compound,
Rajkot.

4. Executive Engineer (Const.)
Western Railway, Jamnagar. .... Respondents.

O.A.No. 332/88

Zeenat Mubarak
Mohmedian, Aged about 27 years,
District : Jamnagar,
To : Okha. ..... Applicant.

Versus.

1. Union of India, Owning and
representing Western Railway
through General Manager,
Western Railway, Churchgate,
Bombay.

2. Chief Executive Engineer (Const.)
Western Railway,
Railway Station, Ahmedabad.

3. Executive Engineer (Const.)
Western Railway, Kothi Compound,
Rajkot.

4. Executive Engineer (Const.)
Western Railway, Jamnagar. ..... Respondents.

O.A.No. 333/88

Manjoola Chhagan,
Hindu, Aged about 25 years,
District : Jamnagar,
To: Okha. ..... Applicant.

Versus.

1. Union of India, Owning and
Representing Western Railway
through General Manager,
Western Railway, Churchgate,
Bombay.

2. Chief Executive Engineer(Const.)
Western Railway, Railway Station,
Ahmedabad.

3. Executive Engineer (Const.)
Western Railway, Kothi Compound,
Rajkot.

4. Executive Engineer (Const.)
Western Railway, Jamnagar. ..... Respondents.

O.A.No. 334/88

Ramaben Daya,
Hindu,Aged about 30 years,
District : Jamnagar.
To: Okha. ..... Applicant.

Versus.

..... 3/-

(4)

1. Union of India,
   Owning and Representing
   Western Railway through
   The General Manager,
   Western Railway,
   Churchgate, Bombay.

2. Chief Executive Engineer (Const.)
   Western Railway, Railway Station,
   Ahmedabad.

3. Executive Engineer (Const.)
   Western Railway, Kothi Compound,
   Rajkot.

4. Executive Engineer (Const.)
   Western Railway, Jamnagar. ..... Respondents.

O.A.No. 335/88

Pola Ghogha,
Hindu, Aged about 32 years,
District : Jamnagar,
To : Okha. ..... Applicant.

Versus.

1. Union of India,
   Owning and representing
   Western Railway through
   The General Manager,
   Western Railway, Churchgate,
   Bombay.

2. Chief Executive Engineer (Const.)
   Western Railway, Railway Station,
   Ahmedabad.

3. Executive Engineer (Const.)
   Western Railway, Kothi compound,
   Rajkot.

4. Executive Engineer (Const.)
   Western Railway, Jamnagar. .... Respondents.

Mr. C.D. Parmar, learned counsel for the applicants.
Mr. B.R. Kyada, learned counsel for the respondents.

COMMON JUDGMENT

O.A.Nos.328, 329, 331, 332
333, 334, 335 of 1988

Date : 27-9-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The above seven applications in all of which the applicants are Ex Railway Casual Labourers have been taken up as a group. Their facts have similarity and so also the particulars and laws and rules relied

M. M

upon. The learned counsel for the applicants and learned counsel for the respondents are also the same in all the cases.

2. The service particulars furnished by the applicant of O.A.No. 328/88 dated 10.5.88 are that he joined as casual labour under PWI(C) Dwarka on 15.10.1983. He was transferred to various places and finally retrenched on 10.9.85 by order XEN(C)JAM/RJT No. RJT/E/615/8 passed jointly by Executive Engineer(C) of Western Railway Jamnagar & Rajkot. An application for condonation of delay resulted in the OA being admitted subject to limitation. The application is silent about number of days of actual engagement of the applicant. A xerox copy of record of service of the applicant has been annexed. This xerox copy contains no information about actual number of days of engagement of the applicant. A notice of termination dated 9.8.85 issued to the applicant is as under :

> "Sub:- NOTICE FOR TERMINATION OF SERVICE OF CASUAL LABOUR
>
> Consequent upon the reduction in work your service is no longer required. As such your service will stand 'terminated' with effect from 10.9.85 in terms of para 25-F(A) of Industrial Dispute Act.
>
> 2. This may be treated as one month's notice Please acknowledge the receipt.
>
> Sd/-
> Executive Engineer,
> Construction
> Western Railway, Jamnagar.
>
> Copy for information to
> i) Labour Enforcement Officer, Central, Rajkot."

3. The service particulars furnished by the applicant of O.A.No. 329/88 dated 10.5.88 are that he started serving as casual labour from 26.4.79 and after continuous service of five years and six months during which he put in 948 days of work, he was retrenched by

H. H.

(5)

oral order passed on 10.1.1985. No material to support the claim of work for 948 days has been furnished. A xerox copy of the service card furnished contains no details of actual number of days of engagement. An application for condonation of delay filed resulted in the O.A. being admitted subject to limitation.

4. The particulars furnished by the applicant of O.A. 331/88 dated 10.5.88 are that he started work as casual labour on 20.10.83 and retrenchment on 10.9.85 by order dated 29.8.85 jointly issued by Executive Engineers(C) Jamnagar & Rajkot. However, about limitation the application states that final order was passed on 9.8.85. The application is silent about actual number of days of engagement put in by the applicant. A xerox copy of the record of service of the applicant is produced. This too is silent about the actual number of days of engagement put in by the applicant. An application for condonation of delay resulted in O.A. being admitted subject to limitation. A notice of termination in terms above reproduced was issued to the applicant.

5. The service particulars furnished by the applicant of O.A. 332/88 dated 7.3.88 filed on 10.5.88 are that she started work as casual labour on 24.10.83. She was retrenched on 10.9.85 by order dated 9.8.85 jointly issued by Executive Engineers(C) Jamnagar & Rajkot. The so called order dated 9.8.85 is in fact notice of termination in terms reproduced above. The application is silent about the actual number of days of service put in by the applicant. A xerox copy of the record of service of the applicant is enclosed which too is silent with regard to the actual number of days of service put in by the applicant. An application for condonation of delay filed resulted in the O.A. being

admitted subject to limitation.

6. The service particulars furnished by the applicant of O.A. 333/88 dated 7.3.88 filed on 10.5.88 are that she started serving as casual labour on 5.10.83 and was retrenched on 10.9.85 by order dated 8.8.85 issued jointly by Executive Engineer(C) Jamnagar & Rajkot. This socalled order dated 9.8.85 is in fact notice of termination in terms reproduced above. The application is silent about the actual number of days of engagement of the applicant. A xerox copy of the record of service of the applicant produced also does not furnish this information.

7. The service particulars of the applicant of O.A. 334/88 dated 9.5.88 are that she was appointed as Casual Labour on 5.10.83 and retrenched on 10.9.85 by order dated 8.8.85 jointly issued by Executive Engineers(C) Jamnagar & Rajkot. The socalled order is in fact notice of termination in terms reproduced above. The application is silent about the number of days of actual engagement of the applicant. A xerox copy of her record of service is also silent on this point. The O.A. was admitted subject to limitation.

8. The service particulars furnished by the applicant of O.A. 335/88 dated 10.5.88 in the application are that he started work as casual labour on 5.10.83 and was retrenched on 10.9.85 by order dated 8.8.85 jointly issued by Executive Engineers(C) Jamnagar & Rajkot. The socalled order is in fact notice of termination in terms reproduced above. The application is silent about the actual number of days of work put in by the applicant. A xerox copy of record of the applicant's service produced is also silent

about this information.

9. Every original application above furnishes more or less the same reason for filing the application late. The following is a representative text thereof from one such application :

> "The applicant could not filed application earlier because of draught situation prevailing this area since last three years and has to lookafter his family and his aged parents of poor health. His family is very poor condition and adverse circumstances, the applicant herein therefore, prays to the Hon'ble Tribunal be grant the relief as per the merit of this case."

10. Separate applications for condonation of delay came to be filed in each of the above original applications. However, the reasons advanced in the separate applications for condonation of delay are noticed to be similar. Reproduced below are such reasons figuring in M.A. 457/88 filed in O.A. 335/88 above by way of an example :

> "The applicant who is very poor person of aged parents he to lookafter the household affairs, and to maintain his father and mother is of not good health and reason of sickness and very poor condition prevented to file this O.A. in time this sufficient cause from performing to applicant within the stipulated period.
>
> 3. The order was passed on 10.9.85 there after she made representation twice to PWI(C) JAM. and come to know about others who got stay order from Hon'ble Gujarat High Court the illness of his parents and financial condition not allow to joint to his other applicants in the High Court and after in this Hon'ble Tribunal.
>
> 4. Applicant is very poor having responsibility to maintain his family and aged parent and under the natural calamity like continues third year draught situation prevailing this part of

State. Under this circumstances there is delay of 608 days in filing this original application."

11. We have heard learned counsel Mr.C.D.Parmar for the applicants and Mr.B.R. Kyada, learned counsel for the respondents. We have also perused the record.

12. To written replies of the respondents in each application that the application is time barred, rejoinders that the application is not time barred as it is, to quote from one such rejoinder "within three years time before the Tribunal came into existence".

13. We first have to examine the question of limitation subject to which each application came to be admitted as above stated. On this subject, we need no more seek guidance in case law prior to the judgment of the Supreme Court in S.S.Rathore V/s. State of Madhya Pradesh (JT 1989(3) SC 530) which was decided by a bench of seven judges. This judgment of the Supreme Court surveys the law on the subject of limitation and in regard to provisions in the Administrative Tribunals Act on the subject of limitation has been observed in para 22 as follows :

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

14. In the cases herein before us, there is no contention that there is any provision in the rules with regard to making representation against termination of service by prior notice or by oral order or otherwise. In the condonation applications, figures a vague mention that representation was made to the PWIs. No idea of date of such representation much less its contents has been given. No record to show that the representation was made has been produced. Such representation, in terms of the above extract from the judgment of the Supreme Court, does not enhance limitation. From the rejoinders it is clear that to the applicants herein, if the cause of action arises within three years prior to the commencement of the exercise of the authority of the Tribunal an application is to be taken as filed within the time limit prescribed by law. In regard to such contention of the applicants, guidance is available in para 21 of the above judgment which para is reproduced below :-

> "21. It is appropriate to notice the provision regarding limitation under S.21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58."

In terms of the above, we, in acting within the purview of the Admn.Tribunals Act, have no authority to condone delay of more than six months from after the initial period of one year from arising of cause of action

prescribed as period of time within which an application should be filed.

15. In the seven applications above, the impugned action came to be taken on, to mention the date of each, 10.9.85, 10.1.85, 10.9.85, 10.9.85, 8.8.85, 10.9.85 and 10.9.85. Period of one year from these dates in each case will end on 10.9.86, 10.1.86, 10.9.86, 10.9.86, 8.8.86, 10.9.86 and 10.9.86. Adding six months to these dates, the maximum period by which, we can condone delay, i.e., dates thereof, come to 10.3.87, 10.7.86, 10.3.87, 10.3.87, 8.2.87, 10.3.87 and 10.3.87 in each case. But the applications have been filed on 10.5.88, 10.5.88, 10.5.88, 10.5.88, 10.5.88, 9.5.88 and 10.5.88. These thus are filed much after the dates upto which we could have considered condonation of delay provided we found the reasons sufficient. The applications are therefore so barred by the provisions of Section 21 of the Administrative Tribunals Act, 1985, that we cannot even condone the delay in any of them.

16. In view of the above, all the applications are liable to be dismissed. We hereby do so without any order as to costs.

Sd/-
(S.Santhana Krishnan)
Judicial Member

Sd/-
(M.M.Singh)
Administrative Member

Prepared by Pat sheet 03/10/91
Compared by

TRUE COPY
K B Sane 03.Oct.91
(K. B. SANE)
Officer (J)
Central Administrative Tribunal
Ahmedabad